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THE  
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IN

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Those applicable to the Titles "CUSTOMS," "EXCISE," "POOR LAWS," and "TAXES,"

BY

JOSEPH CHITTY, Esq. BARRISTER AT LAW,

AND THE BEST BY

THOMAS CHITTY, Esq.

**THOMAS CHITTY, Esq.,**

OF THE INNER TEMPLE.

IN SIX VOLUMES.

VOL. II.

LONDON:

S. SWEET, 3, CHANCERY LANE; STEVENS & SONS, 39, BELL YARD; AND  
A. MAXWELL, 32, BELL YARD, LINCOLN'S INN;

*And Booksellers & Publishers.*

1831.





THE  
**JUSTICE OF THE PEACE**  
AND  
**Parish Officer.**

BY  
**RICHARD BURN, LL. D.**

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THE  
JUSTICE OF THE PEACE  
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PARISH OFFICER.

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**East India Company.**

[1 & 2 Geo. IV. c. 61.]

**THE** 1 & 2 Geo. IV. c. 61, s. 6, enacts, "That if any person shall be convicted of making a false oath, touching any of the matters directed or required by that act, (an act to regulate the appropriation of unclaimed shares of prize money, belonging to soldiers or seamen in the service of the East India Company) to be testified on oath, such person so convicted shall be deemed guilty of perjury, and liable to be punished as persons guilty of perjury in England.

Any person making a false oath relative to certain East India prize money, to be deemed guilty of perjury.

"And if any person shall corruptly procure or suborn any other person to swear falsely in any such oath, such person being duly convicted of such procuring and suborning shall suffer such pains, &c. as persons convicted of perjury are liable to."

Persons suborning.

See further as to perjury in general, *post*, Perjury, Vol. V.

As to forgery on, see *Forgery*, Vol. III.

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**Ecclesiastics and Ecclesiastical Courts.** See *Clergy, Church*, Vol. I. As to Proof of Proceedings in, *post*, *Evidence*, Vol. II.

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**Egyptians.**

[22 H. VIII. c. 10; 1 & 2 P. & M. c. 4; 5 El. c. 20; 1 Geo. IV. c. 116.]

**THESE** are a strange kind of commonwealth among themselves, of wandering impostors and jugglers, who made their first appearance in Germany about the beginning of the sixteenth century, and have since spread themselves all over Europe and Asia. They were originally called Zinganees by the Turks, from their captain, Zinganeus; who, when Sultan Selim conquered Egypt, about the year 1517, refused to submit to the Turkish yoke, and retired into the deserts, where they lived by rapine and plunder, and frequently came down into the plains of Egypt, committing

Gypsies.

VOL. II.

B

## GYPSIES.

great outrages in the towns upon the Nile, under the dominion of the Turks. But being at length subdued and banished from Egypt, they dispersed themselves in small parties into every country in the known world; and, as they were natives of Egypt, a country where the occult sciences, or black art, as it was called, was supposed to have arrived to great perfection, and which, in that credulous age, was in great vogue with persons of all religions and persuasions, they found the people, wherever they came, very easily imposed on. *Mod. Univ. Hist.* vol. xliii. p. 271.

Description of, by  
22 H. 8. c. 10.

1 & 2 P. & M. c. 4.  
5 Eliz. c. 20.

5 Eliz. c. 20. re-  
pealed by 22 Geo.  
3. c. 51.

1 Geo. 4. c. 116.  
repealing so much  
of 1 & 2 P. & M.  
c. 4. as inflicts  
capital punish-  
ment.

In the compass of a very few years, they gained such a number of idle proselytes, who imitated their language and complexion, and betook themselves to the same arts of chiromancy, begging, and pilfering, that they became troublesome, and even formidable, to most of the states of Europe. Hence they were expelled from France in the year 1560, and from Spain in 1591. And the government in England took the alarm much earlier; for, in 1530, they are described by the statute of the 22 H. VIII. c. 10, as "outlandish people, calling themselves Egyptians, using no craft nor feat of merchandize, who have come into this realm, and gone from shire to shire, and place to place, in great company, and used great, subtil, and crafty means to deceive the people; bearing them in hand, that they by palmestry could tell men's and women's fortunes; and so, many times, by craft and subtilty have deceived the people of their money, and also have committed many heinous felonies and robberies." Wherefore they are directed to avoid the realm, and not to return, under pain of imprisonment, and forfeiture of their goods and chattels: and, upon their trials for any felony which they may have committed, they shall not be entitled to a jury *de medietate linguæ*. And afterwards it was enacted by stat. 1 & 2 P. & M. c. 4, and 5 El. c. 20, that if any such persons shall be imported into this kingdom, the importer shall forfeit 40*l*. And if the Egyptians themselves remain one month in this kingdom, or if any person being fourteen years old, whether a natural born subject or stranger, which hath been seen or found in the fellowship of such Egyptians, or which hath disguised him or herself like them, shall remain in the same one month at one or several times, it is felony without benefit of clergy. And Sir Matthew Hale informs us, that at one Suffolk assizes no less than thirteen gypsies were executed upon these statutes, a few years before the Restoration. But, to the honour of our national humanity, there are no instances more modern than this, of carrying these laws into execution. 4 *Black. Com.* 166. And by stat. 23 G. III. c. 51, the said stat. 5 El. c. 20. is repealed.

And now, by stat. 1 G. IV. c. 116, after reciting that, "by the stat. 1 & 2 P. & M. c. 4, it is enacted, that if any of the persons called Egyptians which shall be transported and conveyed into this realm of England or Wales do continue and remain within the same by the space of one month, that then he or they so offending shall, by virtue of this act, be deemed and judged a felon or felons, and shall therefore suffer pains of death, loss of lands and goods, as in cases of felony, by the order of the common law of this realm, and shall, upon the trial of them or any of them therein, so tried in the county, and by the inhabitants of the county or place where they or he shall be apprehended or taken, and not *per medietate linguæ*, and shall lose the benefit and privilege of sanctuary and clergy," it is enacted "that so much of the said act as is herein-before recited shall be, and the same is hereby repealed."

**Election.** See *Writberg*, Vol. I. *Parliament*, Vol. III. As to evidence of Poll Books, see *post*, *Evidence*, Vol. II.

**Embezzlement.** See *Cheat*, Vol. I. *Larceny*, Vol. III.

**Embracery.** See *Maintenance*, Vol. III.

## Emigration.

**THE** statute 4 Geo. IV. c. 84. regulates the number of passengers and the quantity of provisions, &c. to be taken out by ships carrying emigrants to any foreign place out of Europe not within the straits of Gibraltar. That act repeals stats. 43 G. III. c. 56; 53 G. III. c. 36; 56 G. III. c. 83, c. 114; and 57 Geo. III. c. 10.

**Engines, Destroying of.** See **Mines, Manufactures, Malicious Injuries to Property**, Vol. III. **Spring Guns**, Vol. V.

**Engrossing.** See *post*, **Forestalling**, Vol. II.

**Entry, forcible.** See *post*, **forcible Entry**, Vol. II.

## Escape.

See also **Rescue, Prison-Breaking**, Vol. V.

**THIS** is to be understood of escapes in *criminal cases*; and not in *civil cases*, as for debt, or the like.

An escape is, where one that is arrested gaineth his liberty before he is delivered by the course of law. *Terms de la Ley.* Escape, what.

Escapes are of three kinds. 1. By a person who hath the offender in his custody; this is properly called an *escape*. 2. Caused by a stranger; this is commonly called a *rescue*. 3. By the party himself; either without force, which is simply an escape, or with force, which is *prison-breaking*. *Rescue* and *Prison-breaking* are treated of under their respective titles: and this title treats only of escapes properly so called. Concerning which we will treat in the following order: Several kinds thereof.

- I. *Escape by the Party himself*, 4.  
[13 Geo. III. c. 31; 44 Geo. III. c. 92; 45 Geo. III. c. 92; 54 Geo. III. c. 186.]
- II. *Escape suffered by a private Person*, 4.
- III. *Escape suffered by an Officer*, 4.
- IV. *What is a voluntary, and what a negligent, Escape*, 5.
- V. *Concerning the retaking of a Person escaped*, 6.
- VI. *Indictment for an Escape*, 7.
- VII. *Trial and Conviction for*, 7.
- VIII. *Punishment of*, 8.  
[37 Geo. III. c. 140; 52 Geo. III. c. 156; 9 Geo. IV. c. 6.]
- IX. *Aiding in attempting to escape*, 10.  
[16 Geo. II. c. 31; 4 Geo. IV. c. 64.]
- X. *Forms*.



## I. Escape by the Party himself.

Escape by party himself.

As all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it, whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself from it by any artifice before such time as he is delivered by due course of law, is guilty of a high contempt, punishable with fine and imprisonment. 2 *Haw. c. 17, s. 5*; 4 *Black. Com.* 129.

But escape, committed by the party himself, belongs more properly to the title *Prison-breaking, post*, Vol. V.

Persons escaping from G. B. to Ireland, or from Ireland to G. B., to be apprehended and brought back again.

By stat. 44 Geo. III. c. 92, s. 3, offenders against whom any warrant shall be issued, escaping from Ireland into England, or Scotland, may be apprehended by an indorsed warrant, and conveyed to Ireland; and the fourth section of the act makes the same provision as to offenders escaping from England or Scotland into Ireland, being apprehended and conveyed back again to England or Scotland.

The apprehension of persons escaping from England into Scotland, and from Scotland into England, is provided for by stat. 13 Geo. III. c. 31.

And as to admitting persons apprehended in England, Scotland, and Ireland, to bail, for bailable offences, see stat. 45 Geo. III. c. 92, and 54 Geo. III. c. 186; which latter stat. s. 2 enacts, that all warrants issued in England, Scotland, or Ireland, respectively, may and shall be indorsed and executed, and enforced and acted upon, in any part of the united kingdom, in like manner as is directed by stat. 13 Geo. III. c. 31, in relation to warrants issued or granted in England and Scotland respectively, as fully as if all the provisions of the said act were made part of this act, as to every part of the united kingdom, and as to all justices of the peace, sheriff's officers, constables, or other officer or officers of the peace in Ireland, as well as in England and Scotland respectively.

See also *post*, *Warrant*, Vol. V.

## II. Escape suffered by a private Person.

Escape by a private person.

It seems to be a good general rule, that wherever any person hath another lawfully in his custody, whether upon an arrest made by himself or another, he is guilty of an escape, if he suffer him to go at large before he hath discharged himself of him, by delivering him over to some other who by law ought to have the custody of him. 2 *Hawk. c. 20, s. 1*.

And the law is generally the same, in relation to escapes suffered by private persons, as by officers. *Id.*

As to escapes procured by third persons, see *post*, *Rescue*, Vol. V.

## III. Escape suffered by an Officer.

Escape by officer.

Whenever an officer, having a party lawfully in his custody on a charge of felony, *voluntarily* permits him to escape, the officer is involved in the legal guilt of the crime charged on his prisoner, 2 *Hawk. c. 19, s. 40*.

Where he *negligently* permits a prisoner to escape, he is guilty of a misdemeanor; and he is guilty in this degree if a prisoner in his charge commits suicide. *Dalt. J. c. 159*.

It is laid down, that whoever, *de facto*, occupies the office of a gaoler, is liable to answer for a *negligent escape*, and that it is no way material whether his title to the office be legal or not. 2 *Hawk. c. 19, s. 28*. It appears to have been holden, that it is an escape in the constable to discharge a person committed to his custody by a watchman, as a loose and

disorderly woman, and a street-walker, although no positive charge was made. *Rex v. Bootie*, 2 Burr. 864.

As to what is an escape, and what a negligent, and what an involuntary one, see *infra*.

BY AN  
OFFICER.

#### IV. What is an Escape, and what a negligent, or voluntary one.

In order to make an escape there must be an *actual arrest*; and therefore if an officer, having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, the officer cannot be charged with an escape. 2 Hawk. c. 19, s. 1; 1 Hale, 594. As to what is an arrest, see *ante* Arrest, Vol. I.

What is an escape.

Must be a previous arrest.

The arrest must be also justifiable; for if it be either for a supposed crime, where no such crime was committed, and the party neither indicted nor appealed, or for such a slight suspicion of an actual crime, and by such an irregular mittimus as will neither justify the arrest nor imprisonment, the officer is not guilty of an escape, by suffering the prisoner to go at large. 2 Hawk. c. 19, s. 2.

And justifiable.

And as the imprisonment must be justifiable, so it must be also for a criminal offence. *Id.* s. 3.

And for a criminal offence.

The imprisonment must also be *continuing* at the time of the escape; and its continuance must be grounded on that satisfaction which the public justice demands for the crime committed. So that if a prisoner be acquitted, and detained only for his fees, it will not be criminal to suffer him to escape, though the judgment were that *he be discharged, paying his fees*; he being detained, not as a criminal, but only as a debtor: but if a person convicted of a crime be condemned to imprisonment for a certain time, and also "until he pays his fees," and he escape after such time is elapsed, without paying them, perhaps such escape may be criminal, for it was part of the punishment that the imprisonment be continued till the fees should be paid.\* 2 Hawk. c. 19, s. 4; 1 Russ. C. & M. 531.

And not detained only for fees.

Also, it is an escape in some cases to suffer a prisoner to have greater liberty than by the law he ought to have; as to admit a person to bail, who by law ought not to be bailed, but to be kept in close custody. 2 Hawk. c. 19, s. 5.

Too much liberty, an escape.

So if a gaoler or other officer shall license his prisoner to go abroad for a time, and to come again, this is an escape, even though the prisoner return again. *Dalt.* c. 159.

If the gaoler so closely pursue the prisoner who flies from him, that he retakes him without losing sight of him, the law looks on the prisoner so far in his power all the time, as not to adjudge such a flight to amount at all to an escape: but if the gaoler once lose sight of the prisoner, and afterwards retake him, he seems in strictness to be guilty of an escape. 2 Hawk. c. 19, s. 6.

Losing sight, an escape.

But it must be by a known officer of the law. T. Hill, a yeoman wardour of the Tower, and Dod, the gentleman gaoler there, were indicted for the negligent escape of Colonel Parker, committed to the Tower for high treason. Lord Lucas, the constable of the Tower, had committed the colonel to the care of the defendants, to be kept in the house of the defendant Hill. The judges present (O. B. January, 1694) were of opinion, that the defendants were not such officers as the law took notice of,

\* By 55 Geo. III. c. 50, fees payable by prisoners are abolished. See Gaols, vol. II.

WHAT IS.	and therefore could not be guilty of a negligent escape. It was merely a breach of trust to Lord Lucas, their master. Upon the same principle, S. Stick, a wardour of the Tower, who was indicted at the same sessions for the negligent escape of Lord Clancarty, was acquitted.
Voluntary escape, what.	Wherever an officer, who hath the custody of a prisoner, charged with and guilty of a capital offence, doth knowingly give him his liberty, with an intent to save him from his trial or execution, this is a <i>voluntary escape</i> . 2 Hawk. c. 19, s. 10.
Negligent escape, what.	A <i>negligent escape</i> is, when the party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again before he hath lost the sight of him. Dalt. c. 159.
Suffering a prisoner to kill himself.	If the constable or other officer shall voluntarily suffer a thief, being in his custody, to go into the water to drown himself, this escape is felony in the constable, and the drowning is felony in the thief: otherwise, if the thief shall suddenly, without the assent of the constable, kill, hang, or drown himself, this is but a negligent escape in the constable. Id.
Prisoner breaking gaol.	If a prisoner for felony break the gaol, this seems to be a negligent escape in the gaoler, because there wanted either that due strength in the gaol, that should have secured him, or that due vigilance in the gaoler or his officers to have prevented it; and therefore it is lawful for the gaoler to hamper them with irons to prevent their escape; for if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners, or to retake them that escape. 1 Hale, 601.

### V. Retaking a Person escaped.

Let go voluntarily, cannot be retaken.	If an officer hath arrested a man by virtue of a warrant, and then taketh his promise that he will come again, and so letteth him go, the officer cannot, after arrest, take him again by force of his former warrant, for that this was by the consent of the officer. But if he return, and put himself again under the custody of the officer, it seems that it may be properly argued that the officer may lawfully detain him, and bring him before the justice, in pursuance of the warrant. Dalt. c. 169; 2 Hawk. c. 13, s. 9.
Fresh suit.	But if the party arrested had escaped of his own wrong, without the consent of the officer, now, upon fresh suit, the officer may take him again and again so often as he escapeth, although he were out of view, or that he shall fly into another town or county, and bring him before the justice upon whose warrant he was first arrested. Dalt. c. 169, p. 405. And it is said generally in some books, that an officer who hath negligently suffered a prisoner to escape may retake him wherever he finds him, without mentioning any fresh pursuit: and indeed since the liberty gained by the prisoner is wholly owing to his own wrong, there seems to be no reason he should take any manner of advantage from it. 2 Hawk. c. 19, s. 12.
Breaking open doors to retake.	And wherever a person is lawfully arrested for any cause, and afterwards escapes, and shelters himself in a house, the doors may be broken open to take him, on a refusal of admittance. 2 Hawk. c. 14, s. 9.
Retaking excuseth not the escape.	It is perhaps the better opinion, that wherever a prisoner, by the negligence of his keeper, gets so far out of his power that the keeper loses sight of him, the keeper is punishable for the escape, notwithstanding he took him immediately after: and it is clear that he cannot excuse himself from an escape by killing a prisoner in the pursuit, though he could not possibly retake him; but must in such case be content to submit to such punishment as his negligence shall appear to deserve. 2 Hawk. c. 19, s. 13. In the case of <i>Ryland v. Lavender</i> , 2 Bing. 65, the defendant, as gaoler, covenanted with the sheriff, among other things, to attend the

## Escape—(Retaking after).

7

quarter sessions, and to remove prisoners, under writs of *habeas corpus*, without permitting them to escape. The defendant being engaged at the quarter sessions, the sheriff, upon a writ of *habeas corpus* for the removal of a prisoner, directed his warrant to the defendant, and "W. W., by me (the sheriff) for this time only thereto specially appointed." W. W., who was the defendant's turnkey, proceeded with the prisoner towards the place of destination. The prisoner having escaped, the court of C. P. held that the sheriff having specially directed the warrant to W. W., the defendant was not liable upon his covenant.

RETAKING  
AFTER.

## VI. Indictment for an Escape.

The indictment for an escape, whether negligent or voluntary, must show that the party was actually in the defendant's custody for some crime, or upon some commitment on suspicion; and it is not sufficient to say that he was in the defendant's custody, and charged with such a crime; for that is no allegation that he was in custody upon that charge: *2 Hawk. P. C. c. 97, s. 4*. It should show that the prisoner went at large, and the time when the offence was committed for which the party was in custody, not only that it may appear that it was prior to the escape, but also that it was subsequent to the last general pardon. An indictment for a voluntary escape must allege that the defendant feloniously and voluntarily permitted the prisoner to go at large, and must also show the species of crime for which the party was imprisoned; for it will not be sufficient to say, in general, that he was in custody for felony, &c. It is questionable, however, whether such certainty, as to the nature of the crime, be necessary in an indictment for a negligent escape, as it is not, in such a case, material whether the person who escaped were guilty or not: *1 Russ. 374. Coll. Stat. tit. Escape*.

Indictment.

## VII. Trial and Conviction for an Escape.

If the prisoner be of record in the court, and the gaoler being called cannot give an account where he is, this is a conviction of an escape; but seems not a conviction of a voluntary escape, unless the gaoler confesseth it: And the gaoler may be fined in such a case. *1 Hale, 603*.

Gaoler not producing him, a conviction.

And it seems to be clear, that a keeper who voluntarily suffers another to escape who was in his custody for felony, cannot be arraigned for such escape as for felony until the principal be attainted, for that the felony of the prisoner shall not be tried between the king and the keeper, because the prisoner is a stranger thereunto; yet he may be indicted and tried for it as a misprision before the attainder of the principal offender. *2 Hawk. c. 19, s. 26; 2 Inst. 591, 592*.

Felony to be tried before the escape.

By the *4 Geo. IV. c. 64, s. 44*. "And, to the intent that prosecutions for escapes, breaches of prison, and rescues, may be carried on with as little trouble and expense as is possible, be it enacted, that any offender escaping, breaking prison, or being rescued therefrom, may be tried either in the jurisdiction where the offence was committed, or in that where he or she shall be apprehended and retaken; and in case of any prosecution for any such escape, attempt to escape, breach of prison, or rescue, either against the offender escaping or attempting to escape, or having broken prison, or having been rescued, or against any other person or persons concerned therein, or aiding, abetting, or assisting the same, a certificate given by the clerk of assize, or other clerk of the court in which such offender shall have been convicted, shall, together with due proof of the identity of the person, be sufficient evidence to the court and jury of the

Method of trial and conviction of offenders making escapes, &c.  
*4 Geo. 4. c. 64, s. 44.*

Evidence.



## TRIAL, &amp;c.

Not to extend to  
certain prisons,  
&c.

nature and fact of the conviction, and of the species and period of confinement to which such person was sentenced."

Sec. 48. Gaols, though locally situate out of the county, &c. shall be deemed part of the county, &c., and subject to the jurisdiction of the justices of the county, &c.

Sec. 96. "And be it further enacted, that nothing in this act contained shall extend to the royal hospital of Bethlehem and prison of Bridewell, nor to the King's Bench or Fleet Prison, or to the prison of the Marshalsea, or Palace Courts, the general Penitentiary at Milbank, nor to the Penitentiary at Gloucester; nor to any ships or vessels provided in any port or navigable river for the reception and employment of convicts sentenced to transportation; nor to exempt any such convicts from any punishment or discipline to which they were liable by law before the passing of this act."

## VIII. Punishment of an Escape.

Escape before  
arrest.

Escape by private  
person.

If a felon escape before arrest, it is not punishable in him as felony; but for the flight he forfeits his goods when presented. *Hale's Sum.* 111.

If a *private person* arrest a felon, and he escape by force from him, the township shall be amerced; but it seems it excuseth the party because he cannot raise power to assist him: but if a *constable or other officer* hath the custody of a prisoner, bringing him to the gaol, it seems that a simple escape by the rescue of the prisoner himself doth not wholly excuse him, because he may take sufficient strength to his assistance. 1 *Hale*, 601.

Wherever a *person* is found guilty upon an indictment or presentment of a *negligent* escape of a criminal actually in his custody, he is punishable by fine and imprisonment, according to the quality of the offence. 2 *Hawk.* c. 19, s. 31; c. 20, s. 6; 1 *Hale*, 600, 604.

Escape by officer.

And it seems to be the better opinion, that the sheriff is as much liable to answer for a negligent escape suffered by his bailiff as if he had actually suffered it himself, and that the court may charge either the sheriff or bailiff for such an escape; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. 2 *Hawk.* c. 19, s. 29; *Rex v. Fell*, 1 *Ld. Raym.* 424.

Mr. Hawkins, although he is one of the most accurate of all writers, yet hath inserted in this place certain penalties for escapes which were expired above two hundred years before. 2 *Hawk.* c. 19, s. 34, 35. *Vide* the edition by Mr. Curwood.

It seems to be generally agreed, that a voluntary escape suffered by an officer amounts to the same kind of crime, and is punishable in the same degree as the offence of which the party was guilty, and for which he was in custody; whether it be treason, felony, or trespass. 2 *Hawk.* c. 19, s. 22. if the cause be expressed in the commitment, 2 *Inst.* 52. See *ante*, Commitment, Vol. I.

But yet a voluntary escape is no felony, if the act done were not felony at the time of the escape made, as in case of a mortal wound given, and the party not dying till after the escape; but the officer may be fined to the value of his goods. *Dalt.* c. 159.

Also a voluntary escape suffered by one who wrongfully takes upon him the keeping of a gaol, seems to be punishable in the same manner as if he was never so rightfully entitled to such custody; for that the crime is in both cases of the same ill consequence to the public; and there seems to be no reason that a wrongful officer should have greater favour than a rightful, and that for no other reason but because he is a wrongful one. 2 *Hawk.* c. 19, s. 23.

But it seemeth to be clear that no one is punishable as for felony for the voluntary escape of a felon, but the person only who is actually guilty of

it; and therefore that the principal gaoler is only fineable for a voluntary escape suffered by his deputy; for that no one shall suffer capitally for the crime of another. *Id.* s. 27.

PUNISHMENT.

And therefore, although in all civil causes the sheriff is to be responsible, or the gaoler, at election, yet if the gaoler do voluntarily suffer a felon in his custody to escape, this, inasmuch as it reacheth to life, is felony only in the gaoler that was immediately trusted with the custody, and not in the sheriff. 1 *Hale*, 597.

For the escape must be voluntarily permitted in him that permitted it, which could not be in the high sheriff, though it were such in the gaoler, for he was not privy to it, and therefore could not do it feloniously; but it was a negligent escape in him, in trusting such a person with the custody of his prisoners that would be false to his trust, and therefore the sheriff shall pay, but not corporally suffer for the miscarriage of his gaoler. 1 *Hale*, 597, 598.

But although the felony for which a man is committed be not within clergy, yet the person who voluntarily suffers him to escape shall have the benefit of the clergy. 1 *Hale*, 599. See now *ante*, Clergy, Benefit of, Vol. I.

The *Mutiny Act* in general enacts, that if any offender, under sentence of death by a court-martial, shall obtain a conditional pardon [*viz.* on transportation], all the laws in force touching the escape of felons under sentence of death shall apply to such offender, and to all persons aiding, abetting, or assisting, in any escape or intended escape of any such offender, or contriving any such escape, from the time when an order [for his transportation] shall be made by a justice or baron, and during all the proceedings had for the purposes mentioned in the act. See *post*, *Military Law*, Vol. III.

Escape of offenders sentenced by a military court-martial, and conditionally pardoned.

A former statute, 37 Geo. III. c. 140, s. 6, contains a similar provision with respect to offenders under sentence of death by a naval court-martial, and allowed the benefit of a conditional pardon.

As to those sentenced by a naval court-martial.

The 52 Geo. III. c. 156. provides against the aiding of the escape of prisoners of war, and enacts, that "every person who shall knowingly and wilfully aid or assist any alien enemy of H. M., being a prisoner of war in H. M.'s dominions, whether such prisoner shall be confined as a prisoner of war in any prison or other place of confinement, or shall be suffered to be at large in H. M.'s dominions, or any part thereof, on his parole, to escape from such prison or other place of confinement, or from H. M.'s dominions, if at large upon parole," shall, upon conviction, be adjudged guilty of felony, and be liable to be transported for life, or for fourteen or seven years.

Persons aiding the escape of prisoners of war made liable to transportation.

Section 2. also declares and enacts, that every person who shall knowingly and wilfully aid or assist any such prisoner at large on parole in quitting any part of H. M.'s dominions, where he may be on his parole, although he shall not aid or assist such person in quitting the coast of any part of H. M.'s dominions, shall be deemed guilty of aiding the escape of such person within the act. There is a further provision as to assisting such prisoners in their escape after they had got upon the high seas.

Section 3. enacts, "that if any person or persons owing allegiance to H. M., after any such prisoner as aforesaid hath quitted the coast of any part of H. M.'s dominions in such his escape as aforesaid, shall, knowingly and wilfully, upon the high seas, aid or assist such prisoner in his escape to or towards any other dominions or place, such person shall also be adjudged guilty of felony, and be liable to be transported as aforesaid." It is also provided, that offences committed upon the high seas, and not within the body of any county, may be tried in any county within the realm.

By section 4. the act is not to prevent offenders from being prosecuted as they might have been if the act had not been passed; but no person prosecuted otherwise than under the provisions of the act is to be

**PUNISHMENT.** liable to be prosecuted for the same offence under the act; and no person prosecuted under the act is, for the same offence, to be otherwise prosecuted.

The offence of aiding a prisoner of war to escape is not complete if such prisoner is acting in concert with those under whose charge he is merely to detect the defendant, who was supposed to have assisted in the escape of other prisoners, and such prisoner having no intention to escape. *Rex v. Martin, Russ. & R. C. C.* 196.

Rescue and prison-breach.

As to the punishment of persons guilty of rescuing and breaking prison, see *post*, *Rescue, Prison-Breach*, Vol. V.

Returning from transportation.

As to the offence and punishment relating to escaping after transportation, 5 Geo. IV. c. 84, see *post*, *Transportation*, Vol. V.

## IX. Aiding in attempting to escape.

Aiding a prisoner convicted of treason or felony, or committed for these offences, in an attempt to escape.

The mere aiding an attempt of persons confined to make an escape, though no escape should ensue, is made highly penal by stat. 16 Geo. II. c. 31,\* which enacts, "that if any person shall assist any prisoner to attempt his escape from any gaol, though no escape be actually made, if such prisoner were then attainted or convicted of treason or felony (except petty larceny), or lawfully committed to or detained in any gaol for treason or felony (except petty larceny) expressed in the warrant of commitment or detainer,† he shall be guilty of felony, and be transported for seven years: and if such prisoner were then convicted of, committed to, or detained in gaol for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment or detainer, or was then in gaol upon any process for debt, damages, costs, or sum of money, amounting to 100*l.*, he shall be guilty of a misdemeanor and be liable to fine and imprisonment."

Aiding, &c. a prisoner convicted or committed for petty larceny, &c.

Assisting any person to escape from a constable, or from any boat carrying felons for transportation.

The third section enacts, "that if any person shall assist any prisoner to attempt to escape from any constable, or other officer or person who shall have the lawful charge of him in order to carry him to gaol, by virtue of a warrant of commitment for treason or felony (except petty larceny), expressed on such warrant; or if any person shall assist any felon to attempt his escape from on board any boat, ship, or vessel, carrying felons for transportation, or from the contractor for the transportation of such felons, or his agents, or any other person to whom such felon shall have been lawfully delivered in order for transportation, he shall be guilty of felony, and be transported for seven years."

Felony.

All prosecutions on this act to be commenced within a year after the offence committed.

Stat. 16 Geo. 2. c. 31. does not extend to cases where an actual escape is made.

The stat. 16 Geo. II. c. 31, does not extend to cases where an actual escape is made, but must be confined to cases of an attempt, without effecting the escape itself. Mr. J. Buller, in delivering the opinion of the judges (O. B. June, 1796), observed, "the statute purports to be made for the further punishing of those persons who shall aid and assist persons attempting to escape, and makes the offence felony: it creates a new felony; but the offence of assisting a felon in making an actual escape was felony before, and therefore does not seem to fall within the view or intention of the legislature when they made this statute." *Rex v. Tilley and others, O. B. April Sess. 1795*; 2 *Leach*, 662; see also *Rex v. Burridge*, 3 *P. Wms.*

\* This act is not actually repealed by the 4 Geo. IV. c. 64. *post*, 11; but its provisions are thereby, in many respects, altered.

† This has been held to mean "clearly and plainly expressed;" so that a case

where the commitment is on suspicion only is not within the act. *Walker's case*, 1 *Leach*, 97; *Greeniff's case*, 1 *Leach*, 363; and *Gibbon's case*, 1 *Leach*, 98, note (a) *S. P.*

## Escape—(Aiding in).

11

439; 1 Hale, 621; *R. v. Young and Chissell, Winchester Lent Ass. 1801, cor. Le Blanc, J. Burn, J. 24 ed. 935.*

Delivering instruments is within the act, though the prisoner has been pardoned of the offences of which he has been convicted, on condition of transportation. *Rex v. Shaw, R. & R. Cc. 526.*

The stat. 4 Geo. IV. c. 64, s. 43, enacts, that "If any person shall convey or cause to be conveyed into any prison to which this act shall extend, (*post*, Gaols, Vol. II.) any mask, vizer, or other disguise, or any instrument or arms proper to facilitate the escape of any prisoners, and the same shall deliver, or cause to be delivered, to any prisoner in such prison, or to any other person there, for the use of any such prisoner, without the consent or privity of the keeper of such prison, every such person shall be deemed to have delivered such vizer or disguise, instrument or arms, with intent to aid and assist such prisoner to escape or attempt to escape; and if any person shall, by any means whatever, aid and assist any prisoner to escape, or in attempting to escape, from any prison, every person so offending, whether an escape be actually made or not, shall be guilty of felony, and being convicted thereof, shall be transported beyond the seas, for any term not exceeding 14 years." See a similar provision, stat. 16 Geo. II. c. 31, s. 2. See the 44th section as to the trial and conviction of offenders. *Ante* 7.

AIDING IN.

Conveying visors, &c. into prisons to assist prisoners to escape.

Transportation for assisting prisoners to escape.

## X. Forms.

County of } To the constable of the parish of \_\_\_\_\_, in the said county  
to wit. } of \_\_\_\_\_.

Warrant to apprehend a person for escaping.\*

Forasmuch as J. H., keeper of the gaol (or house of correction) at \_\_\_\_\_, in the county aforesaid, hath this day made information and complaint before me, Sir G. C., bart., one of His Majesty's justices of the peace acting in and for the said county of \_\_\_\_\_, that A. O. hath unlawfully and wilfully escaped from the said gaol (or house of correction), and from and out of the custody of him the said J. H., the keeper thereof, before the expiration of a certain term for which he the said A. O. was ordered to be imprisoned [and kept to hard labour] therein. These are therefore to command you the said constable forthwith to apprehend and bring before me, or some other of His Majesty's justices of the peace for the said county, the body of the said A. O., to answer unto the said complaint, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_.

G. C. (L. S.)

\_\_\_\_\_. (The county wherein the commitment is made.) J. P. esquire, one of His Majesty's justices of the peace for the said county, to the constable of \_\_\_\_\_, in the said county, and to the keeper of the common gaol at \_\_\_\_\_, in the said county.

Commitment of a constable, for a negligent escape of a prisoner.

These are to command you the said constable, in His Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of C. D., charged this day before me the said justice, on the oath of A. B. of \_\_\_\_\_, and others, for that he the said C. D. [state the offence thus]:

On, &c., at, &c., in the said county, having one C. D. in his custody, under and by virtue of a warrant of one of His Majesty's justices of the peace, on suspicion of having feloniously, &c. [as in the warrant], did unlawfully and negligently permit the said C. D. to escape. And you the said keeper, &c. [as usual, to the end thus]:

And you the said keeper are hereby required to receive the said C. D. into your custody in the same [common gaol], and him there safely to keep until he shall be thence delivered by due course of law. Herein fail you not. Given under my hand and seal the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord.

J. P.

\* See 4 Chit. C. L. 78.

## FORMS.

Indictment against  
a constable for a  
negligent escape.

— The jurors for our Lord the King upon their oath present, that on, &c., at, &c., aforesaid, one A. I., of, &c., came before J. P., esquire, then and yet one of the justices of our said Lord the King, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; and the said A. I. did, then and there, on his oath before the same justice, charge, accuse, and give information against one A. O., of, &c. for a certain misdemeanor, in taking fish out of the pond of , at , in the said county, [or as the offence shall be]: Whereupon he the said J. P., the justice aforesaid, did then and there, to wit, at aforesaid, in the county aforesaid, make a certain warrant, under his hand and seal, in due form of law, directed to the constable of aforesaid, in the county aforesaid, thereby requiring him the said constable to take the body of the said A. O., and bring him before the said J. P., the justice aforesaid, to answer to such matters and things as should be alleged against him, touching the said misdemeanor; which said warrant afterwards, to wit, on the same day and year aforesaid, at aforesaid, in the county aforesaid, was delivered to one A. C., then being constable of aforesaid, in due form of law to be executed; by virtue of which said warrant the said A. C. afterwards, to wit, on the day and year aforesaid, at (venue) aforesaid, in the said county, did take and arrest the body of the said A. O., and him the said A. O. in his custody for the cause aforesaid had\*. Nevertheless, the said A. C., of, &c. afterwards, to wit, on the day and year aforesaid, the duty of his office in that respect not regarding, at (venue) aforesaid, in the county aforesaid, unlawfully and negligently did permit the said A. O. to escape and go at large out of the custody of the said A. C.; to the great hindrance of justice, in contempt of our said Lord the King and of his laws, and against the peace of our Lord the King, his crown and dignity.

Indictment against  
a gaoler for a vo-  
luntary escape.

— The jurors for our Lord the King upon their oath present, that heretofore, to wit, [at the general quarter sessions of the peace holden at here state the record of the conviction of the party who escaped, in the past tense; and then as follows:] as by the record thereof more fully and at large appears; which said judgment still remains in full force and effect, and not in the least reversed or made void. And the jurors first aforesaid upon their oath aforesaid do further present, that afterwards, to wit, at the said general quarter sessions of the peace above mentioned, he the said C. D. was then and there committed to the care and custody of E. F., he the said E. F. then and still being keeper of the common gaol in and for the said county of , there to be kept and imprisoned in the gaol aforesaid, according to and in pursuance of the judgment and sentence aforesaid; and the said E. F. him the said C. D. then and there had in the custody of him the said J. S., for the cause aforesaid, in the gaol aforesaid\*. And the jurors first aforesaid, upon their oath aforesaid, do further present, that the said E. F., late of, &c. afterwards, and before the expiration of the six calendar months for which the said C. D. was so ordered to be imprisoned as aforesaid, and whilst the said C. D. was so in the custody of the said E. F. as such keeper of the said common gaol at aforesaid, to wit, on, &c., at, &c., aforesaid, feloniously, [if the offence for which C. D. was convicted were a felony,] unlawfully, voluntarily, and contemptuously, did permit and suffer the said C. D. to escape, and go at large whithersoever he would, whereby the said C. D. did then and there escape out of the said prison, and go at large whithersoever he would, to the great hindrance of justice: in contempt of our said Lord the King and his laws, and against the peace of our said Lord the King, his crown and dignity.

Indictment against  
the turnkey of a  
gaol for a mis-  
demeanor, in per-  
mitting a person  
committed on a  
warrant for a  
misdemeanor to  
escape.

— The jurors for our Lord the King upon their oath present, that one W. D., esq., then being one of the justices, &c., in due form of law did make his warrant of commitment, under his hand and seal, to wit, at, &c. bearing date the same day and year aforesaid, directed to the keeper of the common gaol at , in and for the said county of , by which said warrant of commitment the said keeper was required to receive, &c. [here set forth the mittimus] as by the same warrant more fully appears, by virtue of which said warrant of commitment, afterwards, to wit, on the said, &c., at, &c., G. H., then being keeper of the said common gaol of the said county of , at , aforesaid, did receive the said O. O. into his custody in the said common gaol there situate. And

the jurors, &c., that D. M., late of, &c., labourer, well knowing the premises, afterwards, and whilst the said O. O. was a prisoner as aforesaid, for the cause aforesaid, to wit, on, &c., with force and arms, at, &c., unlawfully, voluntarily, and unjustly did unlock and open the door of a certain yard wherein the said O. O. was then confined within the said prison, as such prisoner as aforesaid, and did permit him, the said O. O., to go out at a certain back door of, and belonging to, the said gaol, and over a certain wall surrounding and enclosing the same, and to go at large out of the said prison wheresoever he would, he the said D. M. then and there having the custody and keeping of the keys of and belonging to the said prison, whereby the said O. O. did then and there escape out of the said prison, and go at large whithersoever he would. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said D. M. then and there, in manner and form aforesaid, was aiding and assisting the said O. O. to make his escape from and out of the said prison, to the great hindrance of justice, in contempt, &c. [Conclude as in last form.]

And the jurors aforesaid, on their oath aforesaid, do further present, that the said O. O. on the said, &c. was lawfully committed to the custody of the said G. H., then being keeper of his said Majesty's gaol of and for the said county of , to wit, at, &c. aforesaid, by virtue of a certain warrant of commitment, duly made, under the hand and seal of the said W. D., then being such justice as aforesaid, bearing date the same day and year last aforesaid, upon and in pursuance of a certain charge, upon oath, made by the said R. R. against the said O. O. to and before him the said W. D., being such justice as aforesaid, alleging that the said O. O. had unlawfully [state the offence as set forth in the warrant], and by which said last-mentioned warrant the said G. H. was required safely to keep the said O. O. until the then next general quarter session of the peace, to be holden in and for the said county of , or until he should be thence delivered by due course of law, as by the said last-mentioned warrant more fully appears. And the jurors aforesaid, on their oath aforesaid, do further present, that the said D. M., so having the custody and keeping of the said keys as aforesaid, and well knowing the said last-mentioned premises, afterwards, to wit, on, &c., aforesaid, with force and arms, at, &c., unlawfully, voluntarily, and contemptuously did permit and suffer the said O. O. then being a prisoner in the said gaol, under the custody of the said G. H., by virtue of the said last-mentioned warrant, for the cause last aforesaid, to escape and go at large out of the said gaol wheresoever he would, without the knowledge, privity, or consent of the said G. H. being such keeper as aforesaid, and without any lawful authority whatsoever; whereby the said O. O. did then and there escape out of the said prison and go at large whithersoever he would: to the great hindrance, &c. [Conclude as in last form.]

Second count.

Commencement as usual, as ante, p. 11.] on, &c., at, &c., being lawfully in the custody of one C. D., a constable, under and by virtue of a warrant of one of His Majesty's justices of the peace, on suspicion of having feloniously, &c., [as in warrant.] unlawfully did escape out of the custody of the said C. D.; and that E. F., late of, &c., did then and there [feloniously and] unlawfully aid and assist the said A. B. in so escaping as aforesaid. And you the said keeper, &c. [as usual, as ante, p. 11. to the end.]

Commitment of the party escaping, and those aiding him.

State the charge before the magistrate, the commitment, and the defendant's being in the custody of A. C., as in the first form, ante, 12 to the\*; and then thus:] And the jurors aforesaid upon their oath aforesaid do further present, that the said A. C., late of, &c., so being in the custody of the said A. C., under and by virtue of the warrant aforesaid, afterwards, and whilst he continued in such custody, and before he was delivered by the said A. C. to the said keeper of the gaol of , or his deputy, to wit, on the day and year last aforesaid, at, &c., aforesaid, out of the custody of the said A. C., unlawfully did escape, and go at large whithersoever he would: to the great hindrance, &c. [Conclude as in last form of indictment.]

Indictment against prisoner for escaping out of the custody of a constable.

## FORMS.

Commitment for conveying instruments to a prisoner, to enable him to escape, on 4 Geo. 4 c. 66.

Commencement, as ante, p. 11.] on, &c., at, &c., [feloniously and] unlawfully did convey into the common gaol at , [two steel files,] being instruments proper to facilitate the escape of prisoners, and delivered the same to C. D., who was then in custody there for [state the offence concisely], with intent to aid and assist the said C. D. to escape from and out of the said gaol, against the form of the statute in such case made and provided. And you the said keeper, &c. [conclude as usual, as ante, p. 11. If the prisoner were not in custody for a felony, omit the word "feloniously."]

Indictment for a like offence.

Proceed as in the second form, ante, 12. to the\*, and then thus:] And the jurors aforesaid, upon their oath aforesaid, do further present, that G. H. late of, &c., afterwards, and whilst the said C. D. was and remained in the custody of the said E. F. in the gaol of aforesaid, to wit, on, &c. at, &c., aforesaid, feloniously and unlawfully did convey and cause to be conveyed into the said gaol of [four steel files and one chisel], being instruments proper to facilitate the escape of prisoners; and the same files, being such instruments as aforesaid, then and there feloniously did deliver and cause to be delivered to the C. D. (he the said C. D. then and there being a prisoner in the said gaol, and then and there lawfully detained for the felony and [murder] aforesaid in the said warrant or commitment above mentioned and expressed), without the consent or privity of the keeper or underkeeper of the said gaol of , which said [files], being such instruments as aforesaid, were then and there so conveyed into the said gaol, and delivered to the said C. D. by the said G. H. as aforesaid, with the felonious intent to aid and assist the said C. D., so being such prisoner and in custody as aforesaid, to escape and attempt to escape from out of the said gaol, against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his crown and dignity.

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### Escheat. See Forfeiture.

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### Estray.

And herein also of Goods waived.

Estray, what.

**ESTRAY** is, where any horses, sheep, hogs, beasts, or swans, do come into a lordship, and are not owned by any man. *Kitch.* 23.

*Where any horses, sheep, hogs, beasts, or swans*—Bees and other creatures of a wild nature are not within this description, and therefore not to be reckoned amongst stray goods. Nevertheless it seemeth that a swarm of bees, of which the owner hath lost sight, and consequently can make out no property, may be seized for the use of the king, or of the lord of the manor; for it is a maxim of the common law, that such goods whereof no one can claim property do belong to the king; and that which the king hath he may grant to another, and consequently another may prescribe to have the same within such a precinct or lordship. And therefore it is said, that if any take honey or swarms of bees within the demesne of the lord, it is inquirable in the court baron. *Kitch.* 114.

*Swans*—Swans that are unmarked and wild (being at large and abroad) may be seized by the sheriff for the use of the king, by his prerogative. *Dult. Sher.* 80.

Also swans marked and tame may be estrays. *Kitch.* 86. But it seemeth that no other fowl can be estray. *Wood, b. 2. c. 2.*

*Do come into a lordship*—That is, where the goods have no right to be ; and therefore an estray cannot be in such place, where the party hath a right of common. *Dalt. Sher.* 79.

ESTRAY.

*And are not owned by any man*—Whereupon (as hath been said) the property accrueth to the king ; and the cattle of the king cannot be estrays, nor forfeited as such to the lord of the manor. *Kitch.* 81.

Waif is, where a felon in pursuit waiveth the goods ; or where the felon, for fear of being apprehended, thinking that a pursuit was made, having them with him in his possession, fleeth, and waiveth, casting away, or goeth from the goods ; in these cases, they shall be said to be waived in law. But if he hath not the goods with him when he fleeth being pursued, or for fear to be apprehended, they are not waived nor forfeited, but the owner may take them when he will, without any fresh suit. *5 Rep.* 109. *Dalt. Sher.* 78.

Waif, what.

But if the thief in his flight waive them, there the goods are forfeited to the king or lord of the liberty by the common law, if the felon upon fresh suit were not attainted at the suit of the owner of the goods. And the reason why waif is given to the king, and that the party shall lose his property in such case, is for default in the owner, that he pursued not freshly to apprehend the felon ; for it concerneth the public that crimes do not remain unpunished. Therefore the law hath imposed this penalty upon the owner, that if the thief by his industry and fresh suit be not attainted at his suit, in an appeal for the same felony, he shall lose for his default all his goods, which the thief at the time of his flight waived. But if the thief had them not with him when he fled, having peradventure hid them, there no default can be in the party ; and therefore they shall not be forfeited, for if he maketh fresh suit after notice of the felony it sufficeth. *5 Rep.* 109.

Heretofore waifs and strays were the finder's, by the law of nature ; and afterward, the king's by the law of nations. *Dalt. Sher.* 79.

Seizure thereof by the lord.

Thus, one, as a bailiff or servant to the sheriff, seized a horse as an estray to the king's use, and proclaimed him according to law, and after the year and day sold him, and the sheriff accounted for him in the exchequer. *Id.* 80.

But now kings have granted this and such like prerogatives unto their subjects, within their liberties ; so that waifs and strays are in many places the lord's of the franchise where they are found. *Id.* 79.

And therefore waived goods and estrays shall be seized by the officer of the king to the use of the king ; or by the officer or bailiff of the lord, who hath such things by grant of the king, or by prescription, to the use of the lord. *Id.* 80.

But if one have a waif, and it be taken out of his manor, he shall have trespass without seizing, and though he do not seize it. *Kitch.* 81.

It seemeth to be agreed that waifs and strays ought to be proclaimed in the two next market-towns ; and that if they be not proclaimed, the owner may take the stray goods again at any time. And it seemeth to be the general tenor of the old books, that they ought also to be proclaimed in the church : which course it seemeth best to follow ; to the end that the owner, who in this case is no wrong-doer, may have reasonable mean to come at his goods again ; that is to say, that the goods be proclaimed at the least thrice, to wit, in the two market-towns next adjoining to the place where they strayed on the market-days respectively, and at the church-door on a Sunday, as the people come out of the church. *Kitch.* 23. 81. 105. *Dalt. Sher.* 79. *Cro. Eliz.* 716.

Proclaiming the goods seized.

And they ought to be wreathed ; and to be put into some several ground in an open place, and not in any covert of wood, that the owner may have a view of them ; for if they be in covert the property is not changed, though they be there a year and a day. *Kitch.* 23.

How waifs or stray are to be kept.



## WAIF, WHAT.

An estray is not to be used in any manner, except in case of necessity, as to milk a cow, or the like; but not to ride a horse, for within the year and day he hath not any property in him. *Cro. Jac.* 147, 148.

In *Osley v. Watts*, 1 T. R. 12, it is determined, that an action of trespass lies for working a horse taken as an estray.

## Owner claiming.

He who taketh an *estray* may keep it until he be satisfied for the finding, keeping, and proclaiming thereof. *Dalt. Sher.* 79.\*

But the owner (if it be within the year and day) may take it without telling any marks, or making any proof of property; but this may be done upon the trial, if contested. *Henly v. Walsh*, 2 Salk. 686.

The lord ought to make a demand of what the amends should be; and then if the party think the demand unreasonable, he may tender sufficient amends; and if the lord shall not accept it, this shall be settled by the jury upon trial.

But it is sufficient in this case to tender amends *generally*, without expressing any certain sum. For there is a difference between this case and that of a tender of amends for trespass. In that of a trespass, if the defendant plead a tender of amends, he must show what he tendered; for he must tender a certain sum. And the law puts this difficulty upon him because he is the wrong-doer: but the owner of the stray (as hath been said) is no wrong-doer: and it is impossible he should know how long his beast hath been in the lord's custody, nor how much will make a proper satisfaction. 2 Salk. 686.

In the case of goods *waived*; the owner may seize them twenty years after, if the lord of the franchise nor the king seized before; but if they are seized, then they become forfeited to the king, or the lord of the liberty. *Kitch.* 82.

And this forfeiture is not like a stray, where, though the lord may seize, yet the party who is the owner may retake them within the year and day; but here the true owner cannot seize his own goods, though upon fresh suit within the year and day. 1 Hale, 541.

But this is not an absolute loss of the owner's goods, but rather an expedient settled by law to drive the owner to convict the felon by prosecuting his appeal; and therefore if he make fresh suit, and prosecute his appeal, and the felon be thereupon convict or attain, and the fresh suit be inquired and found by verdict or inquest of office, he shall have restitution of the goods so waived. 1 Hale, 541.

## Property accruing to the lord, on not claiming.

Waifs and strays not claimed within the year and day are the lord's. *Kitch.* 23. 80, 81.

For where the lord hath a beast a year and a day, and it be cried in the church and markets, the property is changed. *Kitch.* 80.

That is to say, after he hath had the beast a year and day from the time of the proclamation, and not from the time of the seizure; for after the first proclamation it becometh an estray, but not sooner. 11 Mod. 89.

If the estray within the year estray out of the manor, the lord may chase back the estray, unless it be seized by another lord who hath estrays; but if it be seized by such other lord, then the first hath lost all possibility of his gaining the property, and the other lord ought to proclaim it *de novo*. *Finch*, 177. *Kitch.* 81. *Hutt.* 67.

After seizure the lord shall be charged for trespass done by an estray. *Hutt.* 67.

And he shall have a replevin, if a stranger take it. *Hutt.* 67. Or trespass, *Winch.* 68.

\* But if any other person finds and takes care of another's property, not being entitled to it as an estray (nor being saved at sea, or in other cases where the law of salvage applies), the owner may recover it or its value, without being obliged to pay the expenses of keeping. 2 Bla. Rep. 1117; 2 H. Bla. 254.

## Estreat.

**ESTREAT** (*extractum*) is used for the true copy or note of some original writing or record, and especially of fines and amerciaments imposed in the rolls of a Court, to be levied by the bailiff or other officer. When however it is applied to a recognizance, it signifies that the recognizance itself is extracted or taken out from among the other records and sent up to the Exchequer. 4 *Bla. Com.* 253. Estreat, what.

As to the estreating of fines, penalties, for forfeitures and recognizances, see 3 *Geo. IV. c. 46*, and 4 *Geo. IV. c. 37*.

See further as to Estreats, *post*, *Fines and Forfeitures*, Vol. II.

## Eves Droppers.

**EVES** Droppers are such as listen under walls or windows, or the eves of houses, to hearken after discourse, and thereupon to frame slanderous and mischievous tales; are a common nuisance, and presentable at a court leet; or are indictable at the sessions, and are punishable by fine; and are to find sureties for their good behaviour. 4 *Black. Com.* 168.

And *Dalton* says that *night-walkers*, that eve-drop men's houses, or cast men's gates, carts, or the like, into ponds, or commit other outrages or misdemeanours in the night, or shall be suspected to be pilferers, or otherwise like to disturb the peace, or that be persons of ill behaviour, or of evil fame or report generally, or that shall keep company with any such, or with any other suspicious person in the night, are liable to find sureties for their good behaviour.

Eves droppers are indictable at the sheriff's torn as well as other dangerous and suspicious persons. 2 *Haw. c. 10, s. 59*. And it seems that a magistrate may also compel such persons to find surety for their good behaviour. 1 *Haw. c. 61, s. 4*; see *Surety for Peace, post*, Vol. V.

## Evidence.

**EVIDENCE** in legal understanding doth not only contain matters of record, as letters patent, fines, recoveries, inrolments, and the like, and writings under seal, as charters and deeds, and other writings without seal, as court rolls, accounts, and the like; but in a larger sense it containeth also the testimony of witnesses, and other proofs to be produced and given, for the finding of any issue joined between the parties. And it is called evidence, because thereby the point in issue is to be made evident to the jury. 1 *Inst.* 283. Evidence, what.

It should be observed, that the doctrine of evidence in criminal prosecutions and proceedings before justices is, in most respects, the same as that in civil actions. 4 *Esp.*, 136, 9. 144; 2 *East's P. C.* 993; 2 *T. R.* 201, n.; 4 *Bla. Com.* 356; 1 *Chit. C. L.* 656. See the valuable works on Evidence in Civil Actions, by Mr. Phillips, Mr. Starkie, and Mr. Roscoe. Same as in civil proceedings.

We shall confine our considerations under this most important title to the rules and principles of evidence in *general*. As to the evidence on criminal prosecutions and proceedings before magistrates, in *particular* cases the reader is referred to the different titles throughout the work.

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## IN GENERAL.

## I. What should be proved.

What must be proved.

Before inquiring into the nature and mode of proof, it will be expedient to ascertain what parts of the charge contained in an indictment or information should be proved.

(1.) In general.

(1.) *In General*—Generally every fact stated on the face of the indictment or information, which enters into the substance of the offence charged, as also all facts not so stated, but which are necessary to constitute the offence charged, must be proved. See 2 *Leach*, 594.

Surplusage.

Averments stated in the indictment, if wholly unconnected with the charge, may be considered as *surplusage*, and need not be proved. *Id.*; and see further as to what is surplusage, 1 *Chit. C. L.* 294; *post*, Indictment, Vol. III.

Divisible averments.

It is sufficient to prove so much of the indictment as shows the defendant to have been guilty of the substantive crime therein stated, though not to the full extent charged on him. See *R. v. Hunt*, 2 *Camp.* 683. Thus on an indictment charging the defendant with having done, and caused to be done, a particular act, it suffices to prove either. *Id.* and see *post*, Indictment, Vol. III. So where a man was charged with publishing a libel against magistrates, with intent to defame those magistrates, and also with intent to bring the administration of justice into contempt, *Bailey, J.*, held, that proof of his having published it with either of those intentions would support the indictment. *R. v. Evans*, 3 *Stark.* 35. On an indictment for felony, if a misdemeanour only be proved, the prisoner must be acquitted, but he may be found guilty of a felony of lesser atrocity, as, on an indictment for murder, he may be found guilty of manslaughter; on an indictment for breaking a house and stealing, he may be convicted of simple larceny. *Dick. Sess.* 351. So, on an indictment for misdemeanour in assaulting a constable in the discharge of his duty, the defendant may be convicted of a common assault. *Id.* If a man be charged with an offence as principal in the first degree, evidence of his being principal in the second degree will support the indictment, and *e contra*. *Fost.* 351. 9 *Co.* 67 b; *Plowd.* 98; 2 *Ld. Raym.* 886; 1 *Hale*, 122; 2 *Hawk. c.* 46, s. 35, &c. On an indictment for killing a sheep, with the intent to steal the whole carcass (now provided against by 7 & 8 *Geo. IV. c.* 29, s. 25), proof of killing, with intent to steal a *part*, is sufficient to support the charge. *R. v. Williams, R. & M. C. C. R.* 107.

Evidence must be confined to the issue.

Generally speaking, the evidence adduced must be *relevant and confined to the issue*. Therefore the prosecutor cannot generally injure the character of the defendant by giving in evidence other crimes not laid to his charge in the indictment; but when such crimes are connected with, and have a direct tendency to establish the guilt of the defendant in the specific crime charged, then they may be admitted in evidence. Thus, in high treason, though by 7 & 8 *Will. III. c.* 3, s. 8, no evidence shall be admitted or given of any overt act not expressly charged in the indictment; yet this does not prevent overt acts not laid from being given in evidence, if they be direct proof of any of the overt acts which are laid. *R. v. Rookwood*, 4 *St. Tri.* 661, 697; *Holt*, 683; *R. v. Watson*, 2 *Stark.* 134. In an indictment against persons for a conspiracy to carry on the business of common cheats, evidence was admitted of the defendant's having made false representations to other tradesmen besides those named in the indictment. *R. v. Roberts*, 1 *Camp.* 400. See 4 *East*, 171, n. In *R. v. Hunt and Others*, 3 *Barn. & Ald.* 566, upon an indictment for conspiring and unlawfully meeting for the purpose of exciting disaffection and discontent among His Majesty's subjects at Manchester, it was held that the previous conduct of a portion of the assembly, in training, &c., and in assaulting persons whom they called spies, was competent evidence as to the general character and intention of the meeting, although the effect of it as

to each particular defendant was a distinct matter for the consideration of the jury. It was also holden, that it was competent to show, as against *Hunt* (who, though a stranger except by political connexion, had been invited to preside as chairman at the meeting), that at a similar meeting in another place, holden for an object professedly similar, certain resolutions had been proposed by that person; it being in its nature a declaration of his sentiments and views on the particular subject of such meetings, and of the topics there discussed. But the court held, that evidence of the misconduct of the military and others, in the subsequent dispersion of the meeting, was properly refused by the judge at the trial as irrelevant, and having no bearing upon the intention and objects of the meeting; which intention and objects obviously existed previously to the alleged misconduct of the military, attempted to be given in evidence. In a case where the prosecutor, suspecting the prisoner, had put marked money into his till, and caused him to be watched, evidence was admitted of several visits to the till by the prisoner, of several inspections of the till consequent upon them, and of the several results of those inspections, that the money was each time reduced, though it was objected that this was proof of several felonies. *R. v. Ellis*, 6 B. & Cres. 145. So on the trial of a robbery effected by a threat of a revolting description, evidence of an attempt by the prisoner to obtain the money at another time was allowed. *R. v. Egerton*, there cited; and see *R. v. Wylie*, 1 New Rep. 94. So where a number of articles are found in the prisoner's possession, the mere probability that he stole them at different times is no ground for requiring the prosecutor to confine his evidence to one of them, if they might have been stolen at once. *R. v. Dunn*, R. & M. C. C. 148; and see *post*, Rape, Vol. V.

IN GENERAL.

*Knowledge and Intent*, when material, must be made out by the prosecutor. He cannot, of course, make them out by direct evidence, unless when they have been confessed; but both may be gathered from the conduct of the party, as shown in proof; and when the tendency of his actions is direct and manifest, he must always be presumed to have designed the result when he acted. *Dick. Sess.* 353; 6 East, 464. On an indictment for murder, former attempts of the defendant to assassinate the deceased are admissible in evidence; so are former menaces of the defendant, or expressions of vindictive feeling towards the deceased, or, in fact, the existence of any motive likely to instigate him to the commission of the offence in question. See *Arch. C. L.* 73. So on an indictment for uttering forged notes, or counterfeit coin, evidence of other utterings of other notes, or coin, was admitted, though they were not charged on the record. *R. v. Ball*, R. & R. C. C. 132; *R. v. Wylie*, 1 New Rep. 92, &c., though, in another case, in the discretion of the judge, it was refused. *R. v. Smith*, 2 C. & P. 633; *Talfourd's Dick. Sess.* 359.

Knowledge and Intent.

On an indictment for *felony*, embracing a number of charges essentially distinct, the Court will, in its discretion, quash the indictment, or compel the prosecutor to elect on which charge he will proceed. *R. v. Jones*, 2 Camp. 132; *R. v. Galloway*, R. & M. C. C. 234, *id.* 146. But, on an indictment for *misdemeanors*, it is otherwise; and several distinct offences, when charged, may be proved. See *id.* 2 Burr. 984; *post*, Indictment, (several Counts in), Vol. III.

Where several offences charged.

*Matters of defence*, which should more properly come from the defendant, need not be proved. As a branch of this rule, in indictments on statutes where an *exception* or *proviso* is mixed up with the description of the offence, the correct rule is, that in cases where the subject of such averment relates to the defendant personally, or is *peculiarly within his knowledge*, the negative is not to be proved by the prosecutor, but, on the contrary, the affirmative must be proved by the defendant, as matter of defence. But, on the other hand, if the subject of the averment do not relate personally to the defendant, or be not peculiarly within his knowledge, but, on the contrary,

Matters of defence.

Exceptions.

Matter peculiarly in defendant's knowledge.

## IN GENERAL.

either relate personally to the prosecutor, or be peculiarly within his knowledge, or at least be as much within his knowledge as within the knowledge of the defendant, the prosecutor must prove the negative. *Arch. C. L.* 70. Thus informations upon the game laws must negative the defendant's qualification to kill game: but this negative need not be proved upon the part of the prosecution; on the contrary, the defendant must prove the affirmative of it as matter of defence. *R. v. Turner*, 5 *M. & S.* 206. So on an information for selling ale without a licence, it lies on the defendant, who has been shown selling ale, to prove his licence. *R. v. Hanson*, 5 *M. & S.* 209. On the other hand, upon an indictment on stat. 42. Geo. III. c. 107, s. 1, which made it felony to course deer in an enclosed ground, without the consent of the owner,—it was held, that the deer were coured *without the consent* of the owner, was necessary to be proved upon the part of the prosecution. *R. v. Allen*; *R. v. Argent*; *R. v. Chamberlain*, *R. & M. C. C. R.* 154; *R. v. Rogers*, 2 *Camp.* 654; *Arch. C. L.* 70. The owner himself, however, need not be called; his non-consent might be inferred from other circumstances, or proved by his agents. *R. & M. C. C. R.* 154.

Presumptions of law and facts ex officio noticed.

*Presumptions of law*, and those facts which the courts *ex officio* take notice of without proof, need not be proved. See 3 *East*, 192; 3 *Camp.* 10, 12; *Barbary Peerage case*, 2 *Selw. N. P.* 709; and as to what facts the courts take notice of, see 1 *Chit. Plead.* 196 to 204.

Negative, involving culpable omission.

Where any act is required to be done by one, the omission of which would make him guilty of a *criminal neglect* of duty, the law presumes the affirmative, and throws the burden of proving the negative on the party who insists on it. 3 *East*, 192; 3 *Camp.* 10; *R. v. Hawkins*, 10 *East*, 216; *R. v. Twynning*, 2 *B. & A.* 386.

Identity.

The *identity* of the defendant must be established, and this is for a jury to decide on; see 1 *Chit. C. L.* 558. In order to identify a person in court with one whom the witness has described, the attention of the witness may be directed to the person in court, and he may be asked whether that is the person of whom he has spoken. 2 *Stark. C. N. P.* 128.

(2.) In general, as Venue and Place.

(2.) *In general, as Venue and Place*—The offence must in general be proved to have been committed in the county in which the defendant is indicted, unless in particular cases, where the legislature has by act of parliament dispensed with it, and as to which see *post*, *Indictment*, (*Venue in*), Vol. III.

If the offence be not proved to have been committed in the county or other extent of the court's jurisdiction, the defendant must be acquitted. See as to the evidence of publication of a libel in the county wherein defendant is indicted, *post*, *Libel*, Vol. III; also, *post*, *Forgery*, Vol. II; *Larceny*, Vol. III.; *Treason*, Vol. V.

It is in no case, not even in treason or murder, in general necessary to prove that the offence was committed at the precise village, parish, or place laid in the indictment; but it suffices to prove that it happened any where within the proper county; see 2 *Hawk. c.* 25, s. 84. In a late case, where an indictment for robbery stated that it was in a field near the king's highway, and the robbery was not proved to be near any highway, it was considered sufficient. *R. v. Wardle*, *R. & R. C. C.* 9.

There are, however, some exceptions to this rule, as, where the place is the essence of the crime, as in indictments for burglary, or for not repairing, or any other nuisance to a highway. 2 *Hall*, 179. 244; 4 *Bla. Com.* 306; 2 *Hawk. c.* 25, s. 84; and see *post*, *Game*, (*night poaching*), Vol. II.

So, where the place stated is so stated as matter of local description, and not as *venae* merely, it must be proved as stated.

So, if the indictment be on a particular statute, which gives the penalty to the poor of the parish in which the offence was committed, the offence must be proved to have been committed in the parish stated in the indictment.

It should also seem, that in indictments for treason or felony, if there be no such place within the county as that alleged in the indictment, the defendant must be acquitted according to the 9 Hen. V. st. 1, c. 1, which declares such an indictment void; but the disproof lies with the defendant. *Post*, Indictment, Vol. III. p. 335.

*Time*—It is in no case necessary to prove the precise day or even year laid in the indictment, except where the particular time enters into the essence of the offence: see *per Lawrence, J.*; 9 *East. Rep.* 162; and see 2 *Inst.* 218; *Holt*, 301; 2 *Hawk. c.* 23, s. 88. As in an indictment for burglary, though it is necessary to prove that it took place in the night-time, yet it is not necessary to prove strictly that it took place at the hour or day stated in the indictment. 2 *East's P. C.* 513.

So in an indictment for setting fire to a barn, stating it was set fire to in the night-time, it is not necessary to prove it was so, for there was no necessity for the averment that the offence was committed in the night. 2 *East's P. C.* 1021. 1035.

An overt act or acts of treason may be proved to have been committed on a day different from that stated in the indictment, *Fost.* 8, 9; 1 *East's P. C.* 125.

In cases where the day is stated as matter of description, as in describing the date of a deed or other written instrument, the variance would be fatal, unless in the case of indictments for misdemeanors, when the indictment may be amended for such a defect under the 9 Geo. IV. c. 15. *Ante*, Amendment, Vol. I. p. 131. See 2 *Camp.* 307, n.; 4 *Camp.* 209; 1 *T. R.* 656.

Where there are several offences, and they are described as having been committed on such a day and divers days and times afterwards, evidence cannot, it seems, be admitted to prove more than one offence prior to the day named. *B. N. P.* 86; 1 *Saund.* 24, n.; 1 *Stark. C. N. P.* 351. And if a person be charged with a burglary and stealing the goods, the prosecutor, on failing to prove that these facts were committed on the day laid in the indictment, cannot be admitted to prove that a distinct larceny was committed on a prior day. 2 *Leach*, 708.

*Name of Prosecutor and third Persons*—A variance in proof between the real name of a prosecutor or third party and that stated in the indictment will be fatal, unless such name can be rejected as surplusage. *R. & M. C. C.* 1; 2 *East's P. C.* 593; 2 *Hawk. c.* 25, s. 72. See the question raised in *R. v. Messingham, R. & M. C. C.* 287. See the mode of stating names, &c., *post*, Indictment, Vol. III. p. 335 to 343. In an indictment for stealing, to the amount of 40s., in the dwelling-house of A. B., under the repealed act, 12 Anne, c. 7, the defendant was acquitted of the capital part of the charge when not strictly proved to have been the house of A. B., and found guilty of the simple larceny. *Leach*, 339, n. a. 252.

Name of prosecutor and third persons.

If a party be described as a person to the jurors unknown, and it appear in evidence that his name was known at the time of finding the bill of indictment, the defendant will be acquitted: see *Rex v. Walker*, 3 *Camp.* 264; *Holt, C. N. P.* 595.

*Written Instruments*—A written instrument set out in the indictment must be proved as alleged, or a variance will be fatal, unless allowed to be amended under the provisions of the 9 Geo. IV. c. 15, *ante*, Amendment, Vol. I. which allows amendments in the courts at Westminster, and Oyer and Terminer, on variances in proofs of written and printed instruments in misdemeanors. See various instances as to what are variances in setting out written instruments, *post*, Indictment, Vol. III., p. 347, *ibid.*, Vol. III., p. 629, 630, *Forgery*, Vol. II., p. 643, *Perjury*, Vol. V. p. 61, 62.

Written instruments.

*Goods, &c.*—In an indictment for an offence relating to personal property, the evidence must correspond with the description of the goods in the indictment; as, in larceny, an indictment for stealing a pair of shoes cannot be supported by evidence of a larceny of a pair of boots; *Archb.*

Goods, &c.



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EVIDENCE.**

*C. L. 66.* So on an indictment on 15 Geo. II. c. 34, and 14 Geo. II. c. 6, (which made it a felony to steal any ox, cow, or heifer), charging defendant with stealing a cow, proof of its being a heifer will not suffice; for the statute having mentioned both cow and heifer, proved that the words were not considered by the legislature as synonymous. *R. v. Cooke*, 2 *East's P. C.* 617; *Leach*, 123; and see *R. & M. C. C.* 160. 247; *R. & R. C. C.* 416. 494. See *post*, Indictment, Vol. III., p. 348.

Number.

A variance in the number of the goods, if such precise number stated do not constitute the essence of the offence, is immaterial.

Suma.

*Sums*—It is in general unnecessary to prove the precise sum laid in the indictment, unless the precise sum forms the essence of the offence, or is stated as matter of description. Thus in an indictment for extortion, or taking a greater brokerage than is allowed by act of parliament, it is not necessary to prove the taking of the precise sum laid. *R. v. Gilham*, 6 *T. R.* 265. 462; 4 *T. R.* 590. Where the value of property is essential to constitute an offence, it must be proved to have been sufficient for that purpose. See *post*, Indictment, Vol. III., p. 348.

## II. Degree and Kind of Proof.

And herein of, 1. Best evidence; 2. Secondary evidence; 3. Presumptive evidence; 4. Hearsay evidence; 5. Dying declarations; 6. Confessions; 7. Opinions; 8. Evidence of character.

### (I.) Best Evidence.

The best evidence is required.

It is a general rule that the *best evidence* must be given of which the nature of the thing is capable. *Gilb. Ev.* 13. *Bull. N. P.* 293.

The true meaning of this rule is, not that the courts of law require the strongest possible assurance of the matter in question, but that no evidence shall be given, which from the nature of the thing supposes still greater evidence behind in the party's possession or power; for such evidence is altogether insufficient and proves nothing, but carries with it a presumption contrary to the intention for which it is produced. Thus if a party offer a copy of a deed or will, where he has it in his power to produce the original, this raises a presumption, that there is something in the deed or will, which, if produced, would make against the party; and therefore the copy in such a case is not evidence. But if he prove the original deed or will to be in the hands of the adverse party, who refuses to produce it, although he has received a regular notice for that purpose, or if he prove that the original has been lost or destroyed without his default, no such presumption can reasonably be made, and a copy will be admitted, (a) because then such copy is the best evidence that can be produced. *Bull. N. P.* 293; 1 *Phil. Ev.* 7 ed. 218. See also, per Lord Tenterden, 2 *B. & B.* 286; *R. v. Radwen*, 8 *B. & Cres.* 708; *Williams v. The East India Company*, 3 *East*, 193. 201; and *R. v. Stoke Golding*, 1 *B. & A.* 173.

Although the best evidence is thus requisite, yet the strongest possible assurance of a fact, or, in other words, the greatest quantity of existing proof, is not so. Thus, for example, if a deed be attested by several subscribing witnesses, the execution may be proved by one of them; or if none of those witnesses can be produced, proof of the signature of one witness will be sufficient; for the proof is, as far as it goes, complete, and not inferior in its kind to any that can be produced. 1 *Phil. Ev.* 220; *Stark. Evid. Part III.* 391.

And this rule as to the best evidence does not apply, unless the evidence proposed be in its general nature of an inferior degree to that for which it

(a) In the case of the *Attorney-General v. Le Merchant*, 2 *T. R.* 201, n. it was solemnly decided in the Court of Exchequer, that there is no difference in this respect between criminal and civil

cases; that in both parol evidence may be given of the contents of a paper in the defendant's possession, on his refusing to produce it after notice for that purpose.

## § II. (2.) Evidence—(Degree and Kind of Proof).

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is sought to be substituted: and upon this principle, the supposed writer of an instrument need not be called to prove he wrote it; the evidence of another person who can speak to his handwriting will suffice. *Stark. Evid. Part III.* 391; 1 *Stark. C. N. P.* 167; 1 *Chit. C. L.* 567, a.

The party's own admission or declaration also will sometimes supersede the necessity of having other evidence. See *Confession*, Vol. I. Unless where a statute expressly requires the other evidence. See *post*, 50, as to insolvency proceedings, &c.

*Parol evidence* is in general esteemed inferior in its nature to written evidence; consequently where there is written evidence it must be first resorted to. Very nice questions have indeed arisen as to whether parol evidence is admissible to prove a fact which may be evidenced by a written instrument. In *R. v. Holy Trinity, Kingston upon Hull*, 1 *B. & Cres.* 611; 1 *M. & R.* 444, *S. C.*, (a settlement case), parol evidence of the fact of a tenancy was admitted, although the tenant held under a written agreement; but there the appellants made out the case without its appearing, from their witnesses, that there was any written agreement; and the terms of such tenancy were not material, and the facts of that case took place before the passing of the acts 59 Geo. III., c. 50, and 6 Geo. IV., c. 57. (See now the sect. 2 of the latter act, by which a settlement by renting a tenement can only be acquired where the same has been *bona fide* rented for a year at 10*l.* a year). In *Bucher v. Jarratt*, 3 *B. & P.* 143, it is said, that though the contents of a written instrument cannot be proved by parol evidence, its general character may.

Parol evidence when allowed to prove a fact which may be proved by written evidence.

The correct doctrine, however, is the one above stated, that where there is written testimony, it must be resorted to before verbal testimony. And in a late settlement case, where the respondents, in order to show that the pauper was not the sole tenant, attempted to prove by parol evidence, that the premises were let to the pauper and two other persons, but the witness on cross-examination having stated that the letting was by a written instrument, the Court of King's Bench held it could be only proved by that instrument. *R. v. Rawden*, 8 *B. & Cres.* 708. In *Rez v. Merthyr Tydvil*, 1 *Burn. & Adolp.* 29, it was held, that such renting can only appear by reference to the agreement with the landlord, and could not therefore be proved by parol where the contract was in writing and might have been produced. (See the judgment of the court in that case, *post*, *Addenda*). In *Strother v. Barr*, 2 *M. & P.* 207, *S. C.* 5 *Bingh.* 136, the judges of the Court of Common Pleas were equally divided in opinion on a question of this kind. See also *R. v. Castle Morton*, 3 *B. & Ald.* 588; *M. & M.* 257; 1 *Stark. C. N. P.* 115. In 1 *M. & P.* 433, it was held in an action for not accounting for the produce of a bill delivered to defendant to get discounted, that the bill need not be produced, and that plaintiff might give parol evidence of its contents.

There can be no doubt that a party may, by keeping out of view, if he can, a written instrument, make out by parol testimony a *prima facie* case without it, and then it lies on the opposite party to rebut the case so made out. *Per Bailey, J.*, 8 *B. & Cres.* 710.

Particular statutes sometimes dispense with the best evidence. Several statutory provisions to this effect will be found under titles *Excise and Customs*, Vol. II.; *Stage Coaches*, Vol. V.; *Newspaper, Libel, Highway*, Vol. III.; and as to Bankruptcy, and Insolvency Proceedings, *post*, 50, *Ship's Register*, &c. *post*, 41.

Best evidence dispensed with by particular statutes.

When the copy of a document (the document itself not being evidence at common law) is made evidence by act of parliament, a copy must be produced; the original is not made admissible evidence by implication. 2 *Camp.* 181, n.; *sed vide* 6 *T. R.* 534.

## (2.) Secondary Evidence.

To admit of secondary evidence, it must be first shown, that all the proper sources from which the primary or best evidence can be procured are exhausted. Thus, we have already seen (*ante*, 24), what must be

Secondary evidence.

**SECONDARY.**

done where a party is desirous of proving a deed or instrument which is in the hands of the opposite party, or lost.

Where there are two instruments executed as parts of a deed, one of these parts is more authentic and satisfactory evidence of the contents of the other parts than any other draft or copy. It is prepared with more care than any other copy; and the party who produces it, and against whom it is used, by taking and keeping it as a part of the deed, admits its accuracy. The courts have, therefore, always required that, if one part of a deed be lost, and another part be in existence, it must be produced, or shown to be in the hands of the opposite party, and then on his refusing to produce, on notice, a copy may be received. See *per Best, C. J., Munn v. Godbold*, 3 Bingh. 295; and see *R. v. Hunter*, 4 C. & P. 128.

Where the originals of any papers are public documents, as the Journals of Parliament, records, &c. *post*, 36, 42, attested copies may, for public convenience, be always received in evidence. 3 Salk. 153; 2 Hawk. c. 46, s. 78.

**Notice to produce.**

*Notice to produce*—We have just seen that, when the best written evidence is in possession of the opposite party, he must be served with a notice to produce it, before secondary evidence thereof is admissible.

**When necessary or not.**

There are four descriptions of cases, where a notice to produce is not necessary: *first*, where the instrument produced and that to be proved are duplicate originals. *Burleigh v. Stibbs*, 5 T. R. 465; *Roe v. Davis*, 7 East, 363; 2 Camp. 315; 6 B. & C. 398. *Secondly*, where the instrument to be proved is a notice to quit, or a notice of dishonour of a bill, &c. *Kine v. Beaumont*, 3 B. & B. 288; 6 B. & C. 398. *Thirdly*, where, from the nature of the proceeding, the opposite party must be aware that he is charged with the possession of the instrument, as in an indictment for stealing, or in an action of trover for a bill or bond, &c. *R. v. Aicles*, 1 Leach, 330; 6 East, 421; *R. v. Ellins*, R. & R. C. C. 188; *R. v. Hunt*, 3 B. & Ald. 566; 6 B. & C. 398. And, *fourthly*, where the opposite party has procured the possession of the instrument by fraud, as where he has received it after the commencement of the action, from a witness called for the purpose of producing it under a *subpoena duces tecum*. *Leeds v. Cook*, 4 Esp. 256. In these cases secondary evidence of the instrument may be given, although no notice to produce be served.

**Service of notice.**

Before giving secondary evidence of an instrument in possession of the opposite party, when a notice to produce is necessary, the same must be proved to have been served either on the party himself, or his attorney in the proceeding. *Attorney General v. Le Merchant*, 2 T. R. 201, n. A parol notice will suffice, but it is better to give a written one. 1 Camp. 440. The notice must specify the instrument, with a particularity sufficient to inform the opposite party what he is called on to produce. See *France v. Lucy*, R. & M. C. N. P. 341. The notice must be proved to have been served a reasonable time before the time the party is required to produce the instrument. Such time must depend on the circumstances of each case. See 1 Stark. N. P. C. 283; R. & M. C. N. P. 327; *id.* 47.

It is said that neither party will be allowed to inquire into the contents of an instrument, merely because the opposite party has the original in court at the time of the trial, and that the opposite party may object to secondary evidence of its contents, on account of his not having had notice to produce it. 1 Phil. Evid. 425; 1 Stark. Evid. 362; *Roscoe*, 3.

**Possession of original.**

After proof of the service of the notice to produce, the party must give some evidence of the opposite party's possession of the instrument required to be produced before secondary evidence can be given of it. Slight evidence of such possession will suffice, where the instrument belongs exclusively to the party possessing it. See *Henry v. Leigh*, 3 Camp. 502.

**Loss of instrument.**

*Loss of Instrument*—Where the written instrument, containing the best evidence, has been lost, in order to let in secondary evidence thereof, it must be shown that diligent search and inquiries have been made after it; and such search and inquiries must be shown to have been made in those places, and of those persons, where some account of the instrument most probably could be procured. The degree of diligence to be used in searching for a deed must depend on the importance of the deed, and the particular cir-

cumstances of the case. *Gully v. Bishop of Exeter*, 4 Bingh, 290. Where the loss or destruction of the instrument may almost be presumed, very slight evidence of its destruction or loss will suffice. Per *Abbot, C. J. Brewster v. Sewell*, 3 B. & A. 296. In an action for maliciously, and without probable cause, charging plaintiff with an assault before a magistrate, the magistrate proved that the depositions taken before him were reduced into writing, and that he delivered them, at the court of quarter sessions, to the clerk of the peace or his deputy. The clerk of the peace stated, that a bill of indictment for the assault was preferred, and that the grand jury returned *ignoramus*, and that it was usual, in such case, to throw away or destroy the depositions; that he had searched among his papers, and could not find them; it was held, that parol evidence of their contents was admissible, and that it was not necessary to call the deputy clerk of the peace to show that the original depositions were not in his possession, inasmuch as it was his duty, if he had received them, to have delivered them to his principal; and not being in his custody, it was to be presumed that they were lost or destroyed. *Freeman v. Arkell*, 2 B. & C. 494; 2 D. & R. 669, 8 C. Where it appeared that an indenture of apprenticeship, twenty-four years old, the expenses of which the overseers of a parish had paid, was sent to those overseers, and was not to be found in the parish chest, it was held that it might be presumed to be lost, and that secondary evidence of its contents was admissible. *R. v. Stourbridge*, 1 M. & R. M. C. 297. The question of diligent search is, it seems, for a jury. *Bampton v. Paulin*, 4 Bingh. 264. Where the publisher of a paper, in which a libel had appeared, stated that he believed the original was either destroyed or lost, having been thrown aside as useless, this was held sufficient to let in secondary evidence. *Rex v. Johnson*, 7 East, 66. Where, in a settlement case, it was proved that one part of an indenture had been executed, that the pauper and master were both dead at the time of the trial, and that an inquiry for it had been made of the pauper shortly before his death, who said that the indenture had been given up to him after the expiration of the apprenticeship, and that he had burnt it, and that an inquiry had also been made of the daughter and sole executrix of the master, who said she knew nothing about it; it was held that a sufficient inquiry had been made to render secondary evidence of the contents admissible. *Rex v. Morton*, 4 M. & S. 48. Where, however, it appeared that there were two parts of an indenture of apprenticeship, one of which had been destroyed, and the other delivered to A. B., to whom the pauper had been assigned, and that application had been made to A. B. (but who was not called), who said she could not find the indenture, and did not know where it was, the search was held not sufficient. *R. v. Castleton*, 6 T. R. 236.

Loss of instrument.

*What the best Secondary Evidence*—If the best evidence cannot be produced, then the *best secondary* evidence must be so. Thus, if an original deed be lost, the counterpart may be read; and if there is no counterpart, then a copy; and if there be no copy, then parol evidence may be admitted. See *Villiers v. Villiers*, 2 Atk. 71. B. N. P. 254.

What the best secondary evidence.

With respect to what copy is sufficient, it must be one proved to have been examined with the original, and to be a true copy. A rough draft will do. *R. v. Hunter*, 4 C. & P. 128. In 1 Camp. 503, it is said a copy of the original is good, but not a copy from the original. A copy taken by a copying machine is not evidence without notice to produce the original. *Nodin v. Murray*, 3 Camp. 228; and see *R. v. Watson*, 2 Stark. 129. When possession has gone along with a deed for many years, the original of which is lost or destroyed, an old copy, or abstract, may be given in evidence, although not proved to be true, because it may be impossible to give better evidence. B. N. P. 254.

What copy sufficient.

*Parol Evidence, when admissible when there is Written Evidence.*—We have already seen that parol evidence, being inferior to written evidence, cannot, in general, be received instead of it; *ante*, 25. Besides this, parol

Parol evidence.

## PAROL.

In contradiction or  
explanation of  
written evidence.

evidence cannot in general be adduced in contradiction to the written evidence, although, indeed, it tend to show the real intention of the parties, 5 Co. 26; nor can it be adduced to show the invariable usage of trade, 1 Phillips, *Evid.* 539; 6 T. R. 320; or custom of the country, 2 B. & A. 746, in violation of the particular terms of the written instrument. *Chit. jun. Contr.* 22.

Evidence may be received to explain deeds or instruments where there is a *latent* ambiguity, but not where there is a *patent* ambiguity. By a *latent* ambiguity is intended that which does not appear upon the face of the instrument, where every thing seems right and clear: but the meaning rendered uncertain by the proof of some fact, the law permits the removal of the doubt by the like evidence. *Peake's Ev.* 112. By a *patent* ambiguity is that which is apparent on the face of the instrument. See *Stark. Ev. Part IV.* 1000.

Where there was a devise to her cousin I. C., and there were two of that name; evidence was admitted to show which of the two was meant, for the ambiguity was latent. *Peake's Ev.* 112.

So where a fine is levied of the manor of D., the conusor having two manors of that name, evidence may be given to show which was meant. *Peake's Ev.* 113.

So where from the terms of the deed its intent as to its nature is equivocal; for instance, whether it is to enure as a contract of apprenticeship, or only as an agreement to be a mere servant, evidence is admissible to show the intent of the parties, and that some act was done further than that stated in the deed, though forming a part of the same transaction. *R. v. Laindon*, 8 T. R. 379; 1 *Phill. Ev.* 544.

Parol evidence is admissible to show that a written contract, purporting to be made between A. and B., as seller and buyer, was in fact made by B., not on his own account, but as agent for a third person. *Wilson v. Hart*, 7 Taunt. 295; 1 *Moore*, 45, S. C.; 1 *Phill. Ev.* 542.

But parol evidence cannot be admitted to contradict the terms of a deed; as in case of a lease to show that the lessee is to pay a given sum to a ground landlord, the lease only stipulating for payment of a sum certain to the lessor. *Peake's Ev.* 122.

Nor is it admissible to alter the legal construction of an instrument. 3 *Camp.* 426; 1 *M. & S.* 21; 5 *B. & C.* 108; 1 *M. & P.* 147. As, if no time is mentioned in an agreement as to when it is to take effect, the law adds the time, viz. that it shall take effect immediately, and parol evidence is inadmissible to show the contrary, 5 *B. & C.* 108; 8 *D. & R.* 548, S. C.

It seems doubtful, where no consideration is expressed in an instrument, whether a consideration may be proved; see *Mildmay's case*, 1 *Rep.* 176, a. 1 *Ves.* 128; *Dyer*, 146 a; 3 *T. R.* 474, *aff.*; 3 *Bing.* 112; 5 *Bing.* 34, *sembl. neg.* In a settlement case, where the deed of conveyance stated the consideration of the purchase to be 28*l.*, parol evidence was admitted to show that the consideration was in fact 30*l.* *R. v. Scammonden*, 3 *T. R.* 474.

Parol evidence of usage or custom is frequently admissible to explain the meaning of the parties, when not definitively expressed on the face of the written instrument. *Palm.* 211; *Dougl.* 201; 2 *B. & A.* 746; and, especially in the construction of mercantile contracts, parol evidence may be admitted to show the sense in which, according to the usage and custom of merchants, the contract was made. See 2 *Salk.* 443; *Park, Ins.* 416; 2 *B. & C.* 160. So in the construction of ancient charters and deeds, &c., their construction may be asserted by parol evidence of usage. 2 *Inst.* 282; *Cowp.* 248; 2 *B. & B.* 406; 3 *Atk.* 576; 7 *East*, 199; 6 *T. R.* 398.

Parol evidence is always admissible to prove a fraud; see *B. N. P.* 173; 3 *B. & C.* 623; 8 *T. R.* 147; 2 *P. Wms.* 203.

## (3.) Presumptive Evidence.

Many times, juries are much induced to rely upon presumptions;

Presumptive  
evidence.

## § II. (4.) Evidence—(Degree and Kind of Proof).

whereof there are three sorts, violent, probable, and light or temerary. *Violent presumption* many times amounts to full proof; as if one be run through the body with a sword in a house, whereof he instantly dieth, and a man is seen to come out of that house with a bloody sword, and no other man was at that time in the house. *Probable presumption* moveth little; but *light or temerary presumption* moveth not at all. 1 *Inst.* 6; 3 *Blac. Com.* 371.

PRESUMPTIVE

On an indictment for larceny, proof that a part of the stolen goods have been found upon the person of the prisoner, or in his house or possession, is presumptive evidence against him of his having stolen them, so as to call upon him for his defence; and may be sufficient to warrant a conviction, if no facts appear in evidence to repel that presumption. The goods are sometimes found in the prisoner's house before his apprehension, frequently found afterwards; and there can be no objection to proof of their being found at one time or the other. This kind of evidence is frequently strengthened materially by other circumstances, as by proof that about the time of the offence the prisoner was near the spot from which the goods were taken, or that he gave some false account respecting the goods on being charged with the crime, or endeavoured to conceal them, or perhaps tried to prevent an inspection, or by some other proof of suspicious circumstances in his behaviour. On the other hand, the inference, arising from the mere fact of possession, will be much weakened, if any considerable time has elapsed between the loss of the property and the finding of it again, or if the property was from its nature likely to pass in the interval through many hands; especially where the prisoner betrayed no appearance of guilt at the time of his apprehension. 1 *Phill. Evid.* 7 ed. 168, 169; see 2 *East's P. C.* 656, 657.

Where the knowledge of the defendant of the nature of his conduct is the point in issue, as where he is charged with uttering a forged note, knowing it to be forged, evidence of his having committed a series of acts of the same description may be received as presumptive of knowledge. 1 *Camp.* 324; 2 *Leach*, 983. 987; 1 *New Rep.* 92; *Russ. & R. C. C.* 120. 132. 245. *R. & M. C. C.* 148, more fully noticed, *ante*, 21.

So it is of a charter of feoffment, if all the witnesses to the deed be dead (as no man can keep his witnesses alive, and time weareth out all men), then violent presumption, which stands for a proof, is continual and quiet possession. Also the deed may receive credit from a comparing of seals, writing, and the like. 1 *Inst.* 6. See *Doe Wilkins v. Cleveland, Marquis*, 9 *B. & Cres.* 864.

As to the presumption of rights of way, see *Highways*, Vol. III. p. 5, 6.

The death of a party will be presumed, if he has not been heard of for seven years or more. 6 *East*, 84; 4 *B. & Ald.* 430. In a late case it was held, that after one hundred years, the death of a party without issue would be presumed. 8 *B. and Cres.* 22. Proof that a person sailed in a ship, bound for the West Indies, two or three years ago, and that the ship has not since been heard of, is presumptive evidence that the person is dead; but the time of the death, if material, must depend on the circumstances of the case; see *Watson v. King*, 1 *Stark. C. N. P.* 121.

Twenty years' regular usage, uncontradicted and unexplained, is cogent evidence for a jury to presume, that a custom for a steward of the manor to nominate a jury to serve on the court leet, at the election of the mayor of a borough, is an immemorial custom. *R. v. Joliffe*, 3 *D. & R.* 240; 2 *B. & C.* 54, 8. C.

### (4.) Hearsay Evidence.

In general, that which another asserts must be by oath in a court of justice; and no one will be permitted to come into such court, and say upon his oath that he heard such a one declare certain facts to have occurred; but he who makes the declaration must himself repeat it upon his oath. And this is that which is termed hearsay evidence, *viz.* the deposing on oath, that certain facts are, which facts are only known to the deponent by

Hearsay evidence.

## HEARSAY.

the relation of some other person. See 1 *Phill. Evid.* 7 ed. 929; 2 *Hawk. c. 46*, s. 46; *Bull. N. P.* 294; *Stark. Evid. Part I.* 40—47; *Roscoe*, 13.

In the *Queen's* case it was held, that if, upon the trial of an indictment, it appear upon cross-examination of one of the witnesses for the prosecution, that J. S. was employed by the prosecutor for the purpose of procuring and examining evidence and witnesses in support of the indictment, the defendant cannot give evidence of J. S.'s having offered a bribe to a certain person, to induce him to give evidence touching the matter of the indictment, unless such person have been examined as a witness. *The Queen's case*. 2 *Brod. & Bing.* 302.

Hearsay pedigree,  
births, marriages,  
&c.

*Pedigree, Births, Marriages, &c.*—On inquiring into the truth of facts which happened a long time ago, the courts have varied from the strict rules of evidence applicable to modern facts of the same description, on account of the great difficulty of proving those remote facts in the ordinary manner, by living witnesses. On this principle, hearsay and reputation (which latter is the hearsay of those who may be supposed to have known the fact handed down from one to another) have been admitted as evidence in cases of pedigree. *Per Le Blanc, J.*, in *Highman v. Ridgway*, 10 *East*, 120.

Thus declarations of deceased members of the family are admissible evidence to prove relationship; as, who was a person's grandfather, or whom he married, or how many children he had, or as to the time of a marriage or of the birth of a child, and the like, of which it cannot be reasonably presumed that better evidence is to be procured. 1 *Phill. Evid.* 7 ed. 238. And the declarations of a deceased relative are admissible, notwithstanding that if he was alive he would stand in *pari jure* with the party on whose behalf such evidence is tendered, and have the same right to recover. *Doe Tilman v. Turner*, R. & M. C. N. P. 141.

But declarations of servants and intimate acquaintance are not admissible evidence in questions of pedigree. *Johnson v. Lawson and another*, 2 *Bing.* 86; 1 *Phill. Evid.* 240, 7 ed.

Nor is hearsay evidence by a pauper of the declarations of his deceased putative father, as to the birthplace of the pauper, admissible. *R. v. Erith*, 8 *East*, 539; see *Roscoe*, 18.

A written memorandum by a deceased man-midwife, stating that he had delivered a woman of a child on a certain day, and referring to his ledger, in which a charge for his attendance was marked as paid, was thought by the Court of King's Bench to have been properly received in evidence, upon an issue as to the child's age. This entry was made by a person who, so far from having an interest to make it, had an interest the other way: for it appeared distinctly, from other evidence, that the work charged was actually done; and the discharge in the book repels the claim which he would otherwise have had. *Higham v. Ridgway*, 10 *East*, 108, 110; 1 *Phill. Evid.* 7 ed. 258.

On a question, whether a testator at the time of making his will was of full age, a written memorandum by his deceased father, stating the time of his birth, has been admitted to be good evidence. *Herbert v. Tuckall*, T. *Raym.* 84, cited in *Brune v. Rawlins*, 7 *East*, 290.

And the declarations of deceased persons, as to whether they were married or whether the person in question was born before or after marriage, are evidence. *Stevens v. Moss*, 2 *Cowp.* 591; *Doe Northey v. Harvey*, R. & M. C. N. P. 297.

Declarations made after a controversy or suit has arisen, with regard to the point in question, are inadmissible. *Berkeley Peerage case*, 4 *Camp.* 401; 2 *Selv. N. P.* 712.

Declarations in the family descriptions upon monuments or gravestones, in bibles and registry books, recitals in family deeds, engravings on rings, old pedigrees hung up in a family mansion, and the like (in which it is improbable that a description would be suffered to continue if erroneous), are all of them admissible, upon the principle that they are the natural effusions of a party who must know the truth, and who speaks upon an occasion when his mind stands in an even position, without any temptation to exceed or fall short of the truth. 1 *Phill. Evid.* 7 ed. 239.

Right of way, &c.

*Ownership of Way, Estate, &c.*—In questions about a right of way,

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reputation, i. e. what old people deceased have said upon the subject, is good evidence. *Bull. N. P.* 295. See *Highway*, Vol. III. p. 8.

HEARSAY.

Whether a particular piece of land be parcel of an estate may be proved by declarations made by a deceased tenant while in possession. *Ib.* A declaration by the owner or occupier of adjoining land, that his neighbour's land extends to such a spot, accompanying an act of forbearance to go beyond the spot for that reason (or without such act, if he speaks against his interest) is evidence that the land extends so far. *Sir T. Stanley v. White*, 14 *East*, 332. 339; 1 *Phill. Evid.* 163. 245. And the declaration of a deceased occupier of land, that he rented it under a certain person, is evidence of that person's seisin. *Uncle v. Watson*, 4 *Taunt.* 16; *Doe d. Baggalley v. Jones*, 1 *Camp.* 367; *Doe Human v. Pettett*, 5 *B. & A.*, 225. 1 *Phill. Evid.* 7 ed. 258. But entries by a third person, deceased, in his books, of receipts of rent from his tenant for a particular estate, are not admissible to prove the identity of the land, in a cause between two others. *Outram v. Morewood*, 5 *T. R.* 121; and see further as to this, *post*, 32.

Ownership of estate.

In cases of custom, reputation by deceased persons, as to the right, may be proved; but not to prove that they, the deceased persons, had said that they had seen certain facts take place, which amounted to an exercise of the right. *R. v. Ereswell*, 3 *T. R.* 707.

Customs.

[Settlements].—The deathbed declarations of paupers respecting their settlements are, it seems, evidence; and sometimes the general declarations of deceased paupers are evidence. *R. v. Bury*, *Cald.* 481; *vide R. v. Ereswell*, 3 *T. R.* 707.

Settlements.

The owner of a house let to a pauper, having died before an appeal against a removal, grounded on a settlement by tenancy, was heard, it was made a question whether a declaration made by him during the time the pauper occupied the house, that he had let it to him, and that another person had duly guaranteed the rent, could be received. *R. v. Chediston*, 6 *D. & R.* 269; 4 *B. & C.* 230, 8. C.

Hearsay evidence, from a wife, of the declarations of her husband, living abroad, respecting his settlement, are admissible when supported by slight circumstances. *R. v. Wareham*, *Cald.* 141. So declarations of a husband to his wife, respecting his settlement, seem, after his death, to be admissible evidence; but if they refer to a written instrument, they cannot be received unless previous inquiry is shown to have been made after it. *R. v. St. Sepulchre*, *Cald.* 547. See *ante*, 30; *post*, 87.

In an appeal, the respondents, in order to prove the fact of the delivery to them of a certificate given by the appellants, acknowledging the pauper to be their settled inhabitant, produced an old book from their own parish chest, in which was an entry of that fact in the handwriting of a former parish officer; it was held that such evidence was inadmissible. *Res v. Debenham*, 2 *B. & A.* 185, and *post*, 32.

[Public or general Rights].—A general right may be proved by traditional evidence; a particular fact cannot. *Per* *Ld. Kenyon*, C. J., in *Outram v. Morewood*, 5 *T. R.* 123. Upon a question of boundary between two parishes and manors, whether a certain common was within the parish and manor of H. or the parish of B. and manor of M., *Le Blanc*, J. admitted evidence of what old persons, then dead, had said concerning the boundaries, though not as to particular facts or transactions. And this though the old persons were parishioners, and claimed rights of common on the waste which would be enlarged by their several declarations; there not appearing any dispute at the time respecting the right of such old persons. *Nicholls v. Parker*, 14 *East*, 331, n. 1 *M. & S.* 81. But not so as to a boundary between two estates. *Clothier v. Chapman*, 14 *East*, 331, n.

Public or general rights.



HEARSAY.

Where in trespass the question was whether certain land was in the parish of A. or parish of B., the land in B. being tithe-free, it was held that ancient leases granted by the ancestor of the landlord, in which the land was described as being in parish B., were admissible as evidence of reputation that the land was in that parish. Old rates made by the parish officers of B. on the occupiers of the land in question were also produced; and an account, containing an overseer's account, in which, against the sum for which the occupier of that land had been assessed, there were crosses made, were produced: it was held that these were evidence that the sums assessed had been paid by the tenants. *Plaxton v. Dare*, 10 B. & Cres. 17.

Perambulations are evidence of the extent of a particular parish or manor. 1 Maule & S. 687; 1 Phil. Evid. 7 ed. 284.

Before a customary right can be proved by evidence of reputation, a foundation must be laid by showing acts of ownership, and then the evidence of reputation becomes admissible; such evidence being confined to what old persons, who were in a situation to know what these rights are, have been heard to say concerning them. *Weeks v. Sparke*, 1 M. & S. 687; *Peake Evid.* 15.

Declarations as to boundaries or customs, &c., made *post litem motam*, are not admissible as evidence of reputation. *R. v. Cotton*, 3 Camp. 444; 11 Price, 180; 1 Phil. Evid. 7 ed. 250.

Hearsay of persons having no interest to misrepresent.

*Where Party has no Interest to misrepresent*—In many cases, the declarations of deceased persons, who have had no interest to misrepresent, or whose interest was to represent the other way, have been admitted in evidence; as entries by a deceased rector, or vicar, as to the receipt of ecclesiastical dues, are admissible for his successor, for he had no interest to misstate the fact. 2 Gwill. 529; 4 Price, 218. So, entries made by a deceased collector of rates, charging himself with the receipt of money, and made by him in the public books of his office, are admissible against his surety, to prove his receipt. *Goss v. Watlington*, 3 B. & B. 132. And in *Middleton v. Melton*, 10 B. & Cres. 317, it was held that an entry made by a deceased collector of taxes, in a private book kept by him for his own convenience, whereby he charged himself with the receipt of sums of money, was evidence against a surety of the fact of the receipt of such money in an action on a bond conditioned for the due payment of the taxes by the collector, although the parties by whom the money had been paid were alive, and might have been called as witnesses; and that upon the general principle that the entry was to the prejudice of the party who made it. And see 8 B. & Cres. 556; *Gow*, 227; *Doe Smith v. Cartwright*, R. & M. C. N. P. 62; *Roscoe*, 18, 19.

To prove soil and freehold, the entries made by a former steward of the manor in his day-book, of receipts of sums of money for trespasses committed upon the place in question, were held to be good evidence, as the steward thereby charged himself with the receipt of money; and these entries may either be in his handwriting, or in a book signed in his handwriting. And the rule is, that if a steward's entry be sufficient to charge himself, it is admissible evidence. *Barry v. Bebbington*, 4 T. R. 514.

To prove the fact of a surrender of an interest in an estate, the books of the attorney, since deceased, who had made an entry of having prepared the writings, and of the charge for the same, as due to himself, and then an entry that they were paid, were admitted in evidence, and afterwards agreed by the court to be so. *Warren d. Webb v. Greenville*, 2 Str. 1129.

So, to prove the real time of executing a lease to have been different from its actual date, an attorney's entry of charges by himself for making the lease, and of payment of those charges, was admitted as good evidence. *Doe d. Reece v. Robson*, 15 East, 33; and see the case of the surgeon, *ante*, 30.

This, upon the ground that there was a total absence of interest in the persons making the entry to pervert the fact, and at the same time a competency in them to know it. And *Bayley, J.*, said, it had long been an

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established principle of evidence, that if a party, who has knowledge of the fact, make an entry of it, whereby he charges himself, or discharges another upon whom he would otherwise have a claim, such entry is admissible evidence of the fact, because it is against his own interest. 15 East, 35.

HEARSAY.

"The general rule," said *Ld. Hardwicke*, in the case of *Glynn v. The Bank of England*, 2 Ves. 43, "is, that a man cannot make evidence for himself. What he writes or says for himself cannot be evidence of his right, and consequently cannot be for his representative claiming in his right and place. I will not say" (added Lord Hardwicke) "how length of time may vary it; but otherwise it cannot be any more than for himself." 1 Phill. Ev. 241, 242; *R. v. Debenham*, 2 B. & A. 185.

A party cannot make evidence for himself.

A man's book of accounts is no evidence for the owner of the book, though it is for the adverse party; for his book cannot be of better credit than his oath, which would not serve in his own case, *Tr. per Pais*, 348. As to shop books in action for goods sold, &c., see 7 Jac. I. c. 12; *B. N. P.* 282.

*When Hearsay Part of the Transaction itself*—When hearsay is introduced, not as a medium of proof in order to establish a distinct fact, but as being in itself a part of the transaction in question, it is then admissible; for, to exclude it, might be to exclude the only evidence of which the nature of the case is capable. *Rosc.* 17, *B. N. P.* 40; 2 Hawk. c. 46, s. 46. As the declarations of a party of the hurt he received, made immediately on his receiving it, from an assault. See *Thompson v. Trevanion*, *Skin.* 402; and see 6 East, 193; 3 Esp. 276. In *Ld. Gordon's* case, the declarations of the mob were held admissible in evidence. 21 How. St. Tr. 542.

Hearsay, when part of the transaction.

*Titles of Office, Character, &c.*—If upon collateral issue it is to be proved that such an one was justice of the peace, baronet, or the like, common reputation is sufficient proof, without showing the commission or letters patent of the creation. *Tr. per Pais*, 347.

Titles of office.

And in the case of justices of the peace, peace officers, constables, &c., it is sufficient to prove that they acted in those characters, without producing their appointments. So determined by all the Judges in the case of the Gordons, tried for murder in 1789, 1 Leach, 581; *R. v. Shelley*, 1 Leach, 381, n.; *Berryman v. Wise*, 4 T. R. 366.

And in an indictment for disobeying a justice's order for diverting a road, it was held unnecessary to produce the commission of the peace to prove the persons to be magistrates who signed the order. *Per Hotham*, *B. R. v. —*, *Kingston Lent Ass.* 1801, 1 Nol. P. L. 598.

So at the trial of an officer on an information for defrauding government by false returns of musters, it was held sufficient to prove that he acted in the character mentioned in the information, without proving the commission from the king. *R. v. Gardiner*, 2 Camp. 513.

And in general, where a party assumes a particular character, proof of that fact will suffice, as against that party. See 3 T. R. 635, n.

### (5.) Dying Declarations.

The Dying Declarations of a person who expects to die, respecting the circumstances under which he received a mortal injury, are constantly admitted in criminal prosecutions where the death is the subject of criminal inquiry, though the accused was not present when they were made, and had no opportunity for cross-examination. See 1 Phill. Ev. 223; 1 Stark. Ev. 101. For it is considered, that when an individual is in constant expectation of immediate death, all temptations to falsehood, either of interest, hope, or fear, will be removed, and the awful nature of his situation may be presumed to impress him as strongly with the necessity of a

Dying declarations.

## DYING DECLARATIONS.

strict adherence to truth as the most solemn obligation of an oath administered in a court of justice. 1 *Leach*, 502; 1 *Gilb. Evid.* 280; 1 *Chit. C. L.* 568, 9. To enable these testimonies to be given in evidence, they must be made when the party is not only in actual danger of death, but when he is aware of the circumstances in which he is placed, and impressed with a sense of speedy dissolution. 1 *Leach*, 503; 1 *East, P. C.* 353. But it is not necessary that the deceased should express that opinion in words; it will be sufficient if it can be collected from the general circumstances of his condition. *Id.*

In *R. v. Mosley, Ry. & M. C. C. R.* 97, it was held, that the declarations of the deceased, made on the day he was wounded, and when he believed he should not recover, were evidence, although he did not die till eleven days after, and although the surgeon did not think his case hopeless, and continued to tell him so till the day of his death. In *R. v. Christie, Car. C. L.* 232, *O. B.* 1821, the deceased asked his surgeon if the wound was necessarily mortal; and on being told that recovery was just possible, and that there had been an instance where a person had recovered after such a wound, he said, "I am satisfied;" and after this he made a statement. This statement was held by *Abbott, C. J.*, and *Park, J.*, to be inadmissible as a declaration in articulo mortis, as it did not appear that the deceased thought himself at the point of death; for being told that the wound was not necessarily mortal, he might still have had a hope of recovery.

The declarations are only admissible where the death is the subject of the charge, and the circumstances of the death are the subject of the declaration. Thus in a late case where the prisoner was indicted for administering savin to a woman pregnant, but not quick with child, with intent to procure abortion. The woman was dead, and, for the prosecution, evidence of her dying declaration upon the subject was tendered. The learned judge rejected the evidence, observing, that although the declaration might relate to the cause of the death, still such declarations were admissible in those cases alone where the death of the party was the subject of inquiry. *R. v. Hutchison*, 2 *B. & C.* 608. So in *R. v. Mead*, 2 *B. & C.* 605; 4 *D. & R.* 120, *S. C.*, defendant having been convicted of perjury, a rule nisi for a new trial was obtained; whilst that was pending, the defendant *Mead* shot the prosecutor *Lau*; and on showing cause against the rule, an affidavit was tendered of the dying declaration of the latter, as to the transaction out of which the prosecution for perjury arose. The Court of *K. B.* held, that it could not be read; for dying declarations are admissible only where the death is the subject of the charge, and the circumstances of the death are the subject of the declaration. So, in trials for robbery, the dying declarations of the party robbed are rejected. *Per Bayley & Best, JJ.* 1822, 1 *Phill. Ev.* 225.

In *Wright v. Littler*, 3 *Burr.* 1244, however, the declarations of subscribing witnesses, confessing the forgery of a deed, were admitted; and see 6 *East*, 195; but in *Doe dem. Sutton v. Ridgway*, 4 *B. & A.* 54, *Abbott, C. J.*, says, that the cases cited (viz. those of the deceased persons, in cases of murder or manslaughter, or subscribing witnesses to deeds, confessing the deeds to be forged) are the only exceptions to the general rule of not receiving evidence unless upon oath, and with the opportunity of a cross-examination; and *Bayley, J.*, observes, that the declarations admitted in the case of *Aveson v. Kinnaird*, 6 *East*, 188, were a part of the *res gestæ*.

The dying party must, at the time of making the declarations, to render them admissible, have an idea of a future state; therefore the declarations of a dying child, only of four years of age, have been held inadmissible. *R. v. Pike*, 3 *C. & P. C. N. P.* 598.

Nothing can be evidence in a declaration in articulo mortis that would not be so if the party were sworn. Therefore, any thing the murdered person, in articulo mortis, says as to facts, is receivable, but not what he says as matter of opinion. *R. v. Sellers, O. B.* 1796, *Car. C. L.* 233.

If the declaration of the deceased, at the time of his making it, be reduced

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into writing, the written document must be given in evidence, and no parol testimony respecting its contents can be admitted. *Vin. Ab. Evid.* 38 (A. b.).

CHARACTER.

The dying declaration of a criminal at the scaffold will not be thus admissible; because his oath could no longer have been received in a court of justice, after his blood is corrupted. 1 *Leach*, 337; 2 *Hawk.* c. 46. s. 51.

The court are to decide as to the admissibility of the declaration. 1 *Leach*, 304; *R. v. Hucks*, 1 *Stark. C. N. P.* 532; *R. v. Van Butchell*, 3 *C. & P. C. N. P.* 629.

### (6.) Confessions.

We have already seen how far the confessions of the party himself are evidence against him. *Ante*, *Confession*, Vol. I.

### (7.) Opinions of Witnesses.

*Opinions*—Upon questions of skill and judgment, the opinions of competent judges are admissible in evidence; but in general mere matter of opinion is not so. Thus, on a trial where the defence is insanity, a witness of medical skill may be asked, whether such and such appearances, proved by other witnesses, are in his judgment symptoms of insanity—*R. v. Wright*, *R. & R. C. C.* 456; but it is questionable whether he can be asked, whether, from other testimony given, the act with which the prisoner is charged is, in his opinion, an act of insanity, which is the very point to be decided by the jury, *id.* A physician, who has not seen the particular patient, may, after hearing the evidence of others, be called to prove, on oath, the general effects of the disease described by them, and its probable consequences in the particular case. *Peake's Evid.* 208; and see *Roscoe*, 77.

Opinions.

### (8.) Evidence of Character.

In trials for felony and high treason, and in trials also for misdemeanors (where the direct object of the prosecution is to punish the offence), the prisoner is always permitted to call witnesses to his general character; and in every case of doubt proof of good character will be entitled to great weight. The inquiry as to the prisoner's general character ought manifestly to bear some analogy and reference to the nature of the charge against him. On a charge of stealing, it would be irrelevant and absurd to inquire into the prisoner's loyalty or humanity; on a charge of high treason, it would be equally absurd to inquire into his honesty and punctuality in private dealings. Such evidence relates to principles of moral conduct, which, however they might operate on other occasions, would not be likely to operate on that which alone is the subject of inquiry; it would not afford the least presumption, that the prisoner might not have been tempted to commit the crime for which he is tried, and is therefore totally inapplicable to the point in question. The inquiry must also be as to the general character; for it is *general character* alone which can afford any test of general conduct, or raise a presumption that the person who had maintained a fair reputation down to a certain period would not then begin to act a dishonest unworthy part. Proof of *particular* transactions in which the defendant may have been concerned is not admissible as evidence of his general good character. The best medium of proof of general character is, by showing how the person stands in general estimation; proof that he is reputed to be honest is evidence of his character for honesty, and the species of evidence most correctly resorted to in such inquiries. 1 *Phill. Evid.* 7 ed. 177.

Evidence of character.

## CHARACTER.

This evidence is only admitted in prosecutions which subject a man to corporal punishment, and not in actions or informations for penalties, though founded on the fraudulent conduct of the defendant. *Peake's Evid.* 7.

"The true line of distinction," *Eyre*, C. B., said, "is this: in a direct prosecution for a crime, such evidence is admissible; but where the prosecution is not directly for the crime, but for the penalty, as in this information, it is not." *Attorney General v. Bowman*, cited 2 *Bos. & Pull.* 532.

In *Huntley v. Luscombe*, it was said by *Lens*, Serjt., and not contradicted by the court, that the Court of Exchequer is not a criminal court; and all suits for penalties of this nature, though for the king, are considered as civil. The penalty was for a breach of the Excise laws. 2 *Bos. & Pull.* 532.

On the trial of an indictment for a rape, evidence is admissible on the part of the prisoner, that the woman bore a notoriously bad character for want of chastity and common decency, or that she had previously been criminally connected with the prisoner. But it cannot be shown that she had a criminal connexion with other persons. *R. v. Hodgson*, *R. & R. C. C.* 211; 1 *Phill. Evid.* 176, 7 ed. And, on an indictment for an assault with intent to commit a rape, general evidence of the woman's bad character, previous to the supposed offence, is clearly admissible; but evidence of particular facts, to impeach her chastity, cannot be received in this case more than in the last, not even for the purpose of contradicting her answers in cross-examination. *R. v. Clarke*, 2 *Stark. N. P.* 243. Her answers to questions respecting particular facts, not involved in the issue, are conclusive. And if, on cross-examination, she admit her own misconduct in some earlier transactions, it would be proper, on re-examination, to inquire into her conduct subsequent to such transactions, for the purpose of restoring her credit: other witnesses may also be called to show that she has since retrieved her character. *Id.* 1 *Phill. Evid.* 176, 7 ed. And see further, *post*, *Maps*, Vol. V., p. 260.

## III. Modes of Proof by Written Evidence.

## Modes of Proof.

The Modes of proving Facts are by, 1st, Written Evidence; and 2nd, Verbal Evidence by Witnesses.

## (1) Written evidence.

Written Evidence may consist of public documents,—of records and proceedings in courts,—or of private documents.

## (1.) Public Documents.

## Acts of parliament.

*Acts of Parliament*—Acts of parliament relate either to the kingdom at large, when they are called *general* acts; or only to particular classes of men, or to certain individuals, in which case they are called *private* acts. *Bull. N. P.* 222.

## Public acts.

*Public* acts are not the subject of proof in any court of justice, for being the law of the land, they are supposed to be known to every man. The printed statute book is on all occasions referred to, not as an authentic copy of the statute itself (which is a record), but as hints of that which is supposed to be lodged in every man's mind already. *Gill.* 10.

## Private acts.

*Private* acts of parliament, not concerning the public, are not considered as *laws*, but *facts*, and therefore must be proved like other records which concern private rights, by copies examined with the parliament rolls; for the printed statutes are, in this respect, only private copies, and, consequently, no evidence of the fact. *Bull. N. P.* 225. In most private acts a clause is inserted directing that the act shall be deemed and taken to be as a public act, or that a copy printed by the king's printer shall be admitted in evidence, which supersedes the neces-

sity of evidence to prove, or special pleading to introduce them to the notice of a court of justice.

PUBLIC DOCUMENTS.

By stat. 41 Geo. III. U. K. c. 90, s. 9, the statutes of England and of Great Britain, printed and published by the king's printer, shall be received as conclusive evidence of the several statutes in the courts of either kingdom.

Irish acts.  
41 Geo. 3. c. 90.

The preamble of an act of parliament, reciting that certain outrages had been committed in particular parts of the kingdom, has been adjudged by the court of King's Bench, in a late case, to be admissible in evidence, for the purpose of proving an introductory averment in an information for a libel, that outrages of that description had existed, because in judgment of law every subject is privy to the making of the statute. *R. v. Sutton*, 4 M. & S. 532. See further, *post*, Statutes, Vol. V.

Preamble of acts.

*Journals of Parliament*—The journals of the houses of parliament may be proved by examined copies; but the printed journals are not evidence. *Id. Mcville's case*, 24 How. St. Tr. 603. In *Jones v. Randall*, Coup. 17, it was held an unstamped copy of the minutes of the reversal of a judgment in the House of Lords, without more of the proceeding, was evidence of such reversal.

Journals of parliament.

The journals are in general evidence of the facts therein stated. *R. v. Franklin*, 17 How. St. Tr. 617. But the resolutions of the house are not so. *Oates's case*, 10 id. 1165—7.

*Proclamations, Addresses, and Articles of War*—These, as printed by the king's printer, are considered as sufficiently proving themselves by the mere production of a witness, who purchased them of such printer. See *R. v. Withers*, 5 T. R. 446; *Bradley v. Arthur*, 4 B. & Cres. 304; *Attorney-General v. Theakstone*, 8 Price, 89. A paper from the Secretary of State's office, transmitted by the British ambassador at a foreign court, and purporting to be a declaration of war by the government of that country against another foreign state, is admissible for the purpose of showing the precise period of the commencement of the war. *Theluson v. Cosling*, 4 Esp. 266. The recitals in a proclamation are evidence of the facts recited. *R. v. Sutton*, 4 M. & S. 532.

Proclamations, &c.

*Gazette*—The gazette printed and published by the king's printer, or by the authority of government, is evidence of all acts of state, and is sufficiently proved by the production by a witness who purchased it of such printer. *R. v. Holt*, 5 T. R. 436. But according to *R. v. Forsyth*, *R. & R. C. C.* 277, it seems not to be necessary to prove it was bought of the gazette printer, or where it came from.

Gazette.

It is evidence of all acts of state therein recited, *id.*; but not of any private matters respecting individuals, *R. v. Holt*, 5 T. R. 436; as the appointment of an officer to a commission in the army. *Kirwan v. Cockburn*, 5 Esp. 233; *R. v. Gardner*, 2 Camp. 513, or a grant of land, &c. 5 T. R. 443.

The gazette is no evidence of a party having had notice of a private matter contained therein, unless it be proved that such party was in the habit of reading, or had actually read, the gazette itself, or the like. See *Peake*, 154, 155; 1 Stark. 186; 2 Stark. 255; *M. & M.* 183; 3 Bing. 2; *Harratt v. Wise*, 9 B. & Cres. 712.

*Almanacks*—The examination of an almanack, that such a day of the month was Sunday, was ruled to be sufficient; and that a trial of this by a jury is not necessary, although it is a matter of fact. *Cro. Eliz.* 227. But the almanack should be annexed to the common prayer book. 6 Mod. 81.

Almanacks.

The reason why the calendar in an almanack is allowed to be evidence seemeth to be, because the said calendar is part of the book of common prayer, which is established by act of parliament.

*Parish Registers*—The entry of the names and titles of persons in a Parish register.

Parish register.

## PUBLIC DOCUMENTS.

## Parish registers.

*church book*, either for marriages or births, is evidence; but not conclusive of the marriage or birth of any persons, unless the identity of the person (by such entries intended) is fully proved, and also strengthened with circumstances, as cohabitation, the allowance of the parties themselves, and the like. 11 *Vin. Abr.* 89; *R. v. North Petherton*, 5 *B. & Cres.* 508; 4 *D. & R. M. C.* 79. S. C.

But a day-book from whence the register is made up was not allowed as evidence to contradict the latter in a question of legitimacy: for though it was insisted that one was the original entry, the other was the only register, and there cannot be two registers in one parish. *May v. May*, 2 *Str.* 1073; *Bull. N. P.* 247. And in *Doe Warren v. Bray*, 8 *B. & Cres.* 813, it was held, that an entry in the register-book, by the minister of the parish, of the baptism of a child which had taken place before he became minister, or had any connexion with the parish, and of which he received information from the parish-clerk, was not admissible in evidence, nor was the private memorandum of the fact made by the clerk who was present at the baptism.

A parish register, containing an entry of baptism as to the time of a child's birth, is not evidence of the age, *Wihe v. Law*, 3 *Stark.* 63. Nor is the register of the christening of a child in a particular parish evidence, when not accompanied by other circumstances, that the child was born in the parish. *R. v. North Petherton*, 5 *B. & C.* 508; 8 *D. & R.* 325; 4 *D. & R. M. C.* 79, S. C.; 12 *Vin. Abr.* 89. *supra*.

The entry may be proved by an examined copy from the entry in the register, or by production of the register itself. *B. N. P.* 247. The attesting witness to the register need not be subpoenaed. *Dougl.* 182.

We have just seen, that some evidence of identity of the parties, concerning whom the entry is made, must be established; this may be effected by calling the minister, clerk, or attesting witness, or any other person present on or immediately after the occasion, or by proving the handwriting of the party to the entry, if indeed he signed it. *Dougl.* 162; *Roscoe*, 50. If a marriage be proved by a person who was present, it is not necessary to prove the registration, or licence, or bans. *Allison's case*, *R. & R. C. C.* 109.

## 52 Geo. 3. c. 146.

By stat. 52 Geo. III. c. 146, s. 7, it is enacted, that copies of the register books, verified by the officiating minister of the parish, shall be transmitted annually by the churchwardens, after they or one of them shall have signed the same, to the registrars of the diocese within which the church is situated. See tit. *Parish Registers*, Vol. V.

The copy of a register of a dissenting chapel is not evidence to prove a marriage, as it is not a public document. *Newnham v. Raithby*, 1 *Phill.* 315.

## Foreign registers.

It may be as well here to observe, that the copy of a register of a foreign chapel is not admissible to prove a marriage abroad. *Leader v. Barry*, 1 *Esp.* 353. Neither is the copy of a register of baptism kept in the island of Guernsey. *Huet v. Le Mesurier*, 1 *Cox's Ca.* 275.

## Other public books, &amp;c.

*Other Public Books, Entries, &c.*—Entries in public books are frequently evidence, and they are proveable either by production of the books themselves, or by examined copies of the entries.

## Navy office.

Thus entries in books of the Navy office are sufficient evidence that a person of a particular name is dead, proving also the usage to return such persons dead, and the identity of the party. *Bull. N. P.* 249; *Wallace v. Cook*, 5 *Esp.* 117; *Rhode's case*, 1 *Leach*, 24.

## Excise.

Excise books, transcribed from the master's specimen papers, are evidence against him, without calling the officers who have transcribed them, as it is said, *ex necessitate rei*. *R. v. Grimswood*, 1 *Price*, 369.

## Customs, land-tax, bank, East India Company, &amp;c.

So entries in the books of the Custom-house, land-tax commissioners, Bank, East India Company, or South Sea Company, or the like, are evidence. See 2 *Ld. Raym.* 851; 2 *T. R.* 234; *Peake*, 30; 2 *Str.* 954. 1005;

*Hardw.* 128. So is an entry in the book at Lloyd's sometimes evidence. *2 Esp.* 242; *Bain v. Case*, 3 C. & P. 496. So is an entry in the poll-books at an election. *Mead v. Robinson*, *Willes*, 424; 1 *Str.* 307.

Post-office marks in town or country, proved to be such, are evidence, that the letters on which they are impressed were in the office to which those marks belong, at the dates those marks specify. *R. v. Plumer*, *R. & R. C. C.* 264; *Fletcher v. Braddyll*, 3 *Stark.* 64.

Rolls or ancient books in the *Heralds' office* are evidence to prove a pedigree; but an extract of a pedigree, proved to be taken out of records, shall not; because such extract is not the best evidence in the nature of the thing, as a copy of such records might be had. *Bull. N. P.* 248; 3 *Blac. Com.* 105. The heralds' visitation books of counties are evidence on a question of pedigree. *Pitton v. Walker*, 1 *Str.* 162.

Documents affecting the possession or revenues of the duchy of Cornwall are public acts, and evidence of the rights of the crown. *Rowe v. Brenton*, 8 *B. & Cres.* 743.

The copy of an official paper, containing an entry of the number of passengers on board a vessel, made in pursuance of an act of parliament by the captain, and deposited at the East India House, is admissible to prove the number and description of the persons on board the vessels. *Richardson v. Mellish*, *R. & M. C. N. P.* 66; 2 *Bing.* 220. *S. C.* So the log-book of a man-of-war is evidence to show when a certain ship came under her convoy. *D'Israeli v. Jowett*, 1 *Esp. R.* 427.

Entries in the books of the clerk of the peace of deputations (many years since granted to gamekeepers by the owner of a manor) are evidence to show that the party there mentioned exercised the right of appointing gamekeepers, by applying to the clerk of the peace to get certificates, without production of the deputations themselves. *Hunt v. Andrews*, 3 *B. & A.* 341; *Rushworth v. Craven*, 1 *Mac. & Y.* 417.

The book from the Master's office in the King's Bench is admissible to prove a person an attorney of that Court without production of the roll. *R. v. Crossley*, 2 *Esp.* 524. So the books of the King's Bench and Fleet prisons are admissible to prove the dates of the commitment and discharge of prisoners. *R. v. Aicles, Leach*, *C. L.* 436; but not the *cause* of the commitment, of which the commitment itself is the best evidence. *Salte v. Thomas*, 3 *B. & P.* 188.

The books of the Fleet prison are not, as it seems, evidence to prove a marriage, for they are not made by public authority. *Peake*, 231, 1 *Esp.* 213, *S. C.* *Peake*, 233, n. *Roscoe*, 93: *sed vide Peake*, 231; 1 *Esp.* 197; 16 *Ves.* 40.

Corporation books, so far as they concern the public government of a town, when publicly kept, and the entries made by a proper officer, are admissible as evidence of the facts contained therein. *Peake*, 97; *Marriage v. Lawrence*, 3 *B. & A.* 142; *R. v. Mothersell*, 1 *Str.* 93. And corporation books are, it seems, in all cases, as between members of the corporation, admissible in evidence. *Mayor of London v. Mayor of Lynn*, 1 *Hen. Bla.*, 214, n. If the books are ancient, it must be shown that they came from the proper custody, as from a chest which has been always in the custody of the clerk of the corporation. *Mercers of Shrewsbury v. Hart*, 1 *C. & P.* 114. It is not sufficient if they were brought from a chest found in the house of a former clerk after his death; *id.* The entries may be proved by examined copies, 1 *Str.* 308, or by the books themselves. If the entries do not relate to corporate acts, the contents must be proved by other means. *R. v. Guyn*, 1 *Str.* 401.

When an instrument being a corporate act, and intended to be proved as such, is adduced in evidence, the seal of the corporation must be proved to be genuine by a witness acquainted with it, 8 *T. R.* 307; but it is not necessary to call a witness who saw the seal fixed, *id.* The seal of the corporation of London proves itself, 1 *Esp.* 53.

Entries in parish books are sometimes evidence, as an entry in the parish register; as to which see *ante*, 27, 38.

**PUBLIC DOCUMENTS.**

Lloyd's list.  
Poll-books.  
Post-office.

Heralds' office.

Duchy of Cornwall.

Ship's papers.

Log-book.

Clerk of peace books.

Master's office, King's Bench.

Fleet prison.

Corporation books.

Parish books.



**PUBLIC  
ENTRIES, &c.**  

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Apprentices.

By the 42 Geo. III., c. 46, *ante*, *Apprentice*, Vol. I., the particulars of parish indentures are directed to be entered in a book; which book shall be deemed sufficient evidence in courts of law, of the existence and particulars of such indentures, in case it shall be proved the originals are lost or destroyed.

Poor rates.

By 17 Geo. II., c. 38, s. 14, true copies of all rates and assessments, made for the relief of the poor, are to be entered in a book provided for that purpose by the churchwardens of every parish, *post*, *Poor*, Vol. IV.

Vestry books.

Entries in vestry books are sometimes evidence: thus an entry in a vestry book, stating that A. was duly elected treasurer of the parish at a vestry duly held in pursuance of notice, is evidence of such election. *R. v. Martin*, 2 Camp. 100; and see *Price v. Littlewood*, 2 Camp. 288; *ante*, 37, 38.

Inspection.

Though inspection of public books and writings is in general granted in civil cases, it is not so in criminal cases; where it would have the effect of making a defendant furnish evidence to criminate himself. 1 *W. Bla.* 351, 37; 1 *Wils.* 239; 1 *Ld. Raym.* 705; 2 *id.* 927; 2 *Stra.* 1210. See as to Inspection, *post*, Inspection, Vol. III.

Inscriptions.

*Inscriptions on Tombs*—Inscriptions on monuments and gravestones are frequently evidence of the truth of the facts stated in such inscription on questions of pedigree, subject to the common rules respecting proof of identity. 3 *Bla. Com.* 105. See *Cowp.* 594; 4 *Camp.* 404; *T. Raym.* 84.

Public surveys.  
Doomsday book.

*Public Surveys*—Surveys, taken on public occasions, are also evidence to ascertain the rights of individuals not named in them. Thus Doomsday book, which was a survey of the king's lands made in the time of William the Conqueror, is the only evidence to prove whether a manor is held in ancient demesne; that is, whether it was part of the socage tenure, in the hands of Edward the Confessor, or not; and so high is the credit of this book, that the inspection is made by the court. So if a question arise as to the extent of the ports, there lies in the Exchequer a particular survey which ascertains it: and in many instances, where a commission has been confined to a particular place, it has been received as admissible evidence; and even when the commission has been lost, the survey taken under it has been allowed as evidence. *Hob.* 188; *Gilb. Ev.* 78; 1 *Phill. Ev.* 403, 7 ed.

Histories.

*Histories*—Books and chronicles of public history are not admissible in order to prove particular facts or customs. But they are evidence to prove a matter relating to the kingdom at large, as being the best evidence of which the matter is capable. *B. N. P.* 249; 1 *Stark. Evid.*, Part II., p. 180. Camden's *Britannia* was rejected on the question, whether, by the custom of Droitwich, salt-pits could be sunk in any part of the town, or only in a certain place. *Stainer v. The Burgesses of Droitwich*, 1 *Salk.* 281; *Skin.* 623. So on a question, whether the Abbey de Sentibus was an inferior abbey or not, Dugdale's *Monasticon* was refused for evidence, because the original records might be had in the Augmentation Office. Cited in 1 *Salk.* 281.

But in *Neale v. Fay* (cited in *Salk.* 282, and *Bull. N. P.* 249, as *Neale v. Jay*), in order to show that a deed was forged which bore date 1 Ph. & M., in which all the titles were given to Philip which he used after the surrender of Charles the Vth, chronicles were admitted to show that he did not take those titles upon him till six months after the date of the deed. And in the case of St. Katherine's hospital, 1 *Salk.* 282, Lord Hale admitted Speed's *Chronicles* to prove a particular point of history in the time of Edward III. *Id.*, and see *Lord Brounker v. Sir R. Atkins*, *Skin.* 14.

The year books may be evidence to prove the course of the court. 1 *Salk.* 282; 1 *Stark. Ev. Part II.*, p. 181.

Dugdale's *Burtonage* is not evidence to prove a descent. *Piercy's case*, 2 Jon. 164; 1 *Phill. Ev.* 423, 7 ed.

PUBLIC  
ENTRIES, &c.  
Ancient maps.

**Ancient Maps**—An ancient map will be received as evidence where it has accompanied possession, and agreed with the boundaries as adjusted by ancient purchases. If two manors are in the hands of the same person, and a map is made by him, and afterwards one of the manors is conveyed to another person, and then, at a distant time, disputes arise as to the boundaries, the map so taken will be evidence; but if the person under whose direction the map was taken was possessed of only one manor, or a lord describes the boundaries of his waste, or the churchwardens cause a copperplate map to be made, wherein they describe land which an individual claims, to be a public highway, the map so taken is not evidence against the rights of persons not parties to the making of it. *Peake's Ev.* 87, 95, and cases there cited.

**Terriers**—An old terrier, or survey of a manor, whether ecclesiastical or temporal, may be given in evidence when proved to have come from the proper repository; for there can be no other way of ascertaining the old tenures or boundaries. *Bull. N. P.* 248; 1 *Phill. Ev.* 419; *Rosc.* 51.

Terriers, &c.

A terrier of glebe is not evidence for the parson, unless signed by the churchwardens as well as the parson; nor these either, if they be of his nomination: and though it be signed by them, yet it seems to deserve very little credit, unless it be likewise signed by the substantial inhabitants. But, in all cases, it is certainly strong evidence against the parson. *Bull. N. P.* 248.

An ecclesiastical terrier is evidence of the possessions of a church, if it has been regularly made and preserved in the proper repository. Ecclesiastical terriers are constantly received in questions of tithes: they are ecclesiastical records, made in *perpetuam rei memoriam*, and are as solemn instruments as any that can be produced on such subjects. *Drake v. Smyth*, 5 *Price*, 380; 1 *Phill. Ev.* 419, 7th ed.

Unless an ecclesiastical terrier be proved to have come from either the bishop's register office, 4 *Gwill.* 1406, 2 *Anstr.* 386; or the registry of the archdeacon of the diocese, 4 *Gwill.* 1450, 3 *Anstr.* 795; or from the church chest, *Armstrong v. Hewitt*, 4 *Price*, 216; it cannot, in general, be admitted in evidence. A paper, therefore, purporting to be a terrier, found in the charter chest of a college, which had property in the parish, was thought to be inadmissible to disprove a modus. 4 *Gwill.* 1406.

Under particular circumstances, this rule respecting the custody of the terriers has been relaxed, and a terrier has been admitted, though not brought from one of the regular repositories, when the custody in another place has been satisfactorily explained. 1 *Phil. Ev.* 419. A terrier found in the registry of the dean and chapter of Lichfield has been admitted as evidence against a prebendary of Lichfield. 2 *Anstr.* 387.

A book kept in the chapter house of the dean and chapter of Sarum, purporting to contain copies of leases granted by the dean and chapter, is, as a public book, evidence of those leases, for the purpose of reputation, without proof of possession under those leases. *Coombs v. Coether*, *M. & M. C. N. P.* 398.

Book of dean and chapter.

**Court Rolls**—The rolls of a court baron, or customary court, are evidence between the lord and his copyholders or tenants; *Gulb.* 67. Ancient writings, though not properly court rolls, but found among them, and delivered down from steward to steward, purporting to be made *ex assensu omnium tenentium*, have been held to be good evidence, to prove the course of descent within a manor; and this, although not signed by any of the tenants. *Denn Goodwin v. Spray*, 1 *T. R.* 466, 1 *Phil. Evid.* 417.

Rolls of manor.

**Ship's Register**—By the 6 Geo. IV., c. 110, s. 43, it is enacted, "that the collector and comptroller of His Majesty's customs at any port or place, and the person or persons acting for them respectively, shall, upon every reasonable request by any person or persons whomsoever, produce and exhibit, for his, her, or their inspection and examination, any oath or affi-

Ship's register.

## RECORDS.

Ship's register.

davit taken or sworn by any such owner or owners, proprietor or proprietors, and also any register or entry in any book or books of registry, required by this act to be made or kept relative to any ship or vessel, and shall, upon every reasonable request by any person or persons whomsoever, permit him, her, or them to take a copy or copies or an extract or extracts thereof respectively; and that the copy or copies thereof respectively be allowed and received as evidence upon every trial at law, without the production of the original or originals, and without the testimony or attendance of any collector or comptroller, or other person or persons acting for them respectively, in all cases as fully, and to all intents and purposes, as such original or originals, if produced by any collector or collectors, comptroller or comptrollers, or other person or persons acting for them, could or might legally be admitted or received in evidence."

## (2.) Records and Proceedings in Courts.

Records in general.

*Records*—Records are the memorials of the proceedings of the legislature, and of the king's courts of justice, preserved in rolls of parchment; and they are considered of such authority that no evidence is allowed to contradict them. 1 *Inst.* 117, *b. R. v. Hopper*, 3 *Price*, 495; 1 *Phill. Ev.* 7 ed. 316. Thus on an indictment for assisting the escape of a convict out of prison, if the record of the conviction is produced by the proper officer, evidence is not admissible to dispute the statement in the record, or to show that it has never been filed among the records of the county, even although the indictment refer to it with a *prout patet* as remaining among these records. *Rez v. Shaw*, 1 *Russ. & R. C. C.* 526.

But records are only conclusive evidence, generally speaking, against those who are parties to them, or their privies, and not strangers. See *Duchess of Kingston's case*, 20 *How. St. Tri.* 538. In matters of general concern, as customs, tolls, public ways, &c. they are conclusive. *Rosc.* 80. They are not evidence of matters coming collaterally in question, nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the record. 20 *How. St. Tri.* 533.

As to the effect of convictions, see *post*, 51.

Proof by record itself, or by exemplification.

*Proof by Record itself, or Exemplification*—When a record is the very gist of an issue in criminal cases, as in a plea of *autrefois acquit* or *convict*, it should be proved by production of the record itself, if it be a record of the same court in which the record is pleaded: or if a record of another court, by an exemplification under the great seal, which is of itself a record, and needs no further proof—*Gilb. Evid.* 14; 10 *Co.* 93; or by an exemplification of it under the seal of the court, which needs no further proof. *Gilb. Evid.* 19; *Sayer*, 297.

The record of an inferior court, when the gist of the issue is proved by an exemplification of the record, certified under a writ of *certiorari*, issued by the superior court. *Tidd*, 804.

In order to obtain an exemplification of a record of a concurrent superior court, a *certiorari* should be issued by the cursitor, directed to the chief justice of the superior court, requiring him to certify the record to the Court of Chancery; and the record being thereupon certified, an exemplification of it under the great seal is thence sent by mittimus to the court requiring the exemplification, to be there used—*Tidd*, 804; *Gilb. Evid.* 14, 15; and the same practice should be observed to obtain an exemplification of the record of a superior court to be produced to an inferior one.

So where the exemplification of the record of an inferior court is desired to be obtained for the purpose of evidence in a superior court, as the King's Bench, a *certiorari* should be sued out either with the cursitor, or with the proper officer of the Court of King's Bench, directed to the chief

justice, judge, or officer of the inferior court, in whose custody the record is supposed to be, requiring him to certify the record to the Court of King's Bench; and thereupon an exemplification of the record, under the seal of the inferior court, will be transmitted to the Court of King's Bench, to be there used as evidence.

On indictments for a subsequent felony, after a previous conviction for felony, the legislature has dispensed with the usual formal proofs of the former conviction, thus: By statute, 7 & 8 Geo. IV. c. 28, s. 11, upon an indictment for a subsequent felony, after a previous conviction for felony, a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer, is, upon proof of identity, sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same.

On indictments for subsequent offence.

And see a similar provision in the 7 & 8 Geo. IV. c. 30, s. 40, as to certain misdemeanors provided for by that act. *Post*, *Malignant Injuries (to Persons)*, Vol. III.

In these cases the mere production of the certified copy would suffice without further proof.

*Proof by examined Copy*—When the record is not the gist of the issue, but is merely matter of inducement, as is most generally the case in criminal proceedings, it may be proved by an examined copy, or sometimes by an office copy. *Gilb. Evid.* 26.

Examined copy.

To make the copy sufficient the record must be complete, which is not so until delivered into court on parchment. Thus, to prove an allegation of an indictment having been found, it must be done by production of a caption regularly drawn up of record: and the minute-book kept by the clerk of the peace is no evidence of the finding of the bill, though no record be drawn up. *R. v. Smith*, 8 B. & Cres. 341; and see 3 C. & P. 572.

Record must be complete.

A minute-book from which an entry of the proceedings at sessions is made, and from which book the roll containing the record of such proceedings is subsequently made up, is not a record. *R. v. Bellamy*, R. & M. 171.

So the judgment in paper signed by the master is not evidence, for it is not yet become permanent. *B. N. P.* 228; and see 1 M. & P. 236; 5 Esp. 177; 2 N. R. 474.

The sworn copy should contain the whole of the record, *B. N. P.* 228; 3 Inst. 173: unless in cases provided for by the 7 & 8 Geo. IV. c. 28, s. 30, relating to indictments for a subsequent offence, *supra*.

A copy of a copy is not evidence. *B. N. P.* 226.

Copies of records are to be proved as other transcripts, by a witness who has compared the copy, line for line, with the original, or who has examined the copy, while another person read the original. *Reid v. Margison*, 1 Campb. 470; *Rolf v. Dart*, 2 Taunt. 52. And it ought to appear that the original came from the proper place of deposit, or out of the hands of the officer in whose custody the records were kept. *Adamthwaite v. Synge*, 1 Stark. N. P. 183; 4 Campb. 372, S. C.; 1 Phill. Ev. 366.

Where the original record is lost, then a copy *vetustate temporis aut judiciaria cognitione roborata*, may be given in evidence. *Bull. N. P.* 228.

*Proof by Office Copy*—An office copy is, in the same court and in the same cause, equivalent to a record; but in another Court or in another cause it is not so; and in that case either the record itself, or an exemplification, or an examined copy, in case the record be not the gist of the issue should be produced and proved. *Denn v. Fulford*, 2 Burr. 1179.

Office copy.

It is a general rule, that a copy authenticated by a person appointed for that purpose (*viz.* an office copy), is good evidence of the contents of the original, without any proof of its being an examined copy. 1 Phill. Ev. 367; see 2 Campb. 390; *B. N. P.* 229.

Copy made by authorized officer.

## RECORDS, &amp;c.

But where the officer of the court is only intrusted with the custody of records, and is not authorised to make out a copy, he has no more authority for that purpose than a common person, and the copy must be regularly proved in a strict and regular mode. 1 *Phill. Ev.* 368.

The chirograph of a fine is evidence of the fine, the chirographer being appointed to make that copy; but it is not evidence of the proclamations, for of them the chirographer is not appointed to make a copy. *B. N. P.* 229; *Gilb. Ev.* 23. The date of enrolment of a deed of bargain and sale indorsed by the enrolments, is conclusive evidence of the date. *R. v. Hopper*, 3 *Price*, 495; and see 1 *Dougl.* 56; 8 *B. & Cres.* 755.

A copy of the depositions of a witness taken at a judge's chambers, signed by the judge, and delivered out by his clerk, is admissible without proof of examination with the original. *Duncan v. Scott*, 1 *Camp.* 101.

Verdict and  
postea.

*Verdict and Postea*].—No verdict shall be given in evidence as binding on a person unless he be a party or privy to it; because otherwise a man would be bound by a decision, who had not the liberty to cross-examine; and nothing can be more contrary to natural justice, than that any body should be injured by a determination which he or those under whom he claims was not at liberty to controvert. *B. N. P.* 232.

A verdict will not be admitted in evidence, without likewise producing a copy of the judgment founded upon it; because it may happen that the judgment was arrested upon a new trial granted. But this rule doth not hold in the case of a verdict on an issue directed out of Chancery; because it is not usual to enter up judgment in such case; and the decree of the court of Chancery is equally proof that the verdict was satisfactory, and stands in force. *B. N. P.* 234. And if it be required to prove merely that a certain trial was had, the *nisi prius* record, with the *postea* indorsed on it, and regularly stamped and marked, is sufficient evidence for that purpose. *Barnes*, 449; *Pitton v. Walter*, 1 *Stra.* 162; and see, 2 *Stark.* 364, 5. Where the *nisi prius* record was produced, with the minute of the verdict indorsed thereon by the associate, it was held sufficient proof of the trial, though no *postea* was drawn up; the associate stating none could be so, as a motion was pending for a new trial. *R. v. Browne*, 3 *C. & P.* 572; *M. & M. C. N. P.* 315, *S. C.* And see 8 *B. & Cres.* 541.

## Inquisitions.

*Inquisitions*].—On inquisitions of general concern, such as the return to the commission in Henry VIII.'s time, to inquire of the value of livings, the commission is a thing of such general notoriety that it requires no proof. *B. N. P.* 228; and see 8 *B. & Cres.* 747. But, in general, on inquisitions of private matters, it is necessary to show that the inquiry has been made under proper authority, besides proving the return. *Vin. Ab. Ev.* 42, (A. b.) A copy of the judgment roll, containing an award of an elegit, and the return of the inquisition, is evidence of the elegit and inquisition. 2 *M. & S.* 565. An inquisition *post mortem* is evidence, but not conclusive. *Earl Thanet v. Foster*, *T. Jones*, 224.

The inquisition in general of a private matter affects only those persons who are parties or privies to it. But an inquisition of lunacy is evidence against third persons, though not conclusive. 2 *Alk.* 412; 3 *Camp.* 126. As to the sheriff's inquisition to ascertain the ownership of property, see 2 *H. Bla.* 437; 3 *M. & S.* 175.

## Writ.

*Writ*].—Where a writ is the gist of the issue, which however is rarely the case in criminal proceedings, it must be returned into the court from whence it issued, and being then a record, should be proved by the record itself, or else, as is more usual, by an examined copy. *B. N. P.* 234. But if the writ be matter of inducement merely, it is not necessary that it should be returned or proved by an examined copy, when not returned. *Gilb. Ev.* 39; but the writ itself may be given in evidence.

If it has been returned, it should, in general, be proved by the record itself, or an examined copy. To entitle a party to go into secondary evi-

dence of a writ after its return, it must be shown that search has been made in the Treasury, and that subsequently to the return day the writ was in the possession of the opposite party, on whom notice to produce it has been served. *Edmonstone v. Plaisted*, 4 *Esp.* 160. A copy of the judgment roll, containing an award of an elegit, and the return of the inquisition, is evidence of the elegit and inquisition. *Ramsbottom v. Buckhurst*, 2 *M. & S.* 565.

RECORDS, &c.

**Affidavits**—An affidavit, whether voluntary or not, is evidence as an admission on oath against the party who made it. *Gilb. Ev.* 51, 56; 7 *Taunt.* 577; and though proved only to be signed by the party, it will operate in evidence as an admission by him. *Id. B. N. P.* 238.

Affidavits.

When filed of record in the superior courts, they should be proved by examined copies, or produced. Affidavits not so filed can be proved only by production of the affidavits themselves, and by parol evidence of their having been sworn. *Gilb. Ev.* 56; *B. N. P.* 238. Upon an indictment for perjury in an affidavit, the affidavit must in all cases be produced, whether filed or not, and it must be proved in the same manner as an answer to a bill in equity under the same circumstances. *Infra, B. N. P.* 238.

**Rules and Orders of Courts of Law**—Rules of court are proved by office copies; 1 *L. Raym.* 745; 1 *Camp.* 102. 471, n.: it is not necessary to have them examined. A rule of court is evidence that the court have ordered as is therein stated; but it is not evidence of any matters in it which are the mere suggestions of the party who obtained it. 6 *Taunt.* 19. A judge's order may be proved by the production of the order itself, or by an office copy of the rule by which it has been made a rule of court. 4 *Camp.* 17.

Rules and orders of courts of law.

**Letters Patent**—Letters patent should be proved by producing the letters patent themselves, or the exemplification of them under the great seal, which will be sufficient evidence without further proof. 1 *Phill. Evid.* 445.

Letters Patent.

**Proceedings in Chancery**—There are public matters that are not records, as transactions in Chancery and court roll: and of these copies may be given in evidence. *B. N. P.* 234.

Chancery proceedings.

The reason why the proceedings in Chancery are not records is this, because they are not the precedents of justice; for the judgment there is according to equity and good conscience, and not according to the laws and customs. And the reason why any record is of validity and authority is, because it is a memorial of what is the law of the nation: now Chancery proceedings are no memorials of the laws of England, because the chancellor is not bound to proceed according to the laws. *B. N. P.* 235.

**Bill**—A bill in Chancery will not be evidence, except to show that such a bill did exist, and that certain facts were in issue between the parties, in order to introduce the answer or the depositions of witnesses. 1 *Phill. Evid.* 341. It is not to be admitted as evidence in courts of law, to prove any facts either alleged or denied in the bill. *Case of the Banbury Peerage*, 2 *Selw. N. P.* 685; *Roscoe*, 84.

Bill.

**Answer**—An answer in Chancery is good evidence against the defendant as an admission upon oath, and it must be taken together; therefore if, upon exceptions taken, a second answer has been put in, the defendant may insist on having that read, to explain what he swore in his first answer. *B. N. P.* 237; *Gilb. Evid.* 60; *Roscoe*, 84. An answer will be evidence against all persons privy to the party making it; 16 *East*, 334: but the answer of a guardian is no evidence against an infant, nor is the answer of a trustee against the *cestui que trust*. *B. N. P.* 237. As to the answer of a co-defendant, see 3 *P. Wms.* 311; of a partner, *Peake*, 203; 7 *Price*, 198.

Answer.

The answer may be proved by the production of the bill and answer, or of examined copies of them from the Six Clerks' office. *Gilb. Evid.* 56;

RECORDS, &amp;c.

and see 1 *B. & A.* 182; 3 *Camp.* 401. On an indictment for perjury in an answer, the answer itself must be produced, and it must be proved either that the party was sworn to it, or that the name subscribed to it is his handwriting, and that the name subscribed to the jurat is the name and handwriting of a master, or other person having authority for that purpose. 2 *Burr.* 1189; 2 *Camp.* 508. The identity of the parties should be proved. Such identity may be established by a witness who has seen the handwriting of the defendant to the original answers, though it is not produced in court. *Dartnall v. Howard, R. & M. C. N. P.* 169. If the name and description of the defendant at law agree with the name and description of the party answering in equity, it is *primâ facie* evidence of identity. *Hennell v. Lyon, 1 B. & Ald.* 182; and see *M. & M.* 176.

The answer may be read without the bill, if the bill has been lost and the proper officer prove he cannot find it in the proper office. *Gilb. Evid.* 55; and see 8 *B. & Cres.* 765: unless on an indictment for perjury in the answer, *supra*.

When the answer is offered in evidence merely as an admission of the party on oath, it will suffice to prove it by an examined copy, without proof of a decree or of the party's handwriting. *Dartmouth v. Roberts, 16 East,* 334; and see *Ewer v. Ambrose, 4 B. & Cres.* 25; 6 *D. & R.* 127, *S. C.*

Depositions in Chancery.

*Depositions in Chancery*—Depositions in Chancery are admissible in evidence in an action in the same matters between the same parties or their privies, where the witness is dead, insane, or cannot be subpoenaed, or has fallen sick by the way. *B. N. P.* 239; *Gilb. Evid.* 60. But the mere circumstance of a witness being too ill to attend the trial is not, it seems, sufficient ground for reading his deposition in Chancery. *Doe v. Evans, 3 C. & P.* 219, *cor.* Vaughan, B. They are also admissible against strangers in questions of a public or general nature, as relating to customs or tolls, &c. *B. N. P.* 239: so they are so admissible when used to impeach the testimony of a witness who made the depositions. *Id.* 240. When depositions are made before an answer put in, they are in general inadmissible; *B. N. P.* 240; when otherwise, 1 *M. & S.* 4.

In order to prove the depositions, in general, the bill and answer must be first proved, and then the depositions must be produced and proved like other affidavits, not of record, proving the party's handwriting thereto, and that he was sworn, and that the name subscribed to the jurat is the name and handwriting of a master, or other person having authority for that purpose. It should be proved that the party making the depositions is dead, insane, or cannot be found, or has fallen sick by the way. But it is not necessary to do this, or prove the bill and answer, if the depositions are offered in evidence as an admission merely, or to contradict a witness. 1 *Phill. Evid.* 375.

If the bill and answer are ancient and cannot be found, on proving that fact and due search, the production will be dispensed with. *Gilb. Evid.* 64; 2 *Price, 234, n.*; and see 8 *B. & Cres.* 765, where answers to interrogatories were allowed to be read, without producing the interrogatories, which could not be found. But generally depositions taken on interrogatories under a commission are not evidence without production of the commission, unless the depositions are of long standing. *Bayley v. Wylie, 6 Esp.* 85.

As a general rule, it may be said, that in order to render depositions taken under any judicial proceedings evidence against a party, he must have had an opportunity to be present at the examination, and to cross-examine the witness. *Attorney General v. Davison, 1 Mac. & Y.* 160.

Decree.

*Decree*—A decree in Chancery is evidence between the same parties or their privies. *B. N. P.* 243.

The decree may be proved by an exemplification, or by a sworn copy, or when in paper by a decretal order, with proof of the bill and answer. *Trowel v. Castle; 1 Keb.* 21; *B. N. P.* 244; 1 *Phill. Evid.* 373; *Peake, Evid.* 74; *Rosc.* 46.

*Proceedings in Ecclesiastical Courts*—The sentences of ecclesiastical courts in matrimonial causes are in all cases evidence, and conclusive of the facts they therein establish, except in suits of jactitation. *Duchess Kingston's Case*, 20 How. St. Tri. 538, 540, 543; *Bunting's Case*, 4 Rep. 29 a.

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Proceedings in  
ecclesiastical  
courts.

Depositions taken in an ecclesiastical court, in a cause within its jurisdiction, seem to be admissible in evidence upon the same footing as depositions in the Court of Chancery, the parties being the same, and having had an opportunity of cross-examining the deponents. 1 *Phill. Evid.* 359, 360. So a deposition taken in a cause between other parties will be admitted to be read, to contradict what the same witness swears at a trial. *B. N. P.* 240.

The libel, answer, depositions, and sentence, in ecclesiastical courts, are proveable in the same manner as the proceedings in Chancery, *ante*, 45, 46; *Gilb. Ev.* 66, 67; *Com. Dig. Ev. C.* (3.) In general, to prove a sentence in such courts, the libel and answer should be produced. 1 *Esp. 5*. The minute-book of the Consistorial Court has been held sufficient evidence of a decree for alimony, without such decree being drawn up in form. 2 *C. & P.* 25.

The practice of these courts is, it seems, proveable by parol evidence. 3 *Camp.* 388.

*Probate*—The probate of a will, under the seal of the ecclesiastical court, is good evidence of its contents, where the will itself is of *chattels*, for there the probate is an original, taken by authority, and of a public nature; nor is the original will admissible for that purpose: but the probate of a will, devising *real property*, is not evidence of the contents of the will as to such property, even though the original is proved to be lost; the spiritual court having no power to authenticate such a devise, as far as it relates to land. *B. N. P.* 245; 1 *Phill. Evid.* 325; *Doe d. Ash v. Calvert*, 2 *Camp.* 389; *Doe v. Nathrop*, 3 *Salk.* 154; 1 *L. Raym.* 154.

Probate of a will.

Such probate of a will of personalty is also evidence of a party's being executor or the like. *Id.*

The mere production of the probate under the seal of the ecclesiastical court will suffice without further proof. *Kempton v. Cross*, *Rep. T. Hardw.* 108.

An examined copy of the probate is evidence of the person there named being executor, as the probate is an original, taken by authority, and of a public nature (3 *Salk.* 154; 1 *Ld. Raym.* 154); but a copy of the will would not be evidence of that fact. *B. N. P.* 246, *supra*.

It is not the practice in the ecclesiastical courts to grant a second probate if the first should be lost; but only to grant an exemplification from the record of the court, which exemplification will be evidence of the proof of the will.

The probate unrepealed is in general *conclusive* evidence of the facts whereof it is evidence: therefore the party shall not be permitted to allege that the will proved is not the last will and testament of the deceased. *Allen v. Dundas*, 3 *T. R.* 125; *Gilb. Evid.* 73; *T. Raym.* 404, 406. But he may give in evidence that the probate is forged, or that it was obtained by surprise, or revoked. *Gilb. Evid.* 73, 74; *T. Raym.* 404; 2 *Sid.* 359. And in a late case an indictment for forging a will, probate of that will, though unrepealed, was held not conclusive evidence of its validity, so as to bar the prosecution. *R. v. Buttery*, *R. & R. C. C.* 342; *R. v. Gibson*, *id.* 343; overruling; *R. v. Vincent*, 1 *Stra.* 481. And the probate may be impeached, by showing that the ecclesiastical court had no jurisdiction, as that there were no *bona notabilia* within its jurisdiction; *B. N. P.* 247; or that the supposed testator is alive. 3 *T. R.* 130.

To prove the probate revoked, an entry of the revocation in the book of



RECORDS, &c. the Prerogative Court is good evidence. *Ramsbottom's case*, 1 *Leach*, C.C. 30, n. 3d ed.

Letters of administration.

*Letters of Administration*—Such letters are evidence of the facts actually stated therein, but not of facts which can only be inferred therefrom, as the testator's death, &c. *Thomson v. Donaldson*, 3 *Esp.* 63; 20 *How. St. Tri.* 533. The observations already made, *ante*, 47, as to a probate being conclusive evidence, will here apply.

The ecclesiastical court never grants an exemplification of letters of administration; but only a certificate that administration was granted. Such certificate, merely produced, would be of itself good evidence. So would the book of the ecclesiastical court wherein was entered the order for granting administration. *Kempton v. Cross*, *Rep. T. Hardw.* 108; *B. N. P.* 246; 8 *East*, 187. And an examined copy of the act book, stating the grant of letters of administration to the defendant, is proof of his being administrator, without notice to produce the letters. *Davis v. Williams*, 13 *East*, 232. The letters themselves would be good evidence. *R. T. Hardw.* 108.

Proceedings in Admiralty courts.

*Proceedings in Admiralty Courts*—The sentence of this court on a question of prize, over which it has exclusive jurisdiction, is conclusive of what is positively affirmed thereon; and being a proceeding *in rem*, binds all strangers as well as parties thereto. *Park Ins.* 490; 2 *Camp.* 228; 1 *Camp.* 418; *Dougl.* 574. So is such a sentence of a foreign court. 2 *Show.* 232; 5 *East*, 160. But the sentence of an Admiralty Court sitting under a commission from a belligerent power in a neutral country, will not be recognised here. 8 *T. R.* 268; 1 *Camp.* 429; *Roscoe*, 83.

As to how far the libel, answer, and depositions are evidence, see *ante*, 45, 46, as to those proceedings in equity.

The libel, answer, depositions, and sentence, in the Admiralty Court, are proved in the same manner as the bill, answer, depositions and decree in a court of equity. *Com. Dig. Evid.* 1, (C.) *ante*, 45, 46.

Proceedings in foreign courts and foreign laws.

*Proceedings in Foreign Courts*—It seems that the sentence of a foreign court of competent jurisdiction, if evidence abroad, would be evidence here, on the same question and between the same parties, see 1 *Ves.* 159; 2 *Stra.* 733; 2 *Bingh.* 380; 4 *M. & S.* 20. The court will, in general, presume the sentence to be according to the justice of the case; 3 *Bingh.* 353. But if it appears in the face of the proceedings, or it could be otherwise shown, that the court had no jurisdiction, or that the sentence is founded on injustice, as where it appeared the defendant had never been summoned, the sentence would be inadmissible as evidence here; 9 *East*, 192; 1 *Camp.* 63; 3 *B. & Cres.* 786; 1 *M. & P.* 663; 1 *Stark.* 525. And it does not seem that the sentence is in any case conclusive evidence here, not being a record in this country. See 1 *Dougl.* 1, 5; 2 *H. Bla.* 410; 4 *B. & Cres.* 411; 4 *Bingh.* 486; 1 *M. & P.* 663, S. C.: unless perhaps in the case of a sentence of a foreign Admiralty Court on a question of prize, *supra*.

The certificate of a vice-consul has been compared to a foreign judgment, but it will not be admitted as evidence of the facts stated in it. 3 *Taunt.* 162.

The proceedings in a foreign court, whether in colonies belonging to this country or not, are to be proved by exemplifications under the seal of the court, if indeed it has a seal. The genuineness of the seal must be proved. *Henry v. Adey*, 3 *East*, 221; and the seal must be used, though worn out. 1 *Stark.* 525. A copy signed by the clerk of the court would not be sufficient, even though it should be proved the court has no seal. 2 *Stark.* 6; 6 *M. & S.* 34. If there be no seal ever used for the purpose of authenticating the proceedings of the court, then the proceedings must be proved by examined copies; 6 *M. & S.* 36: or distinct evidence should be given (if the fact) that the court has no seal, and verifies

its judgments by the signature of the judge proving such signature. 4 *Camp.* 28.

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Irish records.

Records of the courts in Ireland may be proved by examined copies, &c., in the same manner as the records in this country. Such copy must be examined with a *record*; and, where the witness produced to prove the copy stated that he examined it with a parchment roll shown to him in a room over the four Courts at Dublin, without seeing from whence it was taken, or knowing the person who produced it to be an officer of the court, *Lord Ellenborough* refused to receive it in evidence. 4 *Camp.* 372; 1 *Stark.* 183. An Irish judgment is no record here. 4 *B. & Cres.* 411; 6 *Dowl. & R.* 471, S. C.

*Foreign Laws*—If an act done abroad be invalid by the law of the foreign country, it is so here. See 1 *B. & P.* 141; 8 *T. R.* 609; 5 *East*, 124; but not *vice versâ*. Our courts here take no notice of the revenue laws of a foreign independent state, not belonging to our sovereign. See *James v. Catherwood*, 3 *D. & R.* 190, and cases there cited. *Chit. on Bills*, 7th ed. 57, n. (e); nor do they take notice of foreign penal laws. 6 *M. & S.* 99.

Foreign law.

The laws of a foreign country, if not written, may be proved by the parol evidence of witnesses of competent skill; *sed vid.* 3 *Esp.* 58; if written, a copy properly authenticated must be produced. 3 *Camp.* 166; 4 *Camp.* 155; *per Gibbs, C. J., R. v. Picton*, 20 *How. St. Tr.* 514, 494; 3 *Stark.* 198. The acts of state of a foreign government must be proved by copies examined with the public archives abroad; a copy printed and published abroad by the authorised printer of the foreign government will not, it seems, be sufficient. 1 *Camp.* 65, n.

An instrument, purporting to be a divorce under the seal of the synagogue at Leghorn, is not admissible, without previous proof of the law of the country; but *Lord Kenyon* permitted the party divorced to give parol evidence of her divorce at Leghorn, according to the ceremony and custom of the Jews there. *Ganer v. Lady Lanesborough, Peake*, 17.

*Proceedings in Inferior Courts*—The judgment of an inferior court of record is as available, and conclusive in evidence for the same purposes, as a judgment of a superior court. The judgment of an inferior court, not of record, is equally available, save that it is not *conclusive* evidence, but may be controverted and avoided. See *Walker v. Witter, Dougl.* 5. But the latter doctrine appears somewhat doubtful from the cases in 2 *Burr.* 1009; 2 *Bingh.* 216; 1 *Stark. Evid.* 208; *Roscoe*, 86. It is submitted, however, as correct. Where it appears on the face of the proceedings that they have not been fair and regular, the judgment will not be available, as where it appeared the defendant had not been summoned, or the like. 3 *B. & Cres.* 786. See as to Convictions and Orders, *post*, 51, 52.

Proceedings in inferior courts.

In general.

The judgment of commissioners of Excise, on an information for an offence against an Excise law, is conclusive as to all the world, being upon a proceeding *in rem*. *Fuller v. Fotch. Carth.* 346; *Roberts v. Fortune, Hay, &c., Harg. Law Tracts*, 468; 1 *Phill. Evid.* 355.

The sentence of expulsion of a member of a college, by the master and fellows, is conclusive evidence of that fact, and cannot be impeached in a court of law. *R. v. Grondon, Coup.* 315; and see 1 *Id. Raym.* 5; *Harg. Law Tracts*, 464.

The mere production of a *diploma* of doctor of physic, under the seal of one of the universities, is not of itself evidence to show that the party therein named is entitled to that degree. *Moises v. Thornton*, 8 *T. R.* 303.

Judgments, and the proceedings in a court baron, county court, or other inferior court, not of record, may be proved by producing the books in which they are entered; or, it should seem, by examined copies. See *Gilb Evid.* 74, 20; *Com. Dig. Evid.* (C. 1); 1 *B. & A.* 185; *Peake, Evid.* 80.

How proved.

In proving the judgment, evidence of the previous proceedings should

RECORDS, &c. be adduced. *Com. Dig. Evid.* (C. 1); 2 *W. Bla.* 836. See *ante*, 42, 43, as to the mode of proving records.

Court baron rolls.

*Court Baron Rolls*—The rolls of a *court baron* are evidence; for they are the public rolls by which the inheritance of every tenant is to be preserved: and they are the rolls of the manor court, which was anciently a court of justice relating to all property within the district. *Bull. N. P.* 247; *Doe v. Hall*, 16 *East*, 208.

The copy of the *court roll of a manor*, under the steward's hand, duly stamped, is good evidence; so is an examined copy of the court roll, if sworn to be a true one. For where the original itself is evidence, the immediate copy thereof is also good evidence. *Skinner*, 584; *Hoe v. Nathorp*, 1 *Ld. Raym.* 154; *Bull. N. P.* 247; *Gilb.* 75.

Bankruptcy proceedings.

*Bankruptcy Proceedings*—Proceedings under commissions of bankruptcy are proved either by producing the proceedings themselves, or (if entered of record, as directed by stat. 6 Geo. IV. c. 16, s. 96—7) by copies duly signed and attested. And any person may procure the proceedings to be entered of record upon petition to the Lord Chancellor. But depositions before the commissioners may be given in evidence against the person who made them, by producing and proving them, as in the ordinary case of an affidavit, without having the proceedings recorded. *Arch. Bank. L. by Flather*, 257—8; *Jansen v. Wilson*, 1 *Dougl.* 257. See the enactments of the 6 Geo. IV. c. 16. relative to evidence, *ante*, *Bankrupt*, Vol. I.

Insolvency proceedings.

*Insolvency Proceedings*—A proceeding of the Insolvent Debtors' Court may be proved by the production of an office copy of it, under the seal of the Court. By 7 Geo. IV. c. 57, s. 19, a copy of the assignment of the insolvent's property to the provisional assignee, and of the counterpart of the assignment by the provisional assignee to the assignee subsequently appointed, purporting to have the certificate of the provisional assignee, or his deputy, appointed for that purpose, indorsed upon it, and sealed with the seal of the Court, is evidence of such conveyance and assignment, and of the title of the provisional and other assignee or assignees under the same—in all courts, and before commissioners of bankrupt and justices of the peace, without further proof of any other proceeding in the Insolvent Court. And by the same stat., s. 76, a copy of the petition, schedule, order of adjudication, and other orders and proceedings, purporting to be signed by the officer having the custody of them, or his deputy, certifying the same to be a true copy, and sealed with the seal of the Court, is admissible in the same manner, without further proof that the same is sealed with the seal of the Court. See the provisions, in full, *post*, *Insolvent*, Vol. III.

A paper, purporting to be a copy of the original discharge of an insolvent, and signed by the clerk of the proper officer of that Court, with the impression of the seal affixed to it, is admissible in evidence, to prove such discharge without the production of the certificate thereof, or proof of its being an examined or attested copy. *Carpenter v. Waite*, 3 *Moore*, 231; *Neal v. Isaacs*, 4 *B. & C.* 335; 6 *D. & R.* 484, S. C.: and see 3 *Car. & P.* 625. Such discharge could not be proved by parol evidence, or by an admission of the insolvent. *Scott v. Clare*, 3 *Camp.* 236. The identity of the insolvent should in general be proved.

Judgment of quarter sessions in appeals.

*Judgment of Quarter Sessions*—A judgment by the quarter sessions, discharging an order of removal (not for defect of form, but upon the merits), is conclusive as between the contending parishes, that the settlement of the pauper was not in the appellant parish at the time of the removal; but it is binding only on these parishes, not on a third parish. An order of removal executed, and not appealed against, is conclusive of the pauper's settlement at the time of the order even as between third

parishes who were not parties to that order. *R. v. Corsham*, 11 East, 888. And a judgment by the quarter sessions, confirming an order of removal, is conclusive upon the appellant parish as to all the world, and may be given in evidence against them by a third parish on any subsequent appeal. Here it may be observed, the party, against whom the judgment was pronounced, had an opportunity of discharging themselves by proving the liability on a third parish; and this not having been done, and the court of quarter sessions having confirmed the order of removal, the last settlement is adjudged to be in the appellant parish; and this point being once determined, the judgment must be final, that there may be some end to litigation. 1 *Phill. Ev.* 311, 312.

*Convictions, &c.*]—Convictions must be proved, like other records. See *ante*, 42, 43. In general they may be proved by examined copies. A copy of a conviction for killing game was agreed to be evidence in bar of an action brought for the same offence, and the defendant is entitled to such copy. *R. v. Midlam*, 3 Burr. 1720, *ante*, Conviction, Vol. I. A copy may be obtained from the clerk of the peace. In prosecutions for second offences of a similar kind, the legislature has, in some instances of *misemeanors*, as by 7 & 8 Geo. IV. c. 30, s. 40, made a copy of the former conviction certified by the proper officer to be a true copy, good evidence of such conviction, *ante*, 43; *post*, Malicious Injuries to Property, Vol. III.; and as to convictions for second felonies, *ante*, 43. In such cases the mere production of such a copy would suffice.

Convictions.

A conviction in a court of criminal jurisdiction is conclusive evidence of the facts contained in it, if it comes collaterally in controversy in a court of civil jurisdiction: yet an acquittal in such court is no proof of the reverse. *Bull. N. P.* 245.

Effect of, in evidence.

But where the conviction has been procured on the evidence of the party who seeks to avail himself of it in a civil action, such conviction is inadmissible; and it even seems doubtful whether it is admissible when it has been procured not on the sole evidence of the party, or even where it has been procured entirely on the credence of others. *Hillyard v. Grantham*, 2 Ves. 246; *Gibson v. Maccarty*, *R. T. Hardw.* 311; 1 *Camp.* 151; 3 *Bingh.* 300; 11 *Moore*, 63, S. C.; *Roscoe*, 81.

With respect to how far a conviction will protect the convicting magistrate, it is a general rule and principle of law, that where justices of the peace have an authority given to them by an act of parliament, and they appear to have acted within the jurisdiction so given, and to have done all that they are required by the act to do, in order to originate their jurisdiction, a conviction, drawn up in due form, and remaining in force, is a protection in any action brought against them for the act so done. *Per Abbott, J. C.*, in *Basten v. Carew*, 3 B. & Cres. 652; 5 D. & R. 558, S. C. In trespass against magistrates for taking and detaining a vessel, a conviction by them, under the bum-boat act, is conclusive evidence that the vessel in question is a boat within the meaning of the act, and properly condemned. *Brittain v. Kinnaird*, 1 B. & B. 432; *Gow's C. N. P.* 164, S. C. So, where, in trespass against two magistrates, for breaking and entering the plaintiff's close, in the parish of A., and seizing his sheep, it appeared that the defendants, upon the complaint of the surveyor of the highways, appointed for the whole parish, convicted the plaintiff of neglecting to do statute duty, and issued a warrant to levy the penalty under which the act complained of was done; it was held, the conviction being good on the face of it, was a sufficient defence, and that the plaintiff could not, in this action, try the question whether the land which he occupied was exempt from the burden of repairing the roads in other parts of the parish. *Fawcett v. Fowles*, 7 B. & Cres. 394; 1 M. & R. 102, S. C. So where, in trespass against two magistrates, for giving the plaintiff's landlord

How far a protection to parties.

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## Convictions.

possession of a farm, as a deserted farm, the defendants produced in evidence a record of their proceedings, under the 11 Geo. II. c. 19, s. 16, which set forth all such circumstances as were necessary to give them jurisdiction, and by which it appeared that they had pursued the directions of the statute, it was held such record was not traversable, and was a conclusive answer to the action. *Basten v. Carew*, 3 B. & Cres. 653; 5 D. & R. 558, S. C.; and see *Strickland v. Ward*, 7 T. R. 631; 16 East, 21.

On the other hand, where, upon the face of the conviction, it appears the magistrate has assumed a jurisdiction over a matter which is altogether out of his cognizance, or has been guilty of plain and manifest excess of his jurisdiction, the conviction will not protect him. See cases in *Gow*, C. N. P. 167. Where a person was convicted in four several convictions for exercising his ordinary calling on a Sunday, contrary to 29 Car. II., c. 7, it was held, that, as a man could only commit one offence under the statute on the same day, the three latter convictions were void; and it being an excess of jurisdiction, an action lay against the magistrate. *Crepps v. Durden*, Coup. 640; 16 East, 21; and see *Hill v. Bateman*, 1 Stra. 710; post, *Game*, Vol. II.; *Groome v. Forrester*, 5 M. & S. 314; 1 Mac. & Y. 469; *Rosc.* 403.

As to the mode of drawing up convictions, and the party's remedy when improperly drawn up, see *ante*, Conviction, Vol. I.

## Acquittal.

*Acquittal*—The acquittal of a party cannot afford evidence like a conviction, for it does not ascertain any precise fact, and may have proceeded merely on the ground that sufficient evidence was not produced. 1 *Phill. Evid.* 338, B. N. P. 245, *ante*, 51. See *Acquittal*, Vol. I.

An acquittal, where directly put in issue by the pleadings, should in general be proved by an examined copy of the record of acquittal, and that would be the correct mode of proving it in all cases where a record of acquittal has been formally drawn up as it ought to be.

## Orders of justices.

*Orders of Justices*—Orders of magistrates do not, it seems, in general come within the above doctrine of evidence relative to convictions, and parol evidence is admissible to support or controvert them, where the party disputing them is no party to them. In *Welsh v. Nash*, 8 East, 402, Lord *Ellenborough* said, with regard to an order of justices for diverting a highway, that justices cannot make facts by their determination, in order to give themselves jurisdiction contrary to the truth of the case; and see 1 B. & P. 439. In a late case, where an order of justices, requiring the stewards of a friendly society to re-admit A. B., who had been expelled, recited that it had appeared to the justices that the rules of the society had been enrolled at the quarter sessions; on the trial of an indictment against the stewards for disobeying the order, it was held the recital was no evidence of the enrollment of the rules; the defendants never having concurred in, or assented to, the order. *R. v. Gilkes*, 8 B. & Cres. 439; see post, *Order*, Vol. III.; *R. v. Clayton*, 3 East, 58.

An order of sessions, upon an appeal between two parishes, respecting the settlement of pauper A., is not admissible on the trial of an appeal touching the settlement of B., his sister, another pauper, on a suggestion that the point at issue was precisely the same in both appeals. *R. v. Knaptoft*, 4 D. & R. 469; 2 B. & C. 883, S. C.

On the other hand, it seems that where the party disputing the order is a party thereto by his having obtained such order, or appeared to resist it, such order, unappealed against, is conclusive against him. *R. v. Hinxworth*, and *R. v. Caling*, *Cald.* 42. 472. So, an order quashed is conclusive between the parties. *R. v. Leigh*, *id.* 29.

## Certificates of justices, &amp;c.

*Certificates of Justices, &c.*—The certificate of a justice of the peace, as to a highway being in repair, has been received in evidence. *Rex v. Mawbey*, 6 T. R. 619.

The certificates of bishops with respect to marriage, general bastardy, excommunication, orders, and other the like matters, are received in evidence; *Co. Lit.* 74; 6 *T. R.* 637; *Rosc.* 89; so are the certificates of the judges in Wales, respecting the practice of their courts, 6 *T. R.* 638.

The certificate of a British consul abroad is not admissible as evidence here. 3 *Taunt.* 162; 1 *D. & R.* 324, *ante*, 48. The certificate from commissioners under the act for settling the debts of the army has been held conclusive evidence of the facts found therein. 1 *Str.* 481, *Attorney-Gen. v. Davison*, 1 *Mac. & Y.* 160. So has an old parish certificate. *R. v. Whitchurch*, 7 *B. & Cres.* 573; 1 *M. & R.* 472, *S. C.*; *R. v. Ryton*, 5 *T. R.* 259; *post*, 60.

*Depositions, &c. before Magistrates*—The information and depositions of witnesses upon oath taken before magistrates in felonies and misdemeanors, when put into writing, and certified, and returned as directed by the 7 Geo. IV. c. 64, s. 2, 53 (*post*, Examination, Vol. II.), are evidence of the facts deposed to.

Depositions before magistrates.

But, in order to make them such evidence, it must be proved that the party deposing is either dead, unable to travel, 1 *Hale*, 586; *Kel.* 55; 2 *Hawk.* c. 46, s. 15; 1 *Chit. C. L.* 586, or kept away by the defendant's contrivance, *Kel.* 55, or that he cannot be found, *B. N. P.* 239; 2 *Hawk.* c. 46, s. 18; *sed vid. Kel.* 55; 3 *C. & P.*; so that there is no possibility of obtaining his attendance. They could not, it seems, be read in the case of petit treason, if the witness were living, even although they were unable to travel, or were kept out of the way by the prisoner, or by his procurement; for the stat. 5 & 6 Ed. VI., which extends to all treasons, requires that the witnesses, if living, shall be examined in person upon the trial, in open court. *Fost.* 337. In order to make them evidence, they must also have been duly taken according to the requisitions of the statute; in the presence of the defendant, 1 *Salk.* 281; 5 *Mod.* 183; 1 *Leach*, 502; on the oath of the accuser and witnesses, 1 *Hale*, 586; *B. N. P.* 242; and reduced into writing: 1 *Leach*, 309; in which case they will be admissible, although the witness was not at the time apprehensive of approaching dissolution; 1 *Leach*, 458. It is not necessary they should be signed by the witness, *R. v. Fleming*, 2 *Leach*, 996. Where the depositions were not wholly taken in the presence of the prisoner, but the witness afterwards in his presence was re-sworn, and the depositions repeated and signed, the judges held that they were, under these circumstances, admissible evidence, for the prisoner had an opportunity of cross-examining the witness. *R. v. Smith*, *R. & R. C. C.* 339; 2 *Stark.* 208; *Holt, C. N. P.* 614, *S. C.* And where the testimony of a person, under apprehension of immediate dissolution, has been taken by a magistrate in the absence of the party indicted, though it cannot be read as an examination under the statute, it may be received as a dying declaration with the same degree of authority as if made to a private individual. 1 *Leach*, 361, 503, 3 *T. R.* 713. And the information of an accomplice, duly taken, may, in case of his death, be read in evidence against the prisoner, 1 *Leach*, 12, though it will not be conclusive, unless corroborated by other testimony. *Ib.* As to Dying Declarations, see *ante*, 33.

In order to make the depositions evidence, they must be proved by the magistrate or his clerk, or otherwise to have been truly taken. *Kel.* 55; *Fost.* 337; *post*, 54.

They may be used by the defendant as well as against him. 2 *St. Tri.* 622, &c.; 2 *Hawk. c.* 46, s. 22.

The depositions of a witness taken in a judicial proceeding, in the presence of the party there charged, is not admissible in another proceeding against that party, on the ground that he was present and had the opportunity of cross-examining. *Melon v. Andrews*, *M. & M. C. N. P.* 336.

In *R. v. Reed*, *M. & M. C. N. P.* 403, it was held, that though the examination of a prisoner taken in writing is inadmissible by reason of ir-

DEPOSITIONS,  
&c.

irregularity, parol evidence of what he said at the time of the examination might be received.

## Before coroners.

*Depositions before Coroners*—The depositions taken before coroners on inquisitions, when put into writing, and certified and returned as required by the 7 Geo. IV. c. 64, s. 4, *ante*, *Coroner*, Vol. I., are evidence of the facts deposed to, under the same conditions as depositions before magistrates are evidence, *ante*, 53. It seems, however, that they differ from those taken before justices in this respect, that they are admissible though taken in the absence of the prisoner; because the coroner is an officer appointed on the behalf of the public, and will be presumed to have acted properly in all matters within his jurisdiction. 3 T. R. 713, 722; B. N. P. 242; *ante*, *Coroner*, Vol. I.

On prosecutions  
for leaving seamen  
abroad.

*Depositions on Prosecutions for leaving Seamen abroad*—By the statute 9 Geo. 4, c. 31, s. 30, depositions taken under commissions granted by the Court of King's Bench, for the examination of witnesses abroad, in prosecutions for leaving seamen behind in the colonies or elsewhere, are made evidence, *post*, *Seamen*, &c., Vol. V.; *Malicious Injuries to Persons*, Vol. III.

Depositions under  
mutiny act as to  
settlement.

*Depositions under Mutiny Act as to Settlement*—In the *Mutiny Acts* there is always inserted a clause rendering the examination of a non-commissioned officer or soldier, under certain circumstances, legal evidence to be received upon a question of settlement.

Such enactment usually is as follows: "That it shall and may be lawful for any justice of the peace, for the county, town, or place where any non-commissioned officer or soldier shall be quartered in that part of G. B. called England, in case such non-commissioned officer or private soldier have either wife or child, or children, to cause such non-commissioned officer or soldier to be summoned before him, in the town or place where such non-commissioned officer or soldier shall be quartered, in order to make oath of the place of his last legal settlement (which oath such justice is hereby empowered to administer); and such non-commissioned officer or private soldier as aforesaid is hereby directed to obey such summons, and to make oath accordingly; and such justice is hereby required to take the examination of such non-commissioned officer or soldier in writing, and to give an attested copy of the examination so taken before him to the person so examined, to be by him delivered to his commanding officer, in order to be produced when required; which said examination and such attested copy shall be at any time admitted in evidence, as to such last legal settlement, before any of H.M.'s justices of the peace, or at any general or quarter sessions of the peace: although such non-commissioned officer or soldier be dead or absent from the kingdom: Provided always, and in case any non-commissioned officer or private soldier shall be again summoned to make oath as aforesaid, then, on such examination or such attested copy thereof being produced by him, or by any other person on his behalf, such non-commissioned officer or soldier shall not be obliged to take any other or further oath with regard to his legal settlement, but shall leave a copy of such examination, or a copy of such attested copy of examination, if required."

This enactment is to be construed *strictly*; and therefore no other attested copy is legal evidence, while the original is in existence, except that given to the soldier. *R. v. Clayton le Moors*, 5 T. R. 706; 1 *Phill. Evid.* 358.

The original examination may be evidence. *R. v. Worley*, 6 T. R., 534; but it must be authenticated as being genuine by proof that the persons attesting are magistrates, or at least that the signatures are the hand-writing of those whose they purport to be, or the like. *R. v. Bilton cum Harrougate*, 1 *East*, 13.

The examination of the soldier is to be received in evidence as to his

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settlement, though he be dead or absent from his country when the appeal as to such settlement is tried. *R. v. Warminster*, 3 B. & A. 121.

DEPOSITIONS,  
&c.

In a late case, where an examination of a soldier taken before two magistrates was tendered in evidence to prove his settlement, but it did not appear by the examination itself, or by other proof, that the soldier at the time when he was examined was quartered in the place where the justices had jurisdiction, it was held not admissible. *R. v. All Saints, Southampton*, 7 B. & Cres. 185; 1 M. & R. 663, 8. C.

*Depositions of infirm Paupers as to Settlement*—By stat. 49 Geo. III., c. 124, s. 4, it is enacted, That whenever it shall happen that any pauper is, by age, illness, or infirmity, unable to be brought up to the petty sessions to be examined as to his or her settlement, it shall be lawful for any one magistrate acting for the district where such pauper shall be, to take the examination of the said pauper, and to report the same to any other magistrate or magistrates acting for the said district, and for the said magistrates upon such report to adjudge the settlement of the said pauper, and make and suspend the order of removal, as fully and effectually to all intents and purposes as if the said pauper had appeared before two magistrates. *Vide Poor*, Vol. IV.

Deposition of an infirm pauper as to his settlement, and report to petty sessions, 49 Geo. 3. c. 124.

*Depositions of Prisoners as to Settlement*—And by stat. 59 Geo. III. c. 12, s. 28, it is enacted, That it shall be lawful for any justice of the peace to take in writing the examination on oath of any person having a wife or child, who shall be a prisoner in any gaol or house of correction, or in the custody of the keeper of any such gaol or house of correction, or who shall be in the custody of any constable or other peace officer, by virtue of any warrant of commitment, touching the place of his or her last legal settlement: and such examination shall be signed by such justice taking the same, and shall be received and admitted in evidence, as to such settlement, before any justices, for the purpose of any order of removal, so long only as the person so examined shall continue a prisoner. *Vide Poor*, Vol. IV.

Depositions of prisoners as to their settlements, 59 G. 3. c. 12.

As observed by Mr. Phillips in his valuable treatise on Evidence, Vol. I. p. 376, the general rule, respecting the admissibility of depositions after the death of the witness, is, that they are not evidence, unless they have been taken judicially, and unless the party, whose interests would be affected by them, had an opportunity of being present and cross-examining the deponent. It is, therefore, now clearly established that the *ex parte* examination of a pauper concerning his settlement, taken on oath before magistrates, is not admissible upon a question of settlement, as evidence against the appellant parish. *R. v. Nuneham Courtenay*, 1 East, 373; *R. v. Ferry Frystone*, 2 East, 54; *R. v. Abergwilly*, *ib.* 63. The objection against their admissibility is, not that the magistrates have no power to administer an oath, but that the examination is *ex parte*, obtained at the instance of overseers, whose parish would be benefited by the removal, and behind the backs of the appellants, who received no notice of the proceeding, and had not the benefit of a cross-examination. See *R. v. Eriswell*, 3 T. R. 725. And there are no words (under which paupers in the statute 13 & 14 Car. II., c. 12, are removed) expressly requiring the justices to take down any examination in writing. 1 *Phil. Evid.* 1 ed. 376.

Depositions after death of witness.

*Examinations in Bastardy*—It has been held, that where a pregnant woman died after examination taken under stat. 6 Geo. II. c. 31, but before an order of filiation, such examination is admissible in evidence on an application to the quarter sessions to make an order of filiation on the putative father; and that, if not contradicted, it ought to be considered as conclusive. *R. v. Ravenstone*, 5 T. R. 373. It is to be observed, however, that in the case of *R. v. Eriswell*, 3 T. R. 707, where two justices had taken the examination of a pauper relative to his settlement, but did not remove him thereon, and he afterwards became insane, the judges of the

Examination in bastardy.



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&c.

Court of King's Bench were equally divided on the question, whether two other justices could remove his family on that examination.

## (3.) Private Writings.

## Private writings.

The next class of written evidence consists of *private writings*, as deeds, entries in private books, and other writings made by individuals, relating to themselves or others, in their own private capacity.

We have already noticed the doctrine that the best evidence is required in all cases; also, that written evidence is superior to verbal evidence: such being the case, it is a general rule that, where a party, in making out his case, shows that any part of it rests on written testimony, as a deed, agreement, or other instrument of a private nature, he must produce and prove it. *Fenn v. Griffiths*, 6 Bing. 533; *Brewer v. Palmer*, 3 Esp. 213. In some cases, however, as we have seen, as where the original is lost, or in the hands of the opposite party, who refuses after notice to produce it, secondary and sometimes parol evidence thereof is admissible. For those cases, and the course to be pursued therein, see *ante*, 24 to 28.

We will now consider the mode of proving the execution of a deed, agreement, or other written instrument of a private nature.

Proof of execu-  
tion.

*Proof of Execution*—It is not absolutely necessary that the witness should see the deed or instrument absolutely executed; as if the obligor of a bond sign a bond, and then tell a certain person that he had signed it and sealed it, and bid him witness it, which he does: that is a sufficient proof of due execution of the bond. *Powell v. Blackett*, 1 Esp. 97; *Park v. Mears*, 2 Bos. & Pull. 217; 1 Phil. Evid. 468.

Proof of handwriting will afford presumptive evidence of the due execution. *Grellier v. Neale, Peake*, 146; *Adams v. Kerr*, 1 Bos. & P. 361.

An attesting witness may refresh his memory as to the execution from seeing his own attestation. 8 B. & Cres. 16.

Sealing is essential to a deed, but it is not material with what seal it is sealed. Any number of parties may use the same seal. *Com. Dig. Fait* (A 2). If there be twenty to seal one deed, and they all seal upon one piece of wax and with one seal, yet if they make distinct and several prints, this is a sufficient sealing, and the deed is good. *Shep. Touchst.* c. 4, p. 55; 1 Phil. Ev. 7 ed. 467.

No particular form or ceremony is necessary as to the delivery of a deed. It will suffice if a party testifies his intention in any manner to deliver the deed into the possession of the other party. 1 Phil. Ev. 467. *Thorogood's case*, 9 Rep. 137—*Com. Dig. Evidence* (A 3).

## Identity.

Some evidence to identify the party who executed the instrument must be given. *B. N. P.* 171; *Middleton v. Sandford*, 4 Camp. 34. Proof of the party's signature proves only this fact, that the instrument in question was executed by a person in a certain name; it does not prove the other important fact, that the party who signed is that person. Slight evidence would be sufficient. Evidence that the party was present when the instrument was prepared by the subscribing witness will serve to connect him with the instrument. *Nelson v. Whittall*, 1 B. & A. 19. 1 Phil. Evid. 466. 475. The place of residence of the party described in the instrument will frequently afford evidence of identity. *M. & M.* 176. Where the attesting witness's personal attendance cannot be had, the proof of signature of such witness dispenses with other proof of identity of the party executing. See 3 C. & P. 555; *M. & M.* 286.—79.

Where an attest-  
ing witness.

*Where there is an attesting Witness*—If the execution of the instrument was attested by a subscribing witness, he alone is competent to prove the execution, because he may be able to state the time of the execution, and some circumstances of the transaction, which may be material, and unknown to other persons. On an indictment, therefore, against an apprentice for inlisting himself in the army, all the judges held, that the indenture of

apprenticeship could not be proved by the master, but that it was necessary to call one of the subscribing witnesses. *R. v. Jones*, 2 *East's P. C.* 822; 1 *Lruch*, 174, S. C.; see also *R. v. Harringworth*, 4 *M. & S.* 350; 1 *Phill. Evid.* 446; 7 *T. R.* 266. A notice, if attested, must be proved by the attesting witness, see *Doe v. Durnford*, 2 *M. & S.* 62. So must a warrant or other instrument. *Higgs v. Dixon*, 2 *Stark.* 180.

The subscribing witness must be called, even though the party has admitted the due execution of the instrument, unless where the execution is made an admission in the cause. *Call v. Denning*, 4 *East*, 53; 1 *Esp.* 89; 1 *Camp.* 375. To prove a deed, the attesting witness must be called, though it be an issue directed to try a question as to the date, and not the existence, of the deed. *Edinburgh v. Crundell*, 2 *Stark. N. P.* 284. And even if the deed be cancelled, the subscribing witness must be called to prove the execution. *Per Ld. Kenyon*, C. J., in *Breton v. Cope*, *Peake's Rep.* 30; 1 *Phill. Evid.* 446, 447.

Subscribing witnesses are not essential to a deed. *Com. Dig. Fait. (B. 4) Peake's Evid.* 96.

Where there are two or more subscribing witnesses, it suffices to call one of them. See *Peake's Evid.* 103; 1 *Esp.* 391; *Skin.* 413; 2 *Stra.* 1263.

A subscribing witness to any instrument is compellable to give evidence respecting it; for the person, by subscribing his name, undertakes to give evidence at a proper time and in a proper manner. 10 *Mod.* 333.

If the subscribing witness be dead, it is sufficient to prove his handwriting: but it must also be proved that he is dead. 12 *Mod.* 607; 1 *B. & A.* 19.

Where proof by  
attesting witness  
dispensed with.

Illness is not a sufficient reason for dispensing with the attendance of a subscribing witness: such a relaxation of the rule has not yet been made, and it would obviously be liable to great abuse. *Harrison v. Blades*, cor. *Ld. Ellenborough*, C. J.; 3 *Camp.* 458; 1 *Phill. Evid.* 456; see *Jones v. Brewer*, 4 *Taunt.* 46. If the subscribing witness be blind, *Wood v. Drury*, 1 *Ld. Raym.* 734, or insane, *Currie v. Child*, 8 *Camp.* 283, he need not be called, after proving these facts and his handwriting. So if he be absconded from his creditors, *Crosby v. Percy*, 1 *Taunt.* 364; 1 *Camp.* 303. S. C. So, if by some criminal act he, subsequently to the execution of the deed, become incompetent as a witness in a court of justice. *Jones v. Mason*, 2 *Stra.* 833. So, if he become so by interest subsequently accrued by operation of law; *Buckley v. Smith*, 2 *Esp.* 697; *Godfrey v. Norris*, 1 *Stra.* 34; *Goss v. Tracy*, 1 *P. Wms.* 289; but not by interest given to the witness by the party desirous to prove the execution, *Horill v. Stephenson*, 5 *Bing.* 493; *Forrester v. Pigou*, 1 *M. & S.* 9; or by interest at the time of the execution, *Suire v. Bell*, 5 *T. R.* 371; unless that was known to the party who requested the witness's attestation. *Honeywood v. Peacock*, 3 *Camp.* 196. So, if the witness denies all knowledge of his attestation or execution, *Talbot v. Hodson*, 7 *Taunt.* 251; *Boxer v. Rabeth*, *Gou's C. N. P.* 175; 2 *Camp.* 435. or where the name is fictitious, *Fasset v. Brown*, *Peake*, 23, or where he attested, not knowing what he was about, *McCraw v. Gentry*, 3 *Camp.* 232, he need not be called on proving those facts.

If the attesting witness be out of the jurisdiction of the Court, as not to be amenable to its process, as in Ireland or elsewhere, *Prince v. Blackburn*, 2 *East*, 252; *Hodnett v. Forman*, 1 *Stark.* 90; or where he cannot be found after diligent inquiry, *Cunliffe v. Sefton*, 2 *East*, 183, his personal attendance may be dispensed with.

Strict proof is required of such diligent inquiry; and the sufficiency of the inquiry is a question for the jury; *Bampton v. Paulin*, 4 *Bing.* 264. Where it was proved, that a commission of bankruptcy had been taken out against the attesting witness, a bankrupt, to which he had never appeared, *Ld. Ellenborough*, C. J., said this was sufficient, as he would presume from his not surrendering, that he was out of the kingdom. *Wardell v. Fermor*, 2 *Camp.* 282. A witness, on being subpoenaed, said he would not attend, and the trial was twice put off in consequence of his absence: search was then made at the defendant's house and in the neighbourhood; and upon

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Attesting witness,  
execution of.

information at the defendant's, that the witness was gone to Margate, and inquiry made there without success; under these circumstances his personal attendance was not required. *Burt v. Walker*, 4 B. & A. 697. An ineffectual inquiry after an attesting witness to a bond, at the residences of the obligor and obligee, has been held sufficient. 2 *East*, 183. So has an inquiry after witness at his usual place of residence, and information there that he has absconded. 1 *Camp.* 303; *sed vid. Pytt v. Griffith*, 6 *Moore*, 538, which is to the contrary. So has an inquiry at the Admiralty, and information there, by the last report, that the witness was serving on board a ship. *Parker v. Hoskins*, 2 *Taunt.* 223. So where the witness went abroad twenty years ago, and has never since been heard of. *Doe v. Johnson*, 1 *Phill. Evid.* 453, *ante*, 29. And other circumstances, from which it may be fairly inferred he has left the kingdom, will suffice: as, where a witness expressed an intention of leaving the kingdom, having reason for so doing, to avoid a criminal prosecution, and his relations not having since expressed his intention of going. *Ray v. Brookman*, 3 *Car. & P.* 555.

Where attesting  
witness does not  
attend.

As to the mode of proving the execution of the instrument, where the subscribing witness does not attend the trial, and such attendance is dispensed with, that will be effected simply by proving the handwriting of the attesting witness, as also the circumstances which are necessary to dispense with his attendance. There is no necessity for proving the handwriting of the party himself. *Ray v. Brookman*, 3 *Car. & P.* 555; *Nelson v. Wittal*, 1 B. & A. 19; *Gough v. Cecil*, *Selw. N. P.* 516, n. Proof of the absent attesting witness's signature will suffice, though the party to the instrument executed only by his mark. *Mitchell v. Johnson*, *M. & M. C. N. P.* 176, and see *Page v. Mann*, *id.* 79. Some evidence of the identity of the absent subscribing witness should be given. As to the mode of proving the attesting witness's handwriting, see *infra*.

Where party re-  
fuses to produce  
an attested docu-  
ment.

If a party, after notice, refuses to produce a document which is proved to be in his possession, the opposite party may give secondary evidence of its contents, as in other cases, without calling the subscribing witness. *Cook v. Tanswell*, 2 *Moore*, 513; 8 *Taunt.* 450; 1 *Moore*, 465, S. C.

Where no attesting  
witness.

*Where there is no attesting Witness, &c.*]—In cases where there is no subscribing witness to the instrument, or where the subscribing witness has not any knowledge of the execution (which is the same thing as if there were no witness at all), *Fitzgerald v. Elsec*, 2 *Camp.* 635; *Lemon v. Dean*, *ib.* 636, n. *per Le Blanc, J.*, (in the case of a promissory note); *Talbot v. Hodson*, 7 *Taunt.* 251; *ante*, 57, or where the name of a fictitious person is inserted; *Fasset v. Brown*, *Peake's Rep.* 23; *ante*, 57, or where the attesting witness was interested at the time of the execution of the deed, or becomes so subsequently, and continues so at the time of the trial, *Swire v. Bell*, 5 *T. R.* 371, *ante*, 57, or where the person who has put his name as subscribing witness did so without the knowledge or consent of the parties, *M'Craw v. Gentry*, 3 *Camp.* 232; 4 *Taunt.* 220; *ante*, 57, the execution may be proved by proving the handwriting of the party to the deed; or by any person present at the execution, though he is not indorsed as a witness; *Com. Dig. tit. Evidence*, (B. S.) or by proof of an admission of the party himself that he executed that deed.

Handwriting.

*Handwriting*]—In general, the witness, to prove a handwriting, should have gained his knowledge from *having seen the party write*; but under some circumstances that is not necessary; as where the handwriting to be proved, is of a person residing abroad, evidence by a party who has frequently received letters from him in a course of correspondence would be admitted to prove it, though he had never seen him write. *Bull. N. P.* 236.

Belief.

It is not necessary that a witness should swear that the writing intended to be given in evidence is actually the handwriting of any particular individual; but his *belief* that it is such is sufficient.

This belief must be founded upon rational grounds: either he must

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have seen the individual in question often write his name, or have received letters from him in a course of correspondence, not having actually seen him write, or the like.

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But he is to form his opinion merely and that only from looking at the handwriting in question.

Handwriting.

In a case where a witness who had never seen the defendant, but had corresponded with a person of the defendant's name living at *Plymouth Dock*, where defendant resided, and where, according to other evidence, there was no other person of that name, stated that the handwriting of certain letters was that of the person with whom he had corresponded, it was held, that this evidence was sufficient to admit the letters to be read against the defendant. *Harrington v. Fry*, 2 *Bing.* 119; 9 *Moore*, 344; 3 *Stark. C. N. P.* 90; *R. & M. C. N. P.* 90, S. C.; and see *Tharp v. Gisburne*, 2 *C. & P.* 21.

To prove the handwriting of a member of parliament, the opinion of a clerk employed to inspect franks, who never had occasion to apply to the member to verify his handwriting, has been held insufficient. *Batchelor v. Honeywood*, 2 *Esp. R.* 714.

More opinion.

Where a witness stated that he had merely seen the party subscribe his name to another instrument to which he was attesting witness, and was unable to form an opinion respecting the handwriting in question without examining such other instrument, it was held insufficient; for it was evident he could not speak to the handwriting except by comparison. *Filliter v. Minchin*, *Manning's Index*, 131.

It seems to be generally holden, since the reversal of the attainder of *Algernon Sidney*, that similitude of hands is not evidence in any criminal case, whether capital or not capital. 2 *Hawk. c.* 46, s. 15; 1 *Id. Raym.* 39; 9 *Howell's St. Tri.* 817; 4 *Esp.* 37; *Allport v. Meek*, 4 *C. & P.* 267. Unless perhaps where the writing is so ancient that no witness can be found to prove it. 1 *Phill. Evid.* 492, 7 ed.; *Peake, N. P. C.* 90; *B. N. P.* 236; 8 *Price*, 652; *R. & M. C. N. P.* 143. As where a person's book was produced to prove a *modus*, the parson having been long dead, a witness who had examined the parish books, in which was the same person's name, was permitted to swear to the similitude of the handwriting, for it was the best evidence for the nature of the thing, as the parish books were not in the plaintiff's power to produce. *B. N. P.* 236. Or unless perhaps where there is already contradictory evidence of the fact as to the handwriting. See *Allesbrook v. Rouch*, 1 *Esp. N. P. C.* 352; *Da Costa v. Pym*. *Peake Evid.* If evidence by comparison be properly admitted in such cases to prove the genuineness of a signature, the same kind of evidence must also be admissible to prove that the signature is not genuine. 1 *Phill. Evid.* 492.

Similitude of  
hand.

A witness who has seen a party write may refer to that writing to refresh and strengthen his recollection, and not merely for the purpose of comparison. *Burr v. Harper*, *Holt, C. N. P.* 420; 8 *B. & Cres.* 16. See *post*, as to refreshing memory.

Refreshing me-  
mory.

The best evidence to prove a signature or writing to be a forgery is to be derived from calling the party himself whose writing is alleged to have been forged, provided he be a competent witness.

Imitated hand-  
writing.

Inspectors of franks, clerks of the post office, and other persons of skill, practised in examining handwriting and in detecting forgeries, have been in some cases allowed to give their opinion from their general knowledge of handwriting whether a particular specimen of handwriting is in a genuine or imitated character. *Goodtitle dem. Revett v. Braham*, 4 *T. R.* 497; *R. v. Cator*, 4 *Esp.* 117, 145; *Kemp v. Mackinnell Sayer*, 132; *Stringer v. Searle*; 1 *Esp. N. P. C.* 14; 1 *Phill. Evid.* 493.

Inspector of franks,  
&c.

But such evidence has been since rejected, and great doubts entertained as to its admissibility. *Gurney v. Langlands*, 5 *B. & A.* 330. At all events it should, in general, have but little weight. *Id.*

Execution of.

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WRITINGS.

Proof of execution when not necessary.  
Ancient deeds, &c.

*Proof of Execution when dispensed with*—If a deed be thirty years old, it may be given in evidence without any proof of the execution of it. However, there ought to be some account given of the deed, as to where it was found, &c.: and if there be any blemish in the deed, by rasure or interlineation, the deed ought to be proved, though it were above thirty years old, by the witnesses, if living, and if they be dead, by proving the hand of the witnesses, or at least one of them, and the hand of the party, in order to encounter the presumption arising from the blemishes of the deed; and this ought more especially to be done if the deed imports a fraud. *B. N. P. 255*. There is no fixed rule upon this point, but a deed has often been allowed as evidence where it was but twenty-five years old. *12 Vin. Abr. 57*. Other old writings besides deeds are also subject to this rule of evidence. *Fry v. Wood, Selw. N. P. 517, n.* It has been held sufficient to produce a certificate of settlement thirty years old, without showing that it had been kept in the parish chest. *R. v. Ryton, 5 T. R. 259*; and see *R. v. Whitchurch, 7 B. & Cres. 573*; *1 M. & R. 472, S. C.*; *ante, 53*. Even though the attesting witness be alive, and capable of being produced, it seems unnecessary to call him where the deed is thirty years old. *March v. Collett, 2 Esp. 665*; *B. N. P. 255*. In a late case, a will of thirty years old was allowed to be read as proved, although the testator had died within thirty years, and some of the subscribing witnesses were proved to be still living. *Doe v. Woolley, 8 B. & Cres. 22*. Where a deed enrolled (and of which enrollment was necessary) is given in evidence, it is not necessary to prove the execution of it by the subscribing witness; but it may be proved by the enrollment indorsed on it, or, if the deed be lost, by an examined copy of the enrollment. See *ante, 42 to 44*.

Where one deed or instrument is recited in another, proof of the second deed or instrument is deemed proof of the one recited, as against the parties to the second deed or instrument and their privies. *2 Bac. Ab. Evid. F.* So would be the recital in a deed of the payment of money conclusive proof at law of such payment as against the parties to it or their privies. *Lampon v. Corke, 5 B. & Ald. 606*; *1 D. & R. 210, S. C.*; *2 Taunt. 141*.

Where a party producing a deed under a notice to produce claims a beneficial interest under it, it will not be necessary for the party calling for the deed to prove the execution of it. *Pearce v. Hooper, 3 Taunt. 62*; *Orr v. Morice, 3 B. & B. 139*; *6 Moore, 347, S. C.* But where the party producing the deed does not claim any interest under it, the party calling for it must prove it in the regular way. *Id. Jordan v. Secretan, 8 East, 548*; overruling; *R. v. Middlezoy, 2 T. R. 41*. See *Burnett v. Lynch, 5 B. & Cres. 589*; *8 D. & R. 368, S. C.*; *Doe v. Heming, 6 B. & Cres. 28*; *9 D. & R. 15, S. C.*

In *Vacher v. Cocks, 1 B. & Ald. p. 145*, it was decided that a party, producing at the trial of a cause a deed which had been some months in his possession, is not excused from proving the execution because he received such deed from the adverse party, who formerly claimed a benefit under it.

It is not necessary to prove the execution of an instrument against the spoliator of, or wrongdoer as to it. *R. v. Ellins, R. & R. C. C. 188*.

Entries in books,  
&c.

*Entries in Books, &c.*—We have already seen how far entries by persons in private books and writings are admissible in evidence. *Ante, 30 to 33*.

Stamps.

*Stamps*—It would exceed the limits and object of this work to enter into a full detail of the law relative to stamps: we shall notice only the leading principles relative to the admissibility of unstamped instruments, or other evidence in support of them. The amount of the stamp duties, and several legislative provisions respecting them, will be found *post, title*

**Stamps, Vol. V.** The rest of the law on this subject will be found in *Chitty on Stamps*; *Impey on Stamps*; *Phill. Evid.*; *Roscoe's Evid.* 95, &c.; *Stark.*; *Evid.* title *Stamp*.

PRIVATE  
WRITINGS.

It may be laid down as a *general rule*, that whenever an instrument becomes in any way the direct subject of a prosecution, it cannot be given in evidence unless it have the proper stamp, because, by the stamp acts, without a stamp it cannot be read as a genuine instrument. Thus an agreement to assign an apprentice cannot, if unstamped, be received in evidence to prove a settlement, even after the expiration of the term of apprenticeship. *R. v. Bedford*, 6 T. R. 452. Various other instances might also be cited.

Stamp.

If indeed a party can get through his case without giving the opposite party any opportunity of showing that there was a written instrument, if the latter wishes to avail himself of it, then he must produce it duly stamped. *R. v. Rawden*, 8 B. & C. 710; *Reed v. Deere*, 7 B. & C. 266; *Chit. Stamp Laws*, 43; *ante*, 25.

When a party is desirous of giving secondary evidence of an instrument which requires a stamp, which has been lost or destroyed, or in the custody of the opposite party, who has had notice to produce it, there must be positive or presumptive evidence that it was properly stamped. 1 *Stark. Evid.* 354, 33, *id.* 1379; *Chit. Stamp Laws*, 35. Where a party refuses to produce an instrument after notice to do so, it will be presumed as against him that it was properly stamped, until the contrary appear. *Crisp v. Anderson*, 1 *Stark. C. N. P.* 35; 2 *Stark. Evid.* 80; and see *Munn v. Godbold*, 3 *Bingh.* 292, *ante*, 26. Where an apprentice had regularly served under an indenture executed thirty years ago, and the parish in which the apprentice was settled under that indenture had relieved him for the last twelve years, it was held that the sessions had rightly presumed, that the indenture was duly stamped, although it was proved on the other side by the deputy registrar and comptroller of the apprentice indentures, that it did not appear that any such indenture had been stamped or enrolled. *R. v. Long Buckby*, 7 *East*, 45; 3 *Stark. Evid.* 1379. For the presumption of law is *omnia rite esse acta*; and against the negative evidence the parties below might reasonably set the possibility of an irregular entry in the return made to the office. *Id.*

Should, however, it appear by the examination or cross-examination of the party's witnesses, that the instrument was not properly stamped, then, although it has been lost, *R. v. Castle Morton*, 3 B. & Ald. 588, or destroyed even fraudulently by the party who objects to the want of the stamp, no secondary evidence therefore can be admitted. *Rippiner v. Wright*, 2 B. & Ald. 478; 2 *Stark. Evid.* 80. For it is the duty of the parties to the instrument to take care that when it is executed it is properly stamped, and it is one of the risks attendant on an omission to do this, that if any accident happen to the instrument before the stamp is affixed, there is no remedy whatever on the instrument itself. *Id.*

For some collateral purposes, an unstamped instrument (though it requires a stamp) is admissible in evidence, as to defeat fraud, or prove an offence or crime. Thus, in support of an indictment for forgery, *R. v. Hawkswood*, 1 *Leach*, 257; *East's P. C.* 955, 6; *R. v. Gibson*, 1 *Taunt.* 97; *Chit. Stamp Laws*, 53; or knowingly uttering a forged instrument, *R. v. Reculist*, 2 *Leach*, 703; it may be read in evidence, though unstamped. And an unstamped check is admissible for the purpose of identifying other property stolen, in support of an indictment for larceny. *R. v. Pooley*, 3 B. & P. 316; *R. & R. C. C.* 31.

In general, however, an unstamped instrument cannot be read in a criminal case, as evidence of the purpose for which it was intended. 3 *Stark. Evid.* 1382; *R. v. Hall*, 3 *Stark.* 67, n. Thus, in an indictment for setting fire to a house with intent to defraud an insurer, an unstamped policy is not admissible in evidence to prove the contract of insurance. *R. v. Gibson*, 1 *Taunt.* 95; *R. & R. C. C.* 138; 2 *Leach*, 1007. And upon an indictment against a clerk for embezzling his master's money, an unstamped receipt given by the servant to the debtor who paid him

## Evidence—(Modes of Proof).

## § IV.

the money is not evidence against the prisoner. *R. v. Hall*, 3 Stark. 67. So in a prosecution on the 7 Geo. III. c. 50. (which made it a capital offence for any person employed in receiving letters to secrete any letter containing a bank note, or any warrant or draft for the payment of money), it was held not competent to the prosecutor to give in evidence any instrument of that description unstamped. *R. v. Pooley*, 3 B. & P. 311; 2 Leach, 900, 904; *R. & R. C. C.* 31, S. C.

But for a collateral purpose such a writing may be produced in evidence; and, therefore, if the prisoner be indicted for stealing a letter in which it was folded, it may be brought forward to fix him with having purloined the letter, *id.* And where the act requiring the stamp does not expressly prohibit the unstamped paper from being given in evidence, it may for collateral purposes be read, as in the case of a newspaper, which, though unstamped, may be read in evidence in support of an indictment for a libel in another newspaper to prove the defendant's malice; and *Ld. Kenyon* said this is not the case of deeds and agreements, when the acts of parliament expressly declare, that no such instrument shall be read in evidence until stamped, and though the publisher would be liable to a penalty for not getting the paper stamped before publication, yet it may be given in evidence. *R. v. Pearce*, *Peake's R.* 75, 76; *Chit. Stamp Laws*, 53, 4, 5.

The seeming contradictions in admitting unstamped instruments in support of indictments for forgery, and rejecting them upon other indictments, will be found reconciled in *Chit. Stamp Laws*, 55, 6.

In some cases, as in the instance of an unstamped receipt, although the unstamped instrument is not admissible in evidence, it may, nevertheless, be shown the witness to refresh his memory, and enable him, from his recovered recollection, with more certainty to give his parol evidence. See *Maugham v. Hubbard*, 8 B. & C. 14; 2 M. & R. 5, S. C.; 1 East, 460; 3 Stark. 3; *Chit. Stamp Laws*, 46, 47.

When a party gives in evidence an instrument unstamped, but which in general requires a stamp, and relies on some facts entitling the instrument to an exemption from the stamp duty, he should prove those facts; and the mere recital in the instrument of such facts will not in general suffice. Therefore, where an unstamped indenture of apprenticeship recited that a premium of 12*l.* had been paid by the parish officers, but added, that it was paid out of a charitable donation fund belonging to the parish, and the master being called, proved that the premium had been paid by the parish officers, who told him, at the time of paying it, that it was charity money; it was held, that the fact of payment being proved, the recital in the indenture, and the declaration of the parish officers, were not admissible in evidence, so as to bring the case within the exemption in the stamp act, and that the indenture, being unstamped, was void. *R. v. Skeffington*, 1 B. & Ald. 382. But if there had been no evidence but the deed and the declaration of the parish officer, and the fact of payment by him had not been proved by the master, it seems there would have been sufficient evidence that the money was paid out of the charity fund. *Id.*

Except, however, in the case of exemptions, it is incumbent on the party who relies on the objection to show that the facts bring the case within the operation of the law requiring a stamp. 5 Esp. R. 182; 3 Car. & P. 26.

## IV. Modes of Proof by Witnesses.

Division of subject.

This division of the subject will be considered with reference to, 1st. How many witnesses are requisite. 2d, Their competency. 3d, Their credibility. 4th, How they may be compelled to attend. 5th, The examination of them on the trial. And lastly, Their expenses and privileges.

The law respecting the examination and compelling the attendance of witnesses before magistrates on summary proceedings will be found, *post*, under *tit. Examination*, Vol. II.

WITNESSES.

(1.) Number of Witnesses required.

The common law does not require any certain number of witnesses for the trial of any crime whatsoever except in perjury. 2 Hawk. c. 46, s. 2.

What number of witnesses are required.

And before a justice of the peace, in divers cases, one witness is sufficient to convict an offender; the same being directed by special statutes.

But by stat. 7 Wm. III. c. 3, s. 2, in case of *high treason*, whereby corruption of blood shall be made, no person shall be attainted but upon the oaths of two witnesses, either both to the same overt act, or one of them to one, and the other of them to another overt act of the same treason. But in *Gahagan's case*, at the *Old Bailey Jan. sess. 1748*, 1 *Leach*, 42, it was determined, that a conviction of high treason may be upon the evidence of one witness, in all cases where there is no corruption of blood. In misprision of treason there must be two witnesses, unless the defendant willingly and without violence confess the offence. 1 Edw. VI. c. 12, s. 22. See further, 1 *Chit. C. L.* 560.

On an indictment for *perjury* there must be two witnesses; one alone is not sufficient, because there is in that case only one oath against another. 10 *Mod.* 194; *Str.* 1230. But if the assignment of perjury be directly proved by one witness, and strong circumstantial evidence be given by another, or be established by written documents, this would perhaps be sufficient, although it does not appear as yet to have been so decided. Also, if the perjury consist in the defendant's having sworn contrary to what he had before sworn upon the same subject, this is not within the rule above mentioned; for the effect of the defendant's oath in the one case is neutralized by his oath in the other; and proof by one witness will therefore make the evidence against the defendant preponderate. *Arch. Cr. Plead. & Evid.* 110; 5 *B. & Ald.* 929, n. (a.) See *post*, *Perjury*. Vol. V.

In those courts which proceed by the rules of the civil law, as the spiritual court and the courts of equity, two witnesses are generally required; and the reason why the civil law requires two witnesses is, because their trial is by witnesses, and not by a jury of twelve men. 1 *Inst.* 6 b.; *Plowd.* 12. a.

By stat. 29 Ch. II. c. 3, s. 5, devises of lands shall be attested by three witnesses at the least.

(2.) Competency of Witnesses.

The exceptions to a witness are of two kinds; 1st, to his *credit* on account of facts, which do not at all disable him from being sworn, but yet may blemish the credibility of his testimony; and in such case the witness is to be allowed, but the credit of his testimony is left to the jury; 2nd, to his *competency* on account of facts, which exclude him from giving his testimony; and of these exceptions the court is the judge. 2 *Hale*, 276, 277.

Competency of witnesses.

As to what will affect the *credit* of a witness, see *post*, 78.

The *Incompetency* of a Witness may arise either from Want of Discretion, Want of Religion, from Infamy, from Relationship, from Confidential Communications, from Interest, from being Parties to the Prosecution, &c.

How incompetency may arise.

(1.) WANT OF DISCRETION]—Want of discretion is a good exception against a witness; on which account alone it seems that an infant may be excepted against. 2 *Hawk.* c. 46, s. 27. But if an infant be of the age of fourteen years, he is as to this purpose of the age of discretion to be sworn as a witness; and even if under that age, yet if it appear that he hath a competent discretion, he may be sworn. 2 *Hale*, 278. And in many cases an infant of tender years may be examined, where the exigence of the case requires it; which possibly, being fortified with concurrent evidences, may be of some weight; especially in cases of such crimes as are practised

(1.) Want of discretion. Infants.



WITNESSES'  
COMPETENCY.

## Competency.

upon children. 2 *Hale*, 279, 284. In *Brazier's case*, 1 *East's P. C.* 443, 444; 1 *Leach*, 199. On an indictment for assaulting an infant of five years of age with intent to ravish her, it was agreed by all the judges, that children of any age may be examined on oath, if capable of distinguishing between good and evil: but that they cannot be examined in any case without oath. 2 *Stra.* 700; 1 *Atk.* 29; 4 *Blac. Com.* 214. When the child has appeared not sufficiently to understand the nature and obligation of an oath, judges have often thought it necessary, for the purpose of justice, to put off the trial of the prisoner, directing that the child in the mean time shall be properly instructed. *Vide* 2 *Bac. Abr. by Gwillim*, 577, *notis.* Where the child cannot be sworn, the account which it has given of the transaction to others is not admissible. *R. v. Tucker*, 1 *Phill. Evid.* 19; *R. v. Pike*, 3 *C. & P. C. N. P.* 598; 1 *Chit. C. L.* 589, 590; and see *post*, *Kapf*, Vol. V.

## Lunatics, &amp;c.

Lunatics and other persons who are subject to temporary fits of insanity may be witnesses in their lucid intervals, if they have sufficiently recovered their understandings.

And a person deaf and dumb is not on that account incompetent, but, if he has sufficient understanding, may give evidence by signs, with the assistance of an interpreter. *Ruston's case*, 1 *Leach*, 408; 1 *Phill. Evid.* 18, 20; and see *post*, as to examining him.

(2.) Want of  
religion.

(2.) WANT OF RELIGION.—A man who has no religion whatever, or no religion that can bind his conscience to speak the truth, is excluded from being a witness. *B. N. P.* 292; *Omichund v. Barker*, *Willes*, 549; 1 *Atk.* 44. It is not, indeed, essential that the witness should be a Christian, or believe in the Old Testament; it is sufficient if he believe in a God, in a future state of rewards and punishments, and in the moral obligation of the oath he is about to take. *Id.* *Gentoos, Willes*, 549; *Cowp.* 390; *Jews*, 2 *Stra.* 821; *Mahometans, Turks, and Moors*, *Stra.* 1104; 1 *Leach*, 64; may be witnesses. Atheists, and such like infidels, professing no religion that can bind their consciences to speak the truth, cannot. *B. N. P.* 292; *Willes*, 549. The affirmations of Quakers and Moravians are now made sufficient instead of an oath. 9 *Geo. IV. c. 32*, s. 1, *post*.

As to the mode of administering the oath to persons not Christians, &c., see *post*.

The circumstance that a principal witness, although an adult and of sufficient intellect, has no idea of a future state of rewards and punishments, is not a sufficient ground for discharging the jury, though this appears as soon as the jury is charged, and before any evidence is given. *R. v. Wade, R. & M. C. C. R.* 86.

The proper mode of examining a witness, for the purpose of trying his competency in religious principle, is not to question him as to his particular opinions (as to whether he believes in Jesus Christ), but whether he believes in God, the obligation of an oath, and a future state of rewards and punishments. *Per Buller, J., R. v. Taylor, Peake*, 11. The witness's answer in the affirmative of such question will make him competent in respect to his religion. *Id.*

## (2.) Infamy, &amp;c.

(3.) INFAMY, &c.—It seems agreed that an attainder, judgment, or conviction of treason, felony, piracy, premunire, perjury, or forgery, on stat. 5 *Eliz.*, and also a judgment in attain for giving a false verdict, or in conspiracy at the suit of the king, and also judgment for any heinous crime, to stand on the pillory, or to be whipped or branded, are good causes of exception against a witness, while they continue in force. 2 *Hawk.* c. 46, s. 19; *Bull. N. P.* 291. And in *Bushel v. Barrett, R. & M. C. N. P.* 434, it was considered, that a judgment for a conspiracy to bribe a person (summoned as a witness on an information against the revenue laws) not to appear before the justices of the peace, renders the person convicted incompetent as a witness.

But a party convicted of a crime not of a heinous nature, as for keeping a gaming-house—*R. v. Grant*, R. & M. C. N. P. 270; for publishing a libel, or seditious works, or the like—*Gilb. Evid.* 140; 3 *Lev.* 428; is not incompetent on that account. Nor will a conviction for conspiracy to raise the funds by false rumours, or to commit a fraud, render the party convicted incompetent. *Crouther v. Hopwood*, 3 *Stark.* 21; *D. & R. N. P. C.* 55, S. C.; *Park v. Strockley*, 4 *D. & R.* 144. *Case of the Ville de Varsovie and others*, 2 *Dods. Rep.* 174.

In the case of *Pendock v. Mackindor*, 2 *Wils.* 18, the question was whether a person convicted and whipped for *petit larceny* should be allowed to be a witness. And the court were clearly of opinion he should not; and laid it down as a rule, that it is the crime that creates the infamy, and not the punishment for it. But by stat. 31 Geo. III., c. 35, it was enacted that no person shall be an incompetent witness by reason of a conviction of *petit larceny*. That act is repealed by the 7 & 8 Geo. IV., c. 27; and see now the 7 & 8 Geo. IV. c. 29, s. 2, abolishing the distinction between grand and *petit larceny*. *Post, Larceny*, Vol. III. p. 513.

It seems agreed, that it is no good exception against a witness that he is an alien. 2 *Haw. c.* 46, s. 28.

Outlawry in a civil action is not a good exception against a witness, but outlawry for treason or felony appearing on record by the sheriff's return of the exigent is. *R. v. Celier*, Sir T. Raym. 396; 2 *Haw. c.* 46, s. 21.

Excommunication is now no longer a ground for rendering a witness incompetent. See the 53 Geo. III. c. 127, s. 2, 3.

A pardon of any of these offences has the effect of restoring competency, in as full a manner as if the witness had never been convicted. 2 *Hawk. c.* 46, s. 22; *Gilb. Evid.* 141—2. And this even in the case of perjury at common law, 5 *Esp.* 94, but not in the cases of perjury on stat. 5 *Eliz. c.* 9, and conspiracy at the suit of the King; in which cases the incompetency forms a part of the judgment, and is not merely a consequence of it. 2 *Hawk. c.* 46, s. 22; *B. N. P.* 292; but see *Hargr. Jurid. Arg.* 221.

In general, also, where a capital convict is pardoned, on condition of suffering certain punishment, the endurance of the punishment fulfils the condition, and restores his competency. 2 *Hale*, 278.

Before the abolition of benefit of the clergy, the allowance of clergy in clergyable felonies, and the endurance of the mitigated punishment, restored the offender to competency. The statute 7 & 8 Geo. IV. c. 28, *ante*, Clergy, Benefit of, Vol. I. 652, abolishing the benefit of clergy, and affixing punishments directly to the offences, was probably intended to have the same effect; but, as doubts were entertained whether it had distinctly accomplished the object, the stat. 9 Geo. IV. c. 32, s. 3, enacts, that where any offender has been or shall be convicted of any felony not punishable with death, and has endured the punishment to which he has been adjudged, the punishment so endured shall have the like effects and consequences as a pardon under the great seal as to the felony whereof he was so convicted. (a) And by the same stat., 9 Geo. IV. c. 32, s. 4, a person convicted of a *misde-*

How incompetency restored by pardon, &c.

9 Geo. 4, c. 32, s. 2.

(a) The words of the act are, sec. 3, "And whereas it is expedient to prevent all doubts respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged; be it therefore enacted, that where any offender hath been or shall be convicted of any felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the

punishment so endured hath and shall have the like effects and consequences as a pardon under the great seal as to the felony whereof the offender was so convicted: provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other felony."

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F

WITNESSES'  
COMPETENCY.

Infamy.

meanor (except perjury, or subornation of perjury), which renders him an incompetent witness, shall not, after suffering his punishment, be deemed to be, by reason of such misdemeanor, an incompetent witness in any court or proceeding, civil or criminal. (a)

The incompetency of offenders now, therefore, in every kind of offence, except perjury, or subornation of perjury, is removed, when the punishment is suffered, or a pardon granted. And since the 7 & 8 Geo. IV. c. 28, s. 13, it is not necessary that the pardon should be under the great seal; if it be under the King's sign manual, countersigned by one of his principal secretaries of state, it will suffice. See *post*, Pardon, Vol. V. p. 3.

It was held in *R. v. Badcock*, *Russ. & R. C. C.* 248, that a person who has been convicted of grand larceny, sentenced to be transported for seven years, and confined in the hulks, and discharged at the end of his term, is a competent witness, such confinement operating as a statute pardon, and his having escaped twice from such confinement, for a few hours each time, does not destroy the effect of it.

Mode of proof of  
conviction, &c.

The party who would take advantage of this objection to the witness's competency must have the record itself, or a copy of the record of conviction, ready to produce in court; for, until the judgment upon the verdict be regularly entered, the witness is not deprived of his legal privileges. *B. N. P.* 292; 1 *Cowp.* 3. The conviction without the judgment will not suffice, as judgment might have been arrested; *Gilb. Evid.* 128—9; and the record will not be complete without a caption. *Cooke v. Maxwell*, 2 *Stark. N. P. C.* 183. If it be objected against receiving a person's testimony, that he has been convicted of felony, and his punishment is unexpired, such objection must be supported by the production of the record; and no admission by the party himself will be sufficient. In this case, Lord Ellenborough, C. J., said, "It cannot be seriously argued that a record can be proved by the admission of any witness: he may have mistaken what passed in court, and may have been ordered on his knees for a misdemeanor. This can only be known by the record, and there is no authority for admitting evidence of it." *R. v. Castell Careinion*, 8 *East*, 77; see *ante*, 42; 1 *Phill. Evid.* 30, 7 ed.

No admission that he has committed a crime of which he has not been convicted, even perjury, will prevent him from being a competent witness. *R. v. Teale*, 11 *East*, 309; *Rands v. Thomas*, 5 *M. & S.* 244.

(4) From relation-  
ship.

(4.) RELATIONSHIP.—It is to be observed, that there be many circumstances that disable a juror, that are not sufficient exceptions against a witness. Thus the exception of kindred is a good cause of challenge against a juror, but not against a witness: therefore the father may be a competent witness for or against his son, or the son for or against his father. These and the like exceptions may be to the credit or credibility of the witness, but are not exceptions against his competency. 2 *Hale*, 276; 1 *Wils.* 333; 2 *T. R.* 263; 6 *T. R.* 330; *Gilb. Evid.* 135.

Husband and wife cannot be admitted to be witnesses for each other, because their interests are absolutely the same; nor against each other,

(a) Sec. 4. "And whereas there are certain misdemeanors which render the parties convicted thereof incompetent witnesses, and it is expedient to restore the competency of such parties after they have undergone their punishment; be it therefore enacted, that where any offender hath been or shall be convicted of any such misdemeanor (except perjury, or sub-

ornation of perjury), and hath endured or shall endure the punishment to which such offender hath been, or shall be, adjudged for the same, such offender shall not, after the punishment so endured, be deemed to be, by reason of such misdemeanor, an incompetent witness in any court or proceeding, civil or criminal."

because contrary to the legal policy of marriage. *Co. Lit.* 6 b; *Cases t. Hardw.* 264; *R. v. Sergeant, R. & M. C. N. P.* 352. She cannot even be asked a question on a trial, to contradict what the husband has sworn; for it would subject him to a prosecution for perjury. 2 *T. R.* 268.

However, there are some exceptions to this rule. In the case of high treason, it has been said that a wife shall be admitted as a witness against her husband, because the tie of allegiance is more obligatory than any other. *Sed vide* 1 *Hale*, 301; 2 *Hawk. c.* 46, s. 82; 1 *Phill. Evid.* 7 ed. 85; *Brownl.* 47; 1 *Chit. C. L.* 595.

By stat. 6 Geo. IV. c. 16, s. 37 (and previously by stat. 5 Geo. II. c. 30), the wife of a bankrupt may be examined by the commissioners touching his estate, but not his bankruptcy.

If a woman be taken away by force, and married, she may be a witness against her husband indicted on stat. 9 Geo. IV. c. 31, s. 19, against the stealing of women; for a contract obtained by force has no obligation in law. *R. T. Hard.* 83; *B. N. P.* 286; *ante*, Vol. I. p. 7.

So, upon an indictment on the same act, section 22, for marrying a second wife, the first being alive, though the first cannot be a witness, yet the second may, after proof of the first marriage, the second marriage being void. *Sir T. Raym.* 1; 4 *St. Tri.* 754; *B. N. P.* 287; 2 *Hawk. c.* 46, s. 72; *R. & M. C. N. P.* 354; *post*, Polysamp, Vol. V. p. 146.

In Lord Audley's case, his wife was allowed to be a witness to prove that he assisted to a rape upon her. 1 *St. Tri.* 393; and see 1 *Hale, P. C.* 301; 1 *Phil.* 84.

In Azyre's case on an indictment against him for beating his wife, Lord Raymond suffered her to give evidence. 1 *Str.* 633; *B. N. P.* 287, S. C.

A wife is permitted to exhibit articles of the peace against her husband; *B. N. P.* 287; and the Court will not receive affidavits on the part of the defendant, to contradict the truth of the articles exhibited against him, and prevent his giving surety. *Lord Vane's case*, 13 *East*, 171 (a); *R. v. Doherty, ib.*

So an affidavit of a married woman has been admitted to be read, on an application to the Court of King's Bench for an information against the husband, for an attempt to take her away by force, after articles of separation. *Bull. N. P.* 286; 1 *Burr.* 543; 13 *East*, 171, n.; 1 *Phill. Evid.* 7 ed. 85.

On the trial of a man for the murder of his wife, her dying declarations are evidence against him. *Woodcock's case*, 2 *Leach, C. C.* 363; *John's case*, 1 *East's P. C.* 337; 1 *Phill. Evid.* 85; *ante*, 33.

And in all cases of personal injuries committed by the husband or wife against each other, the injured party is an admissible witness against the other. *R. v. Jagger*, 1 *East's P. C.* 455.

*R. v. Wood, M. Sitt.* 26 Geo. III. On an indictment for forcibly breaking open the house of a third person, and assaulting the defendant's wife, Lord Mansfield, C. J., admitted the defendant's wife as a witness to prove the assault on her. *MS.*

On the trial of an appeal against an order of removal (and, upon the same principle, in any suit or proceeding between third persons), a husband or wife is a competent witness to prove a former marriage, even after proof of a second marriage, although, perhaps, the witness would not be compellable to answer such questions. And the reasoning upon which this rule is founded is equally strong to show, that the one may be called as a witness to disprove what has been stated by the other; and that either the party who has called the one, or the opposite party, may call the other for the purpose of contradicting. Indeed, the reasoning is much stronger in this case than in the former, where the husband or wife is allowed to prove the first marriage; for although they may directly contradict each other as to a particular fact, it will not follow that either party has been guilty of perjury. And as the most serious inconveniences might result from a different rule, which would be a bar to the full and complete

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## Husband and wife.

investigation of the subject, in cases, too, where the property, the character, or even the life of a party may be at stake, it appears to be reasonable, and necessary to the ends of justice, that such evidence should be admitted. 1 *Phill. Evid.* 7 ed. 80; *Rex v. All Saints, Worcester*, *id.* 79; and see *R. v. Cliviger*, 2 *T. R.* 263.

## Woman divorced.

If a woman be divorced *a vinculo matrimonii*, she cannot prove a contract, or any thing else which happened during the coverture. Any fact arising after the divorce, she may prove. *Monroe v. Twisleton*, *Peake's Evid. App.* p. xxxix.

Woman living  
with the party as  
wife.

In *Campbell v. Twemlow*, 1 *Price*, 81, it was made a question, but not decided, whether a woman who had passed as the wife of a man, but was not so, could be examined as a witness for him. Lord C. B. *Richards* cited a case, before Lord *Kenyon* on the *Chester* circuit in the year 1782, where, on a trial for forgery, the prisoner called a woman as his witness whom he had himself in court represented to be his wife, but afterwards, on hearing an objection taken to her competency, denied that she was married to him; and Lord *Kenyon* would not permit him to call her, after having represented her as his wife. 1 *Phill. Evid.* 88, 7 ed. However, it seems now fully settled by the case of *Batthews v. Galindo*, 1 *Mo. & Payne*, 565, that though a woman lives with a man, uses his name, and passes as his wife, she is a competent witness for or against him, such circumstances going only to her credit, and not to her competency; and see 2 *Stark. Evid.* 711.

## Other points.

The wife of a party is an incompetent witness for or against him, though she marry after the subpoena served. *Pedley v. Wellesley*, 3 *C. & P.* 558.

A widow cannot be asked to disclose conversations between her and her late husband. *Doker v. Haslar*, *R. & M. C. N. P.* 198.

It seems a wife cannot be examined against her husband, even with his consent. 1 *Hale's P. C.* 47.

In all cases where husband and wife are admissible witnesses against each other, they are admissible also for each other. *R. v. Sergeant*, *R. & M. C. N. P.* 352.

(s.) From con-  
fidence.

(5.) CONFIDENTIAL COMMUNICATIONS]—Some persons also are privileged, by reason of their peculiar employment, from being compelled to give evidence.

## Attorneys.

Thus an attorney or solicitor ought not to be examined against his client, because he is obliged to keep his secrets; but of his own knowledge before retainer, that is, before he was addressed in his professional character, he may be examined as a witness, if served with a subpoena. *Wood's Inst.* b. 4, c. 4; and *Cutts v. Pickering*, *Ventr.* 197; 1 *Chit. C. L.* 605.

This privilege of confidential communications to an attorney is confined to such as are made to him for the purpose of either commencing, prosecuting, or defending a suit. *Broad v. Pitt*, 3 *Car. & P.* 518; *R. & M. C. N. P.* 233, S. C.; *Williams v. Mundie*, *R. & M. C. N. P.* 34; 1 *C. & P.* 97, S. C.; 2 *Swanst.* 199, n.; *Wadsworth v. Hamshaw*, *Manning's Index*, 374; *Cobden v. Kendrick*, 4 *T. R.* 432: but see *Romack v. Heathcote*, 2 *Brod. & B.* 4; 4 *Moore*, 357, S. C.; and also *R. v. Boddington*, 4 *D. & R. M. C.* 233, being to the contrary. *Per Best, J.*, in 3 *C. & P.* 519:—"I think this confidence in the case of attorneys is a great anomaly in the law. A man is not acting as an attorney when he is consulted about a deed; and I cannot distinguish his situation from that of any other man. I can make a distinction where a person requires information for the purpose of defending himself, or of commencing an action." And this privilege only extends to prevent the disclosure of facts communicated confidentially to the witness in the character of attorney; and therefore it was decided in *Spencely q. t. v. Schulenburg*, 7 *East*, 357,

that an attorney may be examined as to the contents of a written notice which he had received in the course of the cause, calling upon him to produce papers in the hands of his clients. For "the privilege is restricted to communications, whether oral or written, from the client to his attorney, and cannot extend to adverse proceedings communicated to him as attorney in the cause from the opposite party, in the disclosure of which there could be no breach of confidence."—*Per Lord Ellenborough, C. J., S. C.*: and see *M. & M. C. N. P. 235*; *Wilson v. Rastall, 4 T. R. 753*; *B. N. P. 284*. An attorney may be called to prove a deed executed by his client which he has attested. *Doe v. Andrews, Cowp. 846*. So to prove matters communicated to him after the termination of a suit of which they were the subject, without a view to the objects of the suit. *Cobden v. Kendrick, 4 T. R. 431*. And a communication made by a client to his attorney, not for the purpose of asking legal advice, but to obtain information as to a matter of fact, is not privileged. *Bramwell v. Lucas, 2 B. & Cres. 745*; *4 D. & R. 367, S. C.* A person who is not an attorney may be compelled to disclose communications made to him under a mistaken idea that he was an attorney. *Fountain v. Young, 6 Esp. 113*.

**WITNESSES' COMPETENCY.**

Confidential communication.

This privilege is that of the client, and not of the attorney; and the court will not allow the attorney, though he be willing, to make the disclosure, unless the client consent to the disclosure. *B. N. P. 284*; *Wilson v. Rastall, 4 T. R. 759*.

If the attorney be called by the client, and examined as to a matter which has been the subject of confidential communication, he may be cross-examined as to such matter, though not as to others. *Vaillant v. Dodd-mead, 2 Atk. 424*.

Confidential communications made to counsel, when acting as such, are also privileged like those made to attorneys. *4 T. R. 753*, and cases above cited.

Counsel.

A person who acts as interpreter—(*Du Barre v. Levette, Peake, 78*); or as agent between the attorney and his client—(*Parkins v. Hawkshaw, 2 Stark. 239*); or the attorney's clerk—(*Taylor v. Forster, 2 C. & P. 195*; *2 D. & R. 347*); cannot be called to reveal a confidential communication. Nor can a barrister's clerk be called to prove his master's retainer. *Foot v. Hayne, R. & M. C. N. P. 165*.

Interpreter.

Agent of attorney.

Clerks.

But this privilege does not extend to the case of an agent or steward. *Ib. and 2 Atk. 524*.

Agent.

Nor to the case of a conveyancer. *2 Atk. 525*.

Conveyancer.

Nor to the case of medical persons. *4 T. R. 760*. There are indeed cases, said Mr. J. Buller in *Wilson v. Rastall, 4 T. R. 760*, to which it is much to be lamented that the law of privilege is not extended; those in which medical persons are obliged to disclose the information they acquire by attending in those professional characters. This point was very much considered in the Duchess of Kingston's case, before the House of Lords, where Sir C. Hawkins, who had attended the duchess as a medical man, was compelled to disclose what had been committed to him in confidence. *20 Howell's St. Tr. 613*; and see *1 Phill. Ev. 144, 7th ed.*; *R. v. Gibbons, 1 Car. & P. 97*.

Medical persons.

Nor to clergymen. *R. v. Gilham, Car. C. L. 61*; *3 C. & P. 519*; *20 How. St. Tr. 612*; *Per Best, J., 3 C. & P. 519*:—"I for one will never compel a clergyman to disclose communications made to him by a prisoner; but if he chooses to disclose them, I shall receive them in evidence."

Clergymen.

Where the disclosure of a particular fact, not bearing directly upon the matter in question, may be of detriment to the public service, the Court will not compel a witness to disclose it. In *Hardy's case, 24 How*

Matters of state, &c.

# WITNESSES' COMPETENCY.

*St. Tr.* 763, a witness who was employed to obtain information of the proceedings at a meeting of one of the corresponding societies was not allowed to disclose the name of his employer; and see *R. v. Watson*, 2 *Stark.* 136. Communications between the governor of a colony and his attorney-general are confidential, and cannot be disclosed. *Wyatt v. Gore*, *Holt*, 299; *Cooke v. Maxwell*, 2 *Stark.* 184. So is a letter written by an agent of government to one of the secretaries of state. *Anderson v. Hamilton*, 2 *Brod. & B.* 156 (n).

## Other matters.

A letter written by an opposing creditor to the chief commissioner of the Insolvent Court, previous to the hearing of an insolvent's case, is not a privileged communication. *Gould v. Hulme*, 3 *C. & P.* 626.

A clerk attending on a grand jury shall not be allowed to reveal that which is given in evidence before the inquest. *Tr. per Pais*, 387; 2 *Hawk.* c. 46, s. 83; and see *Lee v. Birrel*, 3 *Camp.* 337.

A grand jurymen has been allowed to be examined in an action for maliciously indicting the plaintiff and others for a conspiracy, as to the fact whether the defendant was the prosecutor of the indictment. *Sykes v. Dunbar*, 2 *Selw. N. P.* 1059.

## (6.) From interest.

(6.) **INTERESTED WITNESS**—It is an objection to the admissibility of a witness that he is *interested*; respecting which it seems an uncontested rule in all cases, that it is a good exception against a witness, that he is either to be a *gainer or loser by the event of the cause*, whether such advantage be direct and immediate, or consequential only. 2 *Haw. c.* 46, s. 24.

## What such an interest.

And however small the interest may be, the witness would be incompetent. *Burton v. Hinde*, 5 *T. R.* 174: but see *R. v. Mayor of London*, 2 *Lev.* 231; *Peake's Evid.* 177.

The witness, however, must have an *immediate* interest in the event of the proceeding, or must derive a *certain* benefit from its determination one way or the other. 1 *M. & P.* 648. A liability to a remote action or prosecution would not suffice to make him incompetent. *Id.* And if the witness would not incur any loss, nor be liable to a suit, whatever may be the result of the prosecution, his evidence ought to be received. Thus, on an indictment for forging a bank note in the name of a cashier of the bank of England "for the governor and company," the cashier, not being chargeable, may be a witness. *Newland's case*, 1 *Leach*, 311; 2 *East's P. C.* 1001; 1 *Phill. Evid.* 122.

The judges have, in a variety of cases, resolved that these questions of interest shall, as far as possible, go to the *credit* rather than the *competency* of the witness. *Peake's Evid.* 141.

## Witness believing himself interested. Honorary obligation.

A witness who believes himself interested, but is not so in fact, is competent. Thus a witness who believes himself under an obligation of honour to indemnify the bail, but who has entered into no engagement to indemnify, is competent. *Pederson v. Stoffles*, 1 *Camp.* 145. There are, however, authorities that a witness who believes himself *legally* interested is incompetent: see *Trelawney v. Thomas*, 1 *H. Bla.* 307, and *Fotheringham v. Greenwood*, 1 *Stra.* 129; and see 1 *Phill. Evid.* 54 (n); 2 *Stark. Evid.* 747 (n). In the case of the *Amitie Villeneuve*, 5 *Rob. Rep.* 344, Sir William Scott rejected the evidence of a witness who stated that he conceived he would be entitled to share in case his vessel should be deemed joint captor, although he had signed a release. Sir William Scott observed that "he had always understood the distinction to be, that, if the witness says only that *he expects* to share from the bounty of the captors, he is not disqualified or rendered incompetent, whatever may be the deduction of credit to which he is exposed. But if he *thinks himself entitled in law*, he acts under an impression of interest, which renders him incompetent, however erroneous that opinion may be."

It is no objection to the competency of a witness that he has wishes or a strong bias on the subject-matter of the issue, or that he hopes or expects some benefit from the result of the trial. Such circumstances may influence his mind and affect his credibility; they are therefore always open to observation, and ought to be carefully weighed by the jury, who are to determine what dependence they can have on his testimony; but they will not render him incompetent. 1 *Phil.* 47, 7 ed.; *Gillb. Evid.* 124.

**WITNESSES' COMPETENCY.**

Witnesses' hope or expectation.

As an exception to the general rule, that persons immediately interested in the event of the cause cannot be witnesses for that party whose claim, if established, will advance their own interest, there is a class of cases determining that where a person is equally interested, either in the event of a verdict for the plaintiff or defendant, he is a good witness. As, for example, where one is intrusted by A. to pay money to B., and does not pay it accordingly, and then B. brings an action against A. for the amount: the agent is a good witness to prove no payment; inasmuch as he acknowledges the receipt of the money from A., and thereby renders himself liable to A. So if an indictment be preferred against a county for not repairing a bridge, and the only question be whether it is in repair, men of the county are good witnesses not only on the general principle, but because it is equally desirable to every man, that the bridge, for convenience of passage, should be repaired when it is necessary, as that the county should not be put to an unnecessary charge; so that they are indifferent, being equally concerned on both sides of the question. 1 *Ventr.* 351; 6 *Mod.* 307; *Peake's Evid.* 169.

Persons interested both ways.

Where a person has made himself a party in interest in the subject-matter for the mere purpose of depriving the party to the suit of the benefit of his testimony, this ought not to exclude him from giving evidence: see *Barlow v. Vowel, Skin.* 586; *Bent v. Baker*, 3 *T. R.* 27; 1 *Phil.* 137; and in the late case of *Hovill v. Stephenson*, 5 *Bingh.* 493, where the plaintiff, in an action on a charter-party, had communicated to the attesting witness an interest in the adventure subsequently to the execution of the instrument, it was held that evidence of his hand-writing was inadmissible, and that he himself ought to be called.

Interest acquired subsequently.

If a trustee takes a beneficial interest, he is incompetent, but without such an interest trustees and executors are competent witnesses. 1 *Phill. Ev.* 52, 69, and authorities there cited. Trustees being empowered, by act of parliament, to sue in the name of their treasurer, are not competent witnesses for the treasurer suing as such. 1 *M. & M.* 214.

Trustee.

An heir-at-law may be a witness concerning the title to the land, but the remainder-man cannot; for he hath a present interest, but the heirship is a mere contingency. *Smith v. Blackham*, 1 *Salk.* 283.

Heir-at-law.

It is no objection to a steward of a manor, that he has a fee on admission: he is a witness notwithstanding. 3 *Keb.* 90.

Steward of manor.

In questions as to the rights or immunities of a corporation, the evidence of individuals who are not privately interested, though members of the city, may be received. But where corporators, as such, have private interest, as to be free of toll, rights of common, &c., these being really and substantially interested in the event of the cause are no witnesses. 1 *Peake's Ev.* 145, 146, 156, and authorities there cited; and see the late case of *Doe ex dem. Mayor, &c. of Stafford v. Tooth*, 3 *Younge & Jerv.* 19, where it was held that a member of a corporation is not a competent witness to sustain the claim of the corporation, even though he release his interest in the subject-matter of the suit. In the case of *Weller v. Governors, &c. of Foundling Hospital*, cited in *Peake's Evid.*, it is to be observed the witnesses were admitted because they were mere trustees, and had not the least personal interest.

Member of corporation.

In *Norden v. Williamson*, 1 *Taunt.* 378, it was decided, that if the defendant and plaintiff be willing, the defendant may have the plaintiff as a witness.

Party in a cause.



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COMPETENCY.

Commoner.

One commoner may be a witness for another claiming common, because in effect it charges himself; but if the prescription be, that all the inhabitants of such a place ought to have common there, one of the inhabitants cannot be a witness to prove that another of the said inhabitants ought to have common there, because he would, in effect, swear to give himself right of common there. 1 *Lord Raym.* 731; *Anscumb v. Shore*, 1 *Taunt.* 261; 1 *Phill. Ev.* 57, 7 ed.

Judge or juror  
being a witness.

It seems agreed that it is no exception against a person's giving evidence either for or against a prisoner, that he is one of the judges or jurors who are to try him. 2 *Haw. c.* 46, s. 17. But where a juror is called upon to give his evidence, he ought to give it upon oath openly in court, and not be examined privately by his companions. *Bac. Abr. Evid. (A. 2)*; 3 *Black. Com.* 375; *Kel.* 12.

Prosecutor in  
general.

*Prosecutor*—The testimony of the party injured is constantly admitted in evidence, because he cannot in any future suit derive any advantage from the record of a conviction. Thus a prosecutor is competent upon an indictment for tearing a promissory note payable to him—*Str.* 595; 1 *Sid.* 431; or for extorting a bond from him—7 *Mod.* 118; or for usury, although he was the borrower of the money, and has not repaid it—*Id.*; or for cheating him by false pretences—*Salk.* 286; or for fraudulently procuring him to execute a cognovit—1 *Sid.* 431; *Ventr.* 4; *Stark. Evid.* Part IV. 772.

In perjury.

It was formerly thought that, on an indictment for perjury, the party aggrieved by the deposition alleged to be false could not be sworn on the trial, even though the record of conviction could not be given in evidence in his favour on any future occasion. 2 *Str.* 1043, 1104; 2 *Hawk. c.* 46, s. 118. But it seems now to be fully settled that the party in question is competent, even without showing that he has satisfied the judgment obtained against him in the cause in which the perjury was committed, for the conviction of the defendant founded on his evidence is no ground of subsequent relief even in equity. 1 *Chit. C. L.* 597; 2 *Str.* 1230; 4 *Burr.* 2255; 4 *East*, 572. But on an indictment for perjury, on the statute of Elizabeth, the person injured cannot be a witness, because the statute gives him 10*l.* *Bull. N. P.* 289; see *Perjury*, Vol. V. p. 63.

In forgery.

Formerly, on a prosecution for forgery, the party by whom an instrument purported to be made was not admitted to prove it forged, if he would either be liable to be sued upon the instrument (supposing it genuine), or be thereby deprived of a legal claim against another. *R. v. Russell*, 1 *Leach*, 8; *Watts's case*, *Hard.* 331; 3 *Salk.* 172; *Rhodes's case*, 2 *Str.* 728; *Caffy's case*, 2 *East's P. C.* 995. But now, by stat. 9 *Geo. IV.*, c. 32, s. 2, on any prosecution by indictment or information either at common law, or by virtue of any statute against any person for forging any deed, writing, instrument, or other matter whatever, or for uttering any deed, writing, instrument, or other matter whatsoever, knowing the same to be forged, or for being accessory before or after the fact to any such offence, if the same be a felony, or for aiding, abetting, or counselling the commission of any such offence, if the same be a misdemeanor, no person shall be deemed to be an incompetent witness in support of any such prosecution by reason of any interest which such person may have or be supposed to have in respect of such deed, writing, instrument, or other matter. And before this act, as we have already seen, *ante*, 70, upon an indictment for forging a bank note, the cashier whose name was forged was holden to be a competent witness to prove the forgery. *R. v. Newland*, 1 *Leach*, 350. So on an indictment for forging the indorsement of the payee of a bill of exchange, the payee, who was to have paid the produce in discharge of a debt due from the drawer, but who in fact never received the bill, was holden to be a competent witness to prove the forgery. *R. v. Sponsonby*, 1 *Leach*, 374; and see *Id.* 57. So on an indictment against the payee of a bill for

uttering a forged acceptance, the first indorsee was held a competent witness, though he has only advanced part of the amount of the bill, and though he releases, during the trial, the person in whose name the acceptance is forged. *R. v. Mott, R. & R. C. C. 435.* So on an indictment for forging a receipt, the person whose name was forged, having first recovered the money from the defendant, was holden to be a competent witness to prove the forgery. *R. v. Wells, Bull. N. P. 289.* So on an indictment for forging the name of a person to a power of attorney to sell out stock, where the forgery was detected before the stock was transferred, the person whose name was forged was holden to be a competent witness to prove the forgery. *R. v. Wait, 1 Bing. 121; R. & R. C. C. 505, S. C.* In *R. v. Fauntleroy*, a lady who had been a holder of stock in the public funds which had been sold out under a power of attorney in which her name was forged became a competent witness to prove the forgery, on proof that the stock had been replaced in her name, and on production of a release for the dividends thereon (from the time it was sold out) executed by her to the bank of England, who were the prosecutors, and her legal claim against whom would have been destroyed had the instrument proved genuine. The prisoner was convicted and executed. *2 Bing. 413; 1 C. & P. 421, S. C.*

**WITNESSES' COMPETENCY.**

Interest.

Lord *Raymond*, in *R. v. Fox, 1 Str. 652*, admitted the prosecutor to be a witness on an indictment for an assault, although he had laid a wager that he should convict the defendant; and the reason seems to be, not because the witness had made the wager at a time when public justice became interested in his testimony, but because it would be against public policy to allow a witness, by any such gratuitous act, to exclude himself from giving evidence. In addition to this it may be observed, that the wager would now probably be considered absolutely void, on a principle of public policy, as tending to produce an improper bias on the mind of the witness, and therefore as directly prejudicial to the administration of justice. *1 Phill. Ev. 139, 7th ed.; and see 4 Car. & P. 7.*

Witness laying a wager.

In many criminal cases, from the extreme necessity of the thing, interested persons are allowed as witnesses. As, where the owner prosecutes an indictment of felony for stolen goods, he is concerned in interest, for he will be entitled to restitution, and yet his evidence is admitted; so, on removing an indictment by *certiorari* from the sessions to the K. B., though the prosecutor in that case, if the defendant be convicted, is entitled to his costs, yet he is allowed as a witness. *Q. v. Muscot, 10 Mod. 193; see Stark. Evid. Part IV. p. 753.* It is the constant practice, on an indictment for robbery, to admit the evidence of the person who has been robbed. *1 Phill. Evid. 120.* And the same evidence is admitted in prosecutions for a cheat. *Parris's case, 1 Ventr. 42; 2 Sid. 431, S. C.; or for perjury. R. v. Broughton, 2 Stra. 1230.*

Witness from necessity.

But upon an indictment founded on the statutes of forcible entry, whereby justices are empowered to give restitution of the possession of the lands entered upon by force, or holden by force, to the respective tenants thereof, the tenant whose land has been entered upon or withheld by force is not a competent witness. *R. v. Williams, 9 B. & Cres. 549; and R. v. Beavan, Ry. & M. C. N. P. 242.*

In forcible entry.

Persons who become interested in the common course of business, and who alone can possibly have knowledge of a fact, may be called as witnesses to prove it. Thus persons who have been agents employed to pay money may prove such payment. So an agent may prove the terms of a contract, though he be to derive a profit from it; and this upon the ground of necessity. If such evidence were not admitted, the facts would be incapable of proof. *Bull. N. P. 289; Dixon v. Cooper, 3 Wils. 40,*

Agents, &c.

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**COMPETENCY.**

*B. N. P.* 289; 1 *Phill. Evid.* 129; and see as to a surety of collector of rates, *Middleton v. Frost*, 4 C. & P. 16. But though agents and brokers are competent to prove a sale or contract, they are not competent to prove the contract properly executed in an action against the principal for their negligence. *Gevers v. Mainwaring, Holt, C. N. P.* 139; *McBraine v. Fortune*, 3 Camp. 317; and see 1 *Phill. Evid.* 130. 56, 7th ed.; 8 B. & Cres. 408.

Person entitled to  
reward.

In general a person entitled to a reward upon the conviction of the defendant is not thereby rendered incompetent to give evidence against him—*R. v. Muscot*, 10 Mod. 193—whether the reward be given by statute, by proclamation, or by a private person. 1 *Ph. Ev.* 119. 127; and see *R. v. Williams*, 9 B. & Cres. 556.

Informers.

*Informers*—By the common law, informers, who are entitled under penal statutes to part of a penalty, are not competent witnesses. *R. v. Tilly*, 1 Str. 115; 1 *Phill. Evid.* 125, 7th ed., and authorities there cited. But by the particular provisions or policy of several acts of parliament, they may be admitted. Where a statute can receive no execution unless a party interested be a witness, there he must be allowed, says Ch. B. *Gilbert*; for the statute must not be rendered ineffectual by the impossibility of proof. 1 *Phill. Evid.* 125. Thus by stat. 2 Geo. II. c. 24, s. 8, against bribery at elections, the legislature, in giving an indemnity and discharge to any person offending against the act who shall discover any other offender so that he may be committed, must also have intended that he should be competent to give evidence at the trial; and therefore in an action for penalties he has been admitted. *Bush v. Railling, Say*, 289; *Mead v. Robinson, Willes*, 425; *Heward v. Shipley*, 4 East, 193; 1 *Phill. Evid.* 118. So, on a prosecution for penalties under stat. 9 Anne, c. 14, s. 8, the loser of money at cards may prove his loss. *R. v. Luckup, Willes*, 425, n. (c); 1 *Phill. Evid.* 126; and see *R. v. Williams*, 9 B. & Cres. 557; and *post*, *Gaming*, Vol. II. p. 977. There are also various other similar provisions, which will be found collected under different titles of offences in this work.

In prosecutions for all offences punishable on summary conviction under the 7th and 8th Geo. IV. c. 29, s. 64, the evidence of the party aggrieved is admissible. See *post*, Vol. III. p. 553.

If it be a matter of discretion in the Court whether it will inflict a penalty, the witness would not, it seems, be incompetent though he should be entitled to a moiety of the penalty when inflicted. See *R. v. Cole*, 1 *Esp. Rep.* 217; *Peake Rep.* 217; *sed vid. R. v. Blackmore*, 1 *Esp. Rep.* 95.

Inhabitants.

*Inhabitants*—Inhabitants of a county, or other district, are competent witnesses to charge their own county or parish, but not *vice versa*. *R. v. St. Lawrence*, 1 Burr. 588. Accordingly it has been held that a party who was liable to a county tax for the support of the suit was incompetent. *Shropshire v. Staffordshire*, 1 Sid. 192. So, in settlement cases, a rated inhabitant formerly was incompetent to give evidence for his own parish as to the pauper's place of settlement. *R. v. Prosser*, 4 T. R. 19; and see *R. v. South Lynn*, 5 T. R. 664; *R. v. Kirdford*, 2 East, 561.

Inhabitants made  
competent in cer-  
tain cases.  
54 Geo. 3, c. 170.

But by stat. 54 Geo. III. c. 170, s. 9, the competency of an inhabitant in these matters is established; and that act enacts "that no inhabitant or person rated or liable to be rated to any rates or cesses of any district, parish, township, or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall, before any court or person or persons whatsoever, be deemed and taken to be by reason thereof an incompetent witness for or against such district, parish, township, or hamlet, in any matter relating to such rates or cesses; or to the boundary between such district, parish, township, or hamlet, and any

adjoining district, parish, township, or hamlet; or to any order of removal to or from such district, parish, township, or hamlet; or the settlement of any pauper in such district, parish, township, or hamlet; or touching any bastards chargeable or likely to become chargeable to such district, parish, township, or hamlet; or the recovery of any sum or sums for the charges or maintenance of such bastards; or the election or appointment of any officer or officers, or the allowance of the accounts of any officer or officers, of any such district, parish, township, or hamlet; any law, usage, statute, or custom to the contrary in anywise notwithstanding."

In a late case, this act was expounded liberally, it having been held therein, that on an indictment for the non-repair of a road or bridge on a liability *ratione tenuræ*, parishioners were admissible witnesses for the prosecution, within the scope of this act. *R. v. Hayman*, 1 M. & M. C. N. P. 401.

In the case of *R. v. Wandsworth*, 1 B. & Ald. 66, which is apparently against the above decision in *R. v. Hayman*, the question of competency arose only incidentally, and the point was not discussed. 1 M. & M. C. N. P. 402.

In the case of *Hendebourcke v. Langston*, id. 402, n. it was considered that the inhabitants of a parish are admissible witnesses in an action by the surveyor of the highways against his predecessor, for penalties for not accounting, and for the balance of moneys in his hands. (a)

In an action of trespass against the overseers of a township, where the principal point was, whether the lands in question were vested in the overseers under a local act of parliament, the Court of Exchequer determined that a rated inhabitant of the township was not an incompetent witness on the part of the defendants, although the land in question, if vested in the defendants, would be vested in trust for the township, and in aid of the poor-rates. *Meredith v. Gilpin*, 6 Price, 146.

Upon a question, whether a certain manor were in the county of S., it was ruled, that any person of the county, if he were not within the hundred where the manor was, might be a witness; for as to the county taxes, every hundred pays its proportion; but as to hundreds there are particular charges. *The county of Salop v. the county of Stafford*, 1 Sid. 192; *Peake's Evid.* 156, 157.

Upon an issue, whether a tenement is situate within a chapelry, a witness occupying rateable property in the chapelry is competent to prove the affirmative. *Marsden v. Stanfield*, 1 M. & R. 669; 7 B. & C. 815, S. C.; *et per Bayley, J.*:—"The issue in this case is, whether a messuage and lands in the occupation of the defendant were within the chapelry of *Littleborough*. The question for our consideration is, whether a person having rateable property in the chapelry was a competent witness to prove that it was. The burden of making out that the witness is incompetent lies on the party who makes the objection. It is not stated in this case what are the chapelry burdens, whether it maintains its own poor, roads, or chapel. The witness would not be competent to increase the number of contributors, unless the burden to be borne would thereby be subject to be increased, or his rights damaged by such increase. But the increase of the number of contributors would not only lessen each man's share of the chapel rates, but would lessen also each man's privilege within the chapel by increasing the number of claimants for seats and sepulture; so that there may, perhaps, viewing the case in this manner, be a balance of

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(a) It was held, however, in the same case, 10 B. & Cress. 546, that the surveyor could not maintain his action against the late surveyor for the balance remaining in his hands until his accounts have been settled and allowed or disallowed in the manner pointed out by the 13 Geo. III. c. 78, s. 48.

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Inhabitants.

advantage and disadvantage; and we are bound to see that an interest does exist before we can say that this witness was incompetent. Now *Rex v. Kirdford*, 2 East, 559, establishes that the fact of a party being the occupier of rateable property in a parish, but for which he is not rated, does not make him an incompetent witness. Here the case only states that the witness was an occupier of rateable property. Upon the authority of that case, therefore, I am of opinion that he was competent at common law. I also think that this is a very plain case, according to the true construction of the 54 Geo. III., c. 170, s. 9, which enacts that no person rated or liable to be rated to any rates or cesses of any district, &c., shall, before any court, be deemed and taken to be, by reason thereof, an incompetent witness for or against such district in any matter relating to such rates or cesses, or to the boundary between such district and any adjoining district. The substantial question in this case is, whether the owner of certain property was liable to contribute to the rates of the chapelry. That is a question relating to the rates or cesses of the district; and the question whether certain land be situate within the chapelry was a matter relating to the boundary between the district and the adjoining district." See *Rhodes v. Ainsworth*, 1 B. & Ald. 87; 2 Stark. 215, S. C.

Their declarations.

In *R. v. Hardwicke*, 11 East, 578, it was decided, in an appeal against the removal of a pauper, that the declarations of a rated inhabitant of either parish concerning the facts in issue are admissible in evidence—not only against himself, but also against the other rated inhabitants of his parish, on the ground that the rated inhabitants are the parties directly and immediately interested in the event of the proceeding, although the appeal is entered in the names of the parish officers. And it is not necessary to make such declarations evidence, that he should first be called as a witness and refuse to be examined. *R. v. Whitley Lower*, 1 M. & S. 636. It is to be observed these decisions were before the passing of the 54 Geo. III. c. 170.

In the above case of *R. v. Hardwicke*, Bayley, J. said, "I do not think that in ordinary cases magistrates should give any weight to mere declarations of this kind; though there may be occasions when the declaration of such a party would have great weight, as if a person having gained a settlement by hiring and service were to become a lunatic, the master refuses to be examined, you may in that case give evidence of his declaration."

Non-repair of  
bridges.

By stat. 1 Anne, st. 1, c. 18, s. 13, the inhabitants of a county may be witnesses upon trial of indictments for not repairing bridges, where the question is whether the county or a private person shall repair. Even before this act it was considered they were admissible. *R. v. Carpenter*, 2 Show. 47: see also the case of *R. v. Hayman*, and *Hendebourcke v. Langston*, ante, 75; and ante, title Bridges, Vol. I.

Actions against  
hundred.

In actions against the hundred for injuries occasioned by riots, &c. the inhabitants are made competent witnesses for plaintiff or defendant, by the 7 & 8 Geo. IV., c. 31, s. 5; post, Hundred, Vol. III.; 4 B. & C. 913; 7 D. & R. 385, S. C.

Actions against  
churchwardens.

In actions against churchwardens or overseers of a parish for the recovery of money mispent by them, inhabitants of the parish, who do not receive alms or any gift out of the parochial collection, are made competent witnesses by stat. 3 Will. III., c. 11, s. 12. See Post, Vol. IV.

Highway and turn-  
pike acts.

By the highway act (13 Geo. III. c. 78, s. 68), in all cases, whether of a criminal or civil nature, the surveyor of the parish, township, or place is a competent witness in all matters relative to the execution of that act, though his salary may arise in part from the forfeitures and penalties thereby inflicted. And by sect. 76 any inhabitant of the parish, township, or place in which an offence shall be committed contrary to that

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act shall be a competent witness notwithstanding his inhabitance. See *post*, Vol. III. p. 77.

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A similar provision to the last will also be found in the 137th sect. of the 3d Geo. IV. c. 126, relative to turnpike roads. And by sect. 59 collectors are made competent witnesses; and by stat. 4 Geo. IV. c. 95, s. 84, no person shall be deemed incompetent to give evidence by reason of being a trustee or commissioner, or a mortgagee or creditor of the tolls, or a farmer, lessee, or collector of such tolls, or a treasurer, or clerk, or surveyor, or other officer under such act. See *post*, Vol. III. p. 209. 211.

Formerly, where penalties were given to the use of the poor, for the benefit and exoneration of the parish or other place, the inhabitants were incompetent; but such incompetency is now removed where the penalty does not exceed 20*l.*, by stat. 27 Geo. III. c. 29, which enacts, that where pecuniary penalties, or parts thereof, are given to the poor, the inhabitant of any place may be a competent witness to prove an offence, though the place may be benefited by the conviction of the offender, provided the penalty does not exceed 20*l.* See *R. v. Davis*, 6 T. R. 177.

Where penalty  
given to poor.

Though the penalty exceed 20*l.*, if the witness paid no rates he would be competent. *R. v. Cottrell*, 2 Chit. Rep. 487.

**Co-defendants**—In general one of several defendants standing jointly indicted is not a competent witness for his fellows; and this even though he has suffered judgment by default before their trial. *R. v. Lafone*, 5 Esp. 155; *sed vide* 2 Hawk. c. 46, s. 18. But where there is no case for the jury against one party, the Court may in its discretion allow of his acquittal in any state of the trial before the reply, in order that he may be examined as a witness—2 Hawk. c. 46, s. 98; but he is not entitled to demand an acquittal until all the other evidence for the defendants is concluded. *Emmett v. Butler*, 7 Taunt. 607; *Wright v. Palin*, R. & M. C. N. P. 128. Persons implicated but not joined as defendants are good witnesses, though their credit may be questioned. See 1 Hale, 305; *Talfourd's Dick. Sess.* 375, 376.

Co-defendants.

**Accomplices**—It hath been long settled that it is no exception against a witness that he hath confessed himself guilty of the same crime, if he hath not been indicted for it; for if no accomplices were to be admitted as witnesses, it would be generally impossible to find evidence to convict the greatest offenders. 2 Hawk. c. 46, s. 94; 1 Phill. En. 36, 37, 7 ed.

Accomplices.\*

But though accomplices are received as witnesses, their testimony ought to be received by a jury with a sober degree of jealousy and precaution; for, on their own confession, they stand contaminated with guilt, and, in the hope of lessening their own infamy, will be often tempted to throw as much guilt as possible upon the prisoner. They may also, in some cases, be entitled to rewards on the prisoner's conviction, and in all cases expect to earn a pardon: and as fear is usually their motive in giving evidence, the same feeling may tempt them to exaggerate their statement, for the purpose of destroying their former associate, and securing themselves against his vengeance. See 1 Phill. Evid. 37, 7 ed.

And it is generally considered necessary, in order to induce the jury to credit an accomplice's testimony, to give other circumstances confirmatory of at least some of the leading circumstances of his story, from which the jury may be able to presume that he has told the truth as to the rest. See *Rudd's case*, Cowp. 336; *R. v. Birkett*, Russ. & R. C. C. 251.

However, if the testimony of an accomplice be confirmed so far as his testimony relates to one prisoner, but is not confirmed with respect to another prisoner, the latter may be convicted on the testimony of the accom-

\* See Approber, *ante*, Vol. I.; 1 Phill. Evid. 36, 37. It is not a matter of course to admit an accomplice as evidence, but a motion is made to the Court by the counsel for the prosecution, which the Court may grant or refuse as in their discretion will best answer the purposes of justice.

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COMPETENCY.Confirmatory  
evidence.

plice, if the jury deem him worthy of credit. *R. v. Dawber and others*, 3 Stark. R. 34, and n.

The practice, therefore, is to advise the jury to regard the evidence of an accomplice only so far as he may be confirmed, in some part of his narrative, by unimpeachable testimony. It is not necessary that he should be confirmed in every circumstance which he details in evidence; for there would be no occasion to use him at all as a witness, if his narrative could be completely proved by other evidence free from all suspicion. Nor need it appear, from the confirmatory evidence, that he speaks truth with respect to all the prisoners, or with respect to the share which each had in the transaction. But if the jury are satisfied that he speaks truth in some material parts of his testimony, in which they see unimpeachable evidence brought to confirm him, that is a ground for them to believe that he also speaks truly in other parts and with regard to the other prisoners, as to whom there may be no confirmation. By *Thomson B.* in *R. v. Swallow and others*, Reports of the Trials at York, Jan. 1813, on special commission, p. 3, 17, 50, 150, 165, 201; 1 Phill. Ev. 41, 42.

If the jury find the prisoner guilty on the single testimony even of a credible accomplice, the Court will sometimes recommend him to mercy. 1 Leach, 466; 2 Hawk. c. 46, s. 96.

Incompetency  
from interest re-  
moved.

[Incompetency from Interest removed]—Persons interested may in this, as in other cases be made witnesses by a release; as the supposed obligor in a bond may be a witness when released by the obligee (*Dr. Dodd's case*, 1 Leach, 155), or the acceptor of a bill when released by the holder. *Taylor's case*, 1 Leach, 214; and see *R. v. Peacock*, R. & R. C. C. 278; *R. v. Mott*, id. 435.

It is said, that if the party who calls a witness tender a release to him, and he refuse to accept it, he may notwithstanding be afterwards examined on the trial. 1 Dougl. 139; 3 T. R. 27; *Peake's Evid.* 174.

## (3.) Credibility of Witnesses.

Credibility of wit-  
ness.Who a credible  
witness.

Exceptions to the credit of a witness are such as do not at all disable him from being sworn, but merely affect the degree of belief which the jury will give to his evidence. 2 Hale, 276; 1 Burr. 414; 11 East, 209. In many cases a person may be credible where he is not competent, and competent where he is not credible. 1 Burr. 417. Where, in acts of parliament directing convictions before justices, this word "credible" is introduced, it bears no precise or legal signification; but the magistrate is to judge, like the jury on a trial, how far the witness is sufficiently to be believed to warrant the conviction. 1 Burr. 418; *Peake's Evid.* 124, &c.; 1 Chitt. C. L. 589.

Who not so.

There may be a variety of circumstances which will shake the credit of a witness, arising from his interest, his integrity, good character, veracity, or knowledge of the facts he swears to. It would be of little or no utility to inquire minutely into these, and state who is or is not a credible witness, for that question must depend on the peculiar facts laid before the Court and jury, and must be decided accordingly. We have, in the preceding inquiries, seen many instances where the credit of a witness may be shaken, notwithstanding his competency. See also *Arch. Crim. Pl. & Evid.* 104.

Doubts as to cre-  
dibility to be in  
favour of witness.

Where there is any doubt as to the competency or incompetency of a witness, the judges are more inclined to turn that doubt to a question of the witness's credibility. See *ante*, 70.

Evidence not al-  
lowed to prove  
good character  
of witness when  
not attacked.

Where the character of a witness has not been attacked, no evidence can be admitted in support of it. *Bishop of Durham v. Blackett*, 1 Campb. 207. But evidence of the conduct of deceased witnesses when it has been attacked may be received, to attach credit to their testimony, or to destroy

its effect. *Wright ex d. Clymer v. Littler*, *infra*, cited by *Ld. Ellenborough*, C. J., 1 *Campb.* 210. On an indictment for an assault with intent to commit a rape, where the prosecutrix was cross-examined as to crimes committed by her several years before the alleged offence, it was considered evidence might be adduced to show that her character had since been good. *R. v. Clarke*, 2 *Stark. N. P.* 241; *post*, *Mays*, Vol. V. p. 260.

It often happens that the character of the subscribing witnesses to deeds and other written instruments is the subject of inquiry; and upon this point the following cases have occurred. If the subscribing witnesses to a will be dead, evidence given of what was said by one of them, being then in bed of the illness of which he died, thereby impeaching the validity of the will, inasmuch as he declared it was a forgery, was admitted, and afterwards decided to have been rightly admitted; such evidence being given, not to prove the forgery, but to impeach the credit of the subscribing witness. *Wright d. Clymer v. Littler*, 3 *Burr.* 1244. And evidence of the character of the subscribing witnesses may be admitted, if an imputation be cast upon the will. *Doe dem. Stephenson v. Walker*, 3 *Esp.* 284. And upon the authority of the preceding case, evidence was admitted that the subscribing witness to a bond had in his last moments begged pardon of Heaven for having been concerned in forging it. *Per Ld. Ellenborough*, C. J., in *Aveson v. Ld. Kinnaird*, 6 *East*, 195, *ante*, 34:—These decisions were upon the principle that, if the subscribing witness could have been produced upon the trial, to prove his handwriting, as he might have been cross-examined, so a party may prove his declaration of the fact in contradiction to the presumption of a due execution of the bond from the proof of his handwriting as a subscribing witness. S. C.

WITNESSES'  
CREDIBILITY.

Subscribing witness.

It has been agreed that the evidence given by a witness at one trial cannot, in the ordinary course of justice, be made use of against a defendant on the death of such witness at another trial. 2 *Hawk. c.* 46, s. 12. See *Meleu v. Andrews*, 1 *M. & M. C. N. P.* 336.

Witness varying his evidence at different trials.

But it hath been admitted that, in order to show a variance in the evidence, a deposition taken by a witness before a justice of the peace may at the prisoner's desire be read at the trial, in order to take off the credit of the witness, by showing a variance between such depositions and the evidence given in court.

And for the same reason it seems agreed, that where a witness at one trial varies from his own evidence at another trial, in relation to the same matter, such variance may also be given in evidence to invalidate his testimony at the second trial. 2 *Hawk. c.* 46, s. 9; and see *R. v. Oldroyd*, *R. & R. C. C.* 88, where it was considered the prosecutor had a right to call for and adduce such evidence.

But nothing shall be admitted as evidence of what was done at another trial till the record of that trial be produced.

When a witness in support of a prosecution has been examined in chief, and has not been asked in cross-examination as to any declarations made by him, or acts done by him, to procure persons corruptly to give evidence in support of the prosecution, it is not competent to the party accused to examine witnesses in his defence to prove such declarations or acts, without first calling back such witness examined in chief, to be examined or cross-examined as to the fact whether he ever made such declarations or did such acts. See *The Queen's case*, 2 *Brod. & B.* 311.

If a witness be called on the part of the plaintiff or prosecutor, and give evidence against the defendant or accused; and if, after the cross-examination of such witness, the defendant's or accused's counsel discover that the witness so examined has corrupted or endeavoured to corrupt another person to give false testimony in such cause, the counsel for the defendant or accused is not permitted to give evidence of such corrupt act of such witness without calling back such witness. 2 *Brod. & B.* 311.

Lord C. J. *Ablott*, in delivering the opinion of the judges in that case,



**WITNESSES'  
CREDIBILITY.**

Varying evidence  
at different trials.

said, "The usual practice is this: if it be intended to bring the credit of a witness into question, by proof of any thing that he may have said or declared touching the cause, the witness is first asked upon cross-examination whether or no he has said or declared that which is intended to be proved." 2 *Brod. & B.* 313.

Upon the question whether a witness being asked in cross-examination, if in conversation with C. D. he had not informed him "that he was to be one of the witnesses against the defendant," and being re-examined he stated what induced him to mention to C. D. what he had so told him, and the counsel further proposed to ask as to the whole conversation between him and C. D. so far only as related to his being one of the witnesses, the judges (eight against one, *Best, J., diss.*), were of opinion that the witness having fully and unambiguously explained his motive for so stating, the re-examination could not proceed to the extent sought; and a distinction was made between a conversation with a witness and a party to the suit or prosecution, where the declarations of the latter would be evidence against him, and a conversation with a third party would not. In the latter case, as the conversation of the witness could only become evidence, as it might affect his character and credit with respect to antecedent declarations, or the motives under which he made them, when once every thing which constituted the motive and inducement, and which might show the party's meaning if the declarations were laid before the court, all beyond is irrelevant and incompetent. 2 *Brod. & B.* 294. 298.

If a witness examined in chief on the part of the plaintiff, being asked whether he remembers a quarrel taking place between A. and B., answers that he has heard of a quarrel between them, but does not know the cause of it, and such witness is not asked, upon his cross-examination, whether he has or has not made a declaration stated in the question touching the cause of a quarrel, the counsel for the defendant cannot, in order to prove such witness's knowledge of the cause of the quarrel, afterwards examine a witness to prove that the other witness has made such a declaration to him touching the cause of such quarrel. 2 *Brod. & B.* 299.

In order to discredit a witness by proof of a contradictory statement, it is not enough to ask him *generally* whether he has ever made such a statement; but particulars must be specified to him. *Angus v. Smith*, 1 *M. & M. C. N. P.* 473; *et per Tindal, C. J., S. C.*—"I understand the rule to be, that before you can contradict a witness, by showing he has at some other time said something inconsistent with his present evidence, you must ask him as to the time, place, and person involved in the supposed contradiction. It is not enough to ask him the general question, whether he has ever said so and so, because it may frequently happen that upon the general question he may not remember having so said, whereas when his attention is challenged to particular circumstances and occasions, he may recollect and explain what he has formerly said."

Where witness  
has before said or  
done something  
contrary to his  
evidence.

Where a witness swears to a particular fact, a letter written by him, contradicting in effect his testimony upon that fact, may be given in evidence to impeach his credit, the letter being first regularly proved. The witness stated that a certain school, of which he was usher, had been duly conducted as to morals: a letter was then offered in evidence on the other side, and received as such, formerly written by the witness, whilst usher, to a boy then at the school, containing much immoral matter. *De Sailly v. Morgan*, 2 *Esp.* 692.

Party not allowed  
to discredit his  
own witness.

If a witness is called on the part of the plaintiff who swears what is palpably false, it would be extremely hard if the plaintiff's case should be for that reason sacrificed. The party is not to set up so much of a witness's testimony as makes for him, and to reject or disprove such part as is of a contrary tendency. But if a witness is called, and gives evidence against the party calling him, I think he may be contradicted by other witnesses on the same side, and that in this manner his evidence may be entirely

repudiated. *Per Lord Ellenborough, C. J., in Alexander v. Gibson, 2 Campb. 556.*

**WITNESSES'  
CREDIBILITY.**

But a party will not be permitted, by *general* evidence, to discredit his own witness; for this would enable him to destroy the testimony of the witness if he spoke against him, and to make him a good witness if he spoke for him. *Bull. N. P. 297; Ewer v. Ambrose, 3 B. & C. 749.*

The meaning of the rule is, that a party cannot prove his own witness to be of such a general bad character as would make him unworthy of credit. But if a witness suddenly, and without any previous intimation to the party calling him, give evidence against that party, another witness may be called to disprove the truth of that evidence. Therefore where the question was whether the defendant's servant, who had been to sell a horse, had warranted him sound, he swore, on being called by the plaintiff, that he had not given any warranty; and Lord *Ellenborough* allowed the plaintiff to call another witness to prove, that at the time of the sale he had expressly warranted its soundness. There can be no rule of law, said Lord *Ellenborough*, by which the truth on such an occasion is to be shut out, and justice perverted. *Alexander v. Gibson, 2 Campb. 555; Lowe v. Jolliffe, 1 W. Black, 365; 3 B. & Cres. 749; 1 Phill. Evid. 7 ed. 309.*

A witness's credit may be impeached only by *general* accounts of his character, and not by proofs of particular facts. *2 Hawk. c. 46, s. 20; B. N. P. 296.* Therefore if a witness, on being questioned whether he has not been guilty of a felony or of some infamous offence, deny the charge, the party against whom the witness has been called will not be allowed to prove the truth of the charge. *Rookwood's case, 4 St. Tr. 693; and see Sharp v. Scoging, Holt's N. P. C. 541; R. v. Watson, 2 Stark. N. P. C. 149.*

Witness's credit to be only impeached by general accounts of his character.

It has been doubted whether, to corroborate the testimony of the witness whose credit has been impeached, evidence is admissible to prove that the witness affirmed the same thing before, on other occasions. *Gilb. Evid. 150; B. N. P. 294.* Mr. Phillips lays it down that it is not admissible. *1 Phill. Ev. 293; citing De Sailly v. Morgan, 2 Esp. N. P. C. 691; Christian v. Coombe, 2 Esp. N. P. C. 489.*

Supporting credit by proof of witness having sworn to same facts.

The mere opinion of a party, unsupported by reasons and facts, as to his not believing a witness on his oath, is entitled to no consideration: when otherwise, see *ante*, 35.

Mere opinion as to credit not allowed.

A witness cannot be cross-examined as to a fact wholly irrelevant to the matter in issue, if answered affirmatively, for the purpose of discrediting his testimony if he answered in the negative, by calling other witnesses to disprove what he said. *Spencely v. De Willott, 7 East, 108; 1 Phill. Evid. 272.*

Witness cannot be asked an irrelevant question.

If the witness answer such an irrelevant question before it is disallowed or withdrawn, his answer is conclusive, and evidence cannot be afterwards admitted to contradict him. *Harris v. Tippet, 2 Campb. 638.*

It would be an irrelevant question to inquire of a witness, in cross-examination, whether he had not attempted to dissuade another witness examined on the opposite side from being present at the trial. *Harris v. Tippet, 2 Campb. 637.* And the rule laid down in this case seems particularly illustrated by the following case, which occurred at *Monmouth Lent Ass. 1811.* One Yewin was indicted for stealing wheat. The principal evidence against him was a boy of the name of Thomas, his apprentice. *Lawrence, J.,* allowed the prisoner's counsel to ask Thomas, in cross-examination, whether he had not been charged with robbing his master, and whether he had not afterwards said he would be revenged of him, and would soon fix him in *Monmouth gaol.* He denied both. The prisoner's counsel then proposed to prove, that he had been charged with robbing his master, and had spoken the words imputed to him. *Lawrence, J.,* ruled, that his answer must be taken as to the former; but that as the words were material to the guilt or innocence of the prisoner, evidence might be adduced that they were spoken by the witness. *2 Camp. 638.*

## WITNESSES.

## (4.) How Witnesses compelled to attend.

Having inquired as to the requisite number of witnesses, and as to who are competent and credible, so that the prosecutor and defendant may decide on what witnesses they should respectively call to attend the trial, we will now proceed to point out the mode of compelling such attendance.

Compulsory  
process.

The compulsory means to bring in witnesses are of two kinds. *First*, By process of *subpoena* issued in the king's name by the justices, or others, where the trial is to be, for disobedience to which the person served with the process is liable to an attachment. *R. v. Ring*, 8 T. R. 585. *Secondly*, Which is the more ordinary and more effectual means (in criminal cases), the justices that take the examination of the person accused, and the information of the witnesses, may at that time, or at any time after and before the trial, bind over the witnesses to appear at the sessions; and in case of their refusal to be bound over, may commit them for a contempt—*2 Hale*, 282; *Bennet and Wife v. Watson*, 3 M. & S. 1; 1 *Phill. Ev.* 8; *et vide post*, 95; and in case of their neglect to attend, in pursuance of the recognizance, such recognizance will be forfeited, and may be put in force. See *Recognizance*, Vol. V.

Writs of subpoena issued by the clerk of the peace, or the clerk of assize, at assize, were formerly compulsory only within the county where they are granted; and therefore, if the witness lived beyond its limits, application must have been made to the Crown Office, from whence it might issue to any part of England. *Cro. C. C.* 9, 21. But by the 45 Geo. III., c. 92, s. 3, a writ of subpoena issued from any court of competent jurisdiction to compel the attendance of the witness will be equally valid if served in any part of the united kingdom, and the disobedience of it is punishable in the King's Bench. See further, *post*, 95.

Before magi-  
strates.

In general, magistrates have power to compel the attendance of witnesses for the purpose of a summary trial of an offence amounting to a felony or misdemeanor, and this by virtue of the magistrate's commission. *Dalt*, J., 164. But it is questionable whether they have such power in an offence of less degree created by statute, unless it is specially given by statute, which is usually the case, by the statute creating the offence, and which frequently imposes a penalty on the witness's refusal to attend.

At sessions.

The 38 Geo. III. c. 52, s. 4, provides that the courts of oyer and terminer, and general gaol delivery, may issue process to compel the attendance of witnesses on a trial of an indictment, found by the grand jury of the county, for offences committed in the county of a city or town corporate.

Practice as to  
subpoena.

The subpoena when sued out is to be regularly served on the witness; and as only four witnesses can be included in one writ of subpoena, several writs are frequently necessary. In order to save expense, it is settled that service of a ticket containing the substance of the writ will be as effectual as service of the writ itself. *Goodwin v. West*, *Cro. Car.* 522. In such case, however, the writ ought to be shown. The writ or ticket should be served personally on the witness—*Smelt v. Witmill*, 2 *Stra.* 1054; and in a reasonable time before the day of trial, that he may suffer the less inconvenience; from the attendance on the court. *Hammond v. Stewart*, 1 *Stra.* 509; 1 *Phill. Evid.* 4. See *Tidd*, 9th ed., 806.

A subpoena in court on the day of trial would do. Indeed it has been considered that a person who is present in court, when called as a witness, is bound to be sworn, and to give his evidence in a criminal case, although he has not been subpoenaed. *R. v. Sadler*, 4 C. & P. 218.

Subpoena duces  
tecum.

If there be any papers in the witness's hands, which it is desirable for the party to obtain, a special clause should be inserted in the writ called a *duces tecum*, by which he will be commanded to attend with the documents in question, and which he ought to obey, even where, from any confidential relation, the court will not, on his appearance, compel him to produce them. 9 *East*, 485; 6 *Esp. Rep.* 115. It is no excuse that the legal custody of the instrument belongs to another, if it be in the actual possession

of the witness. 1 *Camp.* 14, 180, n.; 6 *Esp.* 116; *Holt, C. N. P.* 239. If the witness, instead of bringing the papers, &c. required, deliver them to the opposite party, by whom they are withheld, the Court will allow secondary evidence of the contents of them to be given, without a notice to produce the originals. 4 *Esp.* 255; see *R. v. Hunter*, 4 *Car. & P.* 128.

The subpoena may be obtained from the Crown Office, or from the clerk of the peace, or clerk of assize of the Court in which the defendant is to be tried. It is usual and best to obtain it from the Crown Office.

The name of the witness, though not in the original subpoena, may be inserted therein at any time, if he has been regularly served with a copy. *Per Gibbs, C. J., Wakefield v. Gall, Holt, C. N. P.* 526.

Where a witness is a prisoner in execution for debt, he must be brought up by *habeas corpus ad testificandum*, to give his evidence—1 *Phill. Evid.* 5; and so where he is confined on board a ship—3 *Burr.* 1440; 2 *Hawk. c. 46. s. 72*. An affidavit of his being a material witness, and willing to attend, must be made to obtain this writ, as to the form of which, and making the application for it, see 1 *Chit. C. L.* 611; *Tidd's Pract.* 9th ed. 809; *post, Habras Corpus*, Vol. II.

When a witness resides abroad, or is about to leave the country before trial, he may, by the consent of both parties, be examined on *interrogatories*: in the former case, before commissioners approved by both of them; and in the latter before a judge in chambers. See 1 *Chit. C. L.* 612. In proceedings for offences alleged to have been committed in the East or West Indies by persons holding official situations there, witnesses may be examined before the magistrates there on writs of mandamus. 13 *Geo. III. c. 63*; 42 *Geo. III. c. 85, s. 2, 3*. Where a party, in a case where consent is requisite, refuses to grant it, the Court will put off the trial, to give time for the attendance of the witnesses. 1 *Cowp.* 174, *Tidd*; 9 ed. 813.

In criminal proceedings, the only effectual punishment, and mode of securing the future attendance of the witness, is by attachment for the contempt of the Court from which the process was originally awarded, or by indictment—8 *T. R.* 585, 1 *Str.* 510; 1 *Chit. C. L.* 614; and this whether the cause was called on or not. 3 *B. & A.* 598. It is not settled whether magistrates, at sessions, &c. have authority to issue an attachment; and the usual way of punishment in such a case is by indictment or proceeding on the recognizance, if there was one. When the subpoena was not issued out of the Crown Office, the Court issuing the same may, upon proof to their satisfaction of the due service of the subpoena, transmit a certificate of the default of the witness under the seal of the Court, or under the hand of one of the justices thereof, to the Court of King's Bench, which Court is empowered to punish the witness the same as if he had disobeyed a subpoena issued out of that Court. 8 *T. R.* 585; 45 *Geo. III. c. 92, s. 3*.

The witness, if taken upon an attachment for his contempt, may be detained till he has given evidence on the trial of the offender, and then he may be set at liberty. *Id. n. (a.)* The Court will not grant, it seems, an attachment unless the subpoena was personally served, and sufficient expenses tendered if the witness were so poor he could not attend without them. See 2 *Hawk. c. 46, s. 173*. It seems, however, the witness on a criminal prosecution is not entitled to have his expenses first paid. *R. v. Cooke*, 1 *Car. & P.* 321. See *Tidd*, 9th ed. 806; *ante, Costs*, Vol. I.

An indictment would lie for conspiring to prevent the attendance of a witness. 2 *East*, 364.

As to the consequences of not attending on civil proceedings, see *Tidd*, 9th ed. 807, 8; 5 *Eliz. c. 9, s. 12*.

By stat. 43 *Geo. III. c. 140*, after reciting that "Whereas writs of *habeas corpus* have been frequently awarded by the judges of H. M.'s Courts of Record at Westminster, for bringing persons detained in custody under civil or criminal process before magistrates or courts of record, as well for trial as for examination touching matters depending before such magistrates or courts respectively; but doubts have arisen whether such

#### WITNESSES HOW COM- PELLED TO ATTEND.

How to obtain  
subpoena.

Witness a  
prisoner.

Witness abroad.

Punishment for  
non-attendance.

Expenses.

Any judge of the  
Courts at West-  
minster may award  
a writ of *habeas  
corpus* for bringing  
up prisoners for  
trial or examina-  
tion before courts-  
martial, commis-  
sioners of bank-  
rupt, &c.

WITNESSES  
HOW COM-  
PELLED TO  
ATTEND.

Any judge of the superior Courts in England or Ireland may award writs of *habeas corpus* for bringing prisoners before Courts of record to be examined as witnesses.

judges have power to award writs of *habeas corpus* for bringing persons detained as aforesaid before courts-martial, commissioners of bankrupt, commissioners for auditing the public accounts, or other commissioners acting under commission or warrant from H. M.; and whereas it is expedient to make provision for bringing prisoners before such courts-martial or commissioners for the purposes hereinbefore mentioned," enacts, that any judge of the Courts at Westminster may award a writ of *habeas corpus* to bring any prisoner, in any gaol in England, before a court-martial, commissioners of bankrupt, commissioners for auditing the public accounts, or other commissioners acting by virtue of any commission or warrant from H. M.; in like manner as they award such writs to bring persons detained in gaol before magistrates, or Courts of record. The application for a *habeas* under this act should be made to a judge out of Court. 2 M. & S. 582; Tidd, 9th ed. 809.

By stat. 44 Geo. III. c. 102, any judge of the Courts of K. B. or C. P. of England and Ireland respectively, or any baron of the Court of Exchequer of the degree of the coif in England, or any justice of O. and T. or gaol delivery, being such judge or baron aforesaid, may, at his discretion, award a writ of *habeas corpus* for bringing any prisoner detained in any gaol or prison before any of the said Courts, or any sitting of *Nisi Prius*, or before any other court of record, to be there examined as a witness, and to testify the truth before such Courts, or any other grand, petit, or other jury, in any causes or matters, civil or criminal, whatsoever, which now are or hereafter shall be depending or to be inquired into or determined in any of the said Courts. See Tidd, 9th ed. 809, 810.

And see the 45 Geo. III. c. 92, s. 3, 4, for compelling the attendance of witnesses to give evidence in criminal prosecutions in every part of Great Britain.

In *Exp. Griffiths*, 5 B. & A. 730, the Court of K. B. granted a mandamus to the warden of the Fleet to take the body of a debtor confined there before a magistrate, to be examined from time to time respecting a charge of felony or misdemeanor.

### (5.) The Examination of Witnesses.

Who to begin.

*Who to begin*—He who affirms the matter in issue, whether prosecutor or defendant, ought to begin to give evidence. Co. Lit. 36.

Examination on the *voir dire*.

*Examination on voir dire*—Previous to admitting a witness to be sworn, it is often necessary to examine him upon what is termed the *voir dire*; (a) which is done for the purpose of ascertaining whether there be any objection in law to his being admitted as a witness upon the case before the Court; and it has been said, that a party who is cognizant of the interest of the witness at the time when he is called is bound to make his objection in the first instance. *Turner v. Pearle*, 1 T. R. 720; 2 Stark. Evid. 757. In general, however, when it appears, in the course of the examination, that the witness is incompetent to give evidence by reason of some civil disability, or by reason of his being directly interested in the event of the cause at issue, or if it is discovered during any part of a trial that a witness is interested, his evidence will be struck out. 1 Phill. Ev. 123; 1 T. R. 720; *Wightw.* 64; 2 Camp. 14.

If the objection on the score of interest be not taken previous to the examination in chief, the witness cannot be cross-examined as to the contents of a written paper not produced, which might have been done had the objection been taken in the first instance. 2 Camp. 14.

(a) *Voir dire*, *veritatem dicere*, is when it is prayed upon a trial at law that a witness be sworn, that he shall true answer

make to all such questions as the Court shall demand of him, 3 Black. Com. 332.

Where the witness himself is examined on the *voir dire*, he may be asked as to the contents of a written instrument, without a notice to produce, or without producing it, though, if the witness produces the instrument on which the objection is founded, it ought to be read. *Butler v. Carrer*, 2 Stark. R. 434. Accordingly, in the case of *R. v. Gisburn*, 15 East, 57, on a question of settlement, when the point for the consideration of the Court of King's Bench was, whether a witness, who, after having admitted on his examination upon the *voir dire* that he was the occupier of a cottage in the appellant township of the annual value of 25s., but that he had never been charged with or paid any public rate or tax in that township, could be examined without producing the rate to show that he was not rated; the Court held that the witness was competent upon the *voir dire*, that what he answered must be taken for better for worse, and that if he should answer falsely he might be indicted for perjury.

So also it is a rule, that when the objection to the competency of a witness arises from his answer to a question on the *voir dire*, he may in the same way do away with the objection, and restore his competency by parol: but if the fact appears in any other way, as if the witness is proved by other evidence to have been a bankrupt, in such case it is necessary to answer the objection by the best evidence, that is, by production of the certificate itself. By *Ld. Kenyon*, in *Botham v. Swingler*, 1 Esp. 164; *The Butchers' Company v. Jones*, 1 Esp. 162, 8. P.

**Examination on Oath**—In general no one can be examined as a witness in any criminal proceeding except upon oath—1 *Leach*, 110; *Peake*, 11, a. 7 *Chit. C. L.* 615; and a peer is within this rule. 3 *Keb.* 61; 1 *Salk.* 278, *post*, *Peers*, Vol. V. A witness brought into Court merely for the purpose of producing a written instrument to be proved by another witness need not be sworn. 1 *Phill. Evid.* 216; *Roscoe*, 75; *R. v. Brooke*, 2 Stark. 472.

Examination on  
oath.

The oath usually administered to a witness is called a corporal oath. 3 *Inst.* 165; *post*, *Oaths*, Vol. V. The form used at the assizes or sessions is for the clerk of arraigns or of the peace to desire the witness to take the book in his hand, and, when that is done, to say to him, "The evidence you shall give between our sovereign lord the king and the prisoner at the bar shall be the truth, the whole truth, and nothing but the truth; so help you God:" upon which the witness kisses the book, and thereby appeals to heaven for the truth of what he is about to disclose. 2 *Hale*, 279; 1 *Chit. C. L.* 616. See form, *post*, 104, (No. 1.)

Form of oath.

But it is not absolutely necessary to use this form if the witness has a conscientious objection to the mode, or professes a religion which binds him by a different obligation. Thus Jews are sworn on the writings of Moses. 2 *Keb.* 314; 2 *Str.* 821. Mahometans are sworn on the Koran; and persons of other religions according to the form prescribed for that purpose by the religion they profess. *B. N. P.* 292. Christians are sworn with their hats off—Jews, with their hats on. At the *O. B. Dec. Sess.* 1804, Erpune, a native of China, being examined as a witness before *Graham, B.*, on an indictment against Ann Alsley and Thomas Gunn for felony, was sworn according to the form of Courts of China, viz. by holding a saucer in his hand, which he dashed to pieces at the conclusion of the oath, believing, as he stated, that God would cause his body to be cracked, as he cracked that saucer, if he did not tell the truth. *Sess. Pap.* 1804 and 1805, p. 62; *Peake's Evid.* 138, n., 5th ed. In like manner a Scotch covenantor has been permitted to swear by holding up his hand. *Mildons's case*, 1 *Leach*, 412. For oaths are to be administered to all persons according to their own opinions, and as it most affects their consciences.

A witness may be asked, after he is sworn, whether he considers the oath he has taken obligatory upon his conscience; but if he answer in the affirmative, his answer is conclusive, and he cannot further be asked whether there be any other mode of swearing more binding upon his conscience than that which has been used. *The Queen's case*, 2 *Brod. & Bing.* 284. The more correct and proper way, however, is, to ask the witness,

WITNESSES,  
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TION OF.

Affirmations of  
Quakers and  
Moravians.

before he is sworn, whether he considers the oath he is about to take obligatory upon his conscience. 2 *Brod. & Bing.* 284. It is no objection after trial that a Jew was sworn upon the gospel. *Sells v. Hoare*, 3 *Brod. & B.* 232; 1 *Moore*, 36, S. C. And as to what questions may be put to a witness respecting his religious principles, see *ante*, 64.

Formerly a Quaker was not allowed to give in his evidence on his affirmation, nor was a Moravian on his declaration; but now, by the stat. 9 Geo. IV., c. 32, s. 1, a Quaker or Moravian required to give evidence in a criminal case may, instead of taking an oath in the usual form, be permitted to take a solemn affirmation or declaration in these words: "I, A. B., do solemnly, sincerely, and truly declare and affirm," which has the same force and effect in all courts of justice and other places where by law an oath is required, as if such Quaker or Moravian had taken an oath in the usual form. And if any person making such affirmation or declaration shall be convicted of having wilfully, falsely, and corruptly affirmed or declared any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such offender shall be subject to the same pains, penalties, and forfeitures, to which persons convicted of wilful and corrupt perjury are subject.

Presence of pri-  
soner and wit-  
nesses.

*Presence of Prisoner and Witnesses*].—The witness must deliver in his evidence in the presence of the prisoner—2 *Hawk.* c. 46, s. 1; *Bac. Ab. Evid.* (E); 1 *T. R.* 125; 2 *T. R.* 18, especially on trials affecting the prisoner's life: *Id.*

Before the examination commences, the crown may demand that the witnesses should retire, in order that each may be questioned in the absence of the others. *Fost.* 47; *Bac. Ab. Evid.* (E). And the same order will be made on the request of the defendant, but as a matter of indulgence and not of right. 4 *Harg. St. Tr.* 154; *R. v. Faughan*, *Holt*, 689. It seems questionable whether the Court can in either case compel the witness to retire. *Talf. Dick. Sess.* 377. By the uniform practice of all Courts, the attorneys on both sides, whose presence is necessary to the conduct of the case or defence, are exempted from the general rule; and it is usual and reasonable to extend the same indulgence to witnesses who are merely to prove matters of fact, to medical witnesses, and witnesses of character. *Id.*

Who may ex-  
amine.

*Who may examine*].—The witness may be examined by the counsel for the party calling him; or, if none be retained, by the judge or presiding magistrate, who may even recall a witness at any stage of the inquiry before the verdict or conviction. See *R. v. Remnant*, *R. & R. C. C.* 136.

It is usual for only one counsel to examine the same witness; but where the junior counsel is embarrassed in his examination, his leader may step in to his assistance, and proceed in questioning the witness. *Doe v. Roe*, 2 *Camp.* 280.

The prisoner himself may examine or cross-examine the witnesses.

If an improper question be put, the counsel on the other side should immediately interpose, and object to it. If a witness be asked whether a certain representation was made, the opposite counsel may interpose, and ask him whether the representation in question were by parol or in writing; and if the latter, the writing must be produced. *The Queen's case*, 2 *Brod. & Bing.* 292.

Deaf and dumb  
witness.

*Deaf and dumb Witness*].—We have already seen where such a witness may be sworn, *ante*, 64. Though the mode of examining a deaf and dumb witness by means of signs made with the fingers is a mode receivable even in capital cases, yet when the witness can write, it seems it would be better to make him write his answers to the questions put to him. *Morrison v. Lennard*, 3 *C. & P.* 127; *per Best*, *C. J.*

What questions  
should be put.

*Questions to be put*].—The rules before laid down as to what should be proved and the degree and kind of proof that should be adduced, will

show what questions should in general be put to the witness. If the probable answer to the question would be matter not legally admissible in evidence, such question should be objected to by the opposite party.

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TION OF.

*Leading Questions*].—On the examination in chief, the counsel will not be allowed to ask *leading questions*, that is, such as from their nature instruct the witness what he is to say in reply. *Peake Evid.* 206; 1 *Phill. Ev.* 268, 7 ed. But, at the same time, he must state his question in so forcible a way, that it may be perfectly understood, and no material circumstance omitted. And if the witness appears desirous of concealing the truth in order to favour the defendant, the Court will allow a latitude bordering on cross-examination to the prosecutor's counsel. 1 *Phill. Evid.* 269, 7 ed.; *Clarke v. Saffery, R. & M., N. P. C.* 126. So in the examination of a witness to contradict the testimony of another, *leading questions* may be allowed, as whether a written instrument contained certain matter; because otherwise it would be difficult to bring them to any direct contradiction. 1 *Camp.* 44.

Leading questions.

Questions to which the answer yes or no would not be conclusive are not in general objectionable. Thus a witness called to prove that A. and B. are partners may be asked whether A. has interfered in the business of B. *Nicholls v. Dowding*, 1 *Stark. C. N. P.* 81. For though he may have interfered, he may not be a partner. And see 1 *Stark.* 100; 2 *Stark.* 128. To identify a person whom the witness has already described, the person may be pointed out to him, and he may be asked in direct terms, if that be not the person he meant. *R. v. Watson*, 2 *Stark.* 116. Where a witness swears to a certain fact, and another witness is called for the purpose of contradicting him, the latter may be asked in direct terms, whether that fact ever took place. 1 *Camp.* 43.

Leading questions are allowable in cross-examination, though in general such questions make the answers open to observation. *Peake, Evid.* 206; 2 *Stark. Evid.* 132; 1 *Chit. C. L.* 622.

*Irrelevant Questions*].—No question can be put to a witness, the probable answer to which would have nothing to do with the matter in issue. This rule has already been noticed, *ante*, 20, 21.

Irrelevant questions.

*Questions which need not be answered*].—Questions tending to expose the witness to criminal accusation, punishment, or penalty, need not be answered. See 1 *Phill. Evid.* 276, 7 ed.; 1 *Chit. C. L.* 620; 3 *Camp.* 210; 8 *Ves.* 405. A witness may object to answer a question which he thinks will tend to his crimination, though the answer would not lead to an immediate conclusion of guilt. *Cates v. Hardacre*, 3 *Taunt.* 424. On an information against several persons for executing an office of trust without taking the oaths, the Court refused a motion for leave to inspect such books kept by the defendants in which they had entered their elections, receipts, and disbursements, as it would have compelled them to give evidence against themselves in a criminal prosecution. *R. v. Mead*, 2 *Ld. Raym.* 927; *R. v. Worsingham*, 1 *Ld. Raym.* 705; *R. v. Cornelius*, 2 *Str.* 1210. And a similar motion was refused, on an information against two overseers for making a rate without the concurrence of the churchwardens. *R. v. Lee*, cited 1 *Wils.* 240; 1 *Phill. Ev.* 7 ed. 432; and see *ante*, 33, as to other books.

Questions privileged from being answered.

A witness is not compellable to say whether he published a particular paper if the contents be libellous. *R. v. Barber*, 1 *Str.* 444.

Upon an appeal against an order of bastardy, a person is not bound to declare whether he is the father of a bastard child. *R. v. St. Mary, Nottingham*, 13 *East*, 58, n.

It has been settled that a witness is not compellable to answer questions, the answer to which would probably be degrading to his character. *Cooke's Case*, *How. St. Trials*, 334; *Friend's case*, 13 *id.* 17; *Layer's case*, 16

Tending to degrade.



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EXAMINA-  
TION OF.

Questions tending  
to degrade.

*id.* 161. And it has been even held a witness is protected from admitting his commission of an offence although he has received a pardon. *R. v. Reading*, 2 *St. Tri.* 822; *R. v. Earl of Shaftesbury*, 3 *St. Tri.* 439. But this has been of late much doubted; and in *Cundell v. Pratt*, 3 *C. & P.* 240, n. (b), 1 *M. & M.* 108, S. C., *Best*, C. J., said, "I for one, till I hear it decided by the House of Lords, shall not go so far as to say that the witness is protected by the rules of law from answering such questions as might disparage her character. I shall only prevent your asking such questions as may subject witnesses to a prosecution for crime; but not such questions as merely tend to degrade them in their character."

In the case of *Frost v. Holloway*, sutt. K. B. after H. T., 1818, Mr. *Scarlett*, in cross-examining a witness, asked him, whether he had not been tried for theft at *Reading*. The witness refused to answer, and appealed to Lord *Ellenborough*, whether he was bound to answer such a question. Lord *Ellenborough* said, "If you do not answer the question, I will commit you;" adding, "You shall not be compelled to say whether you were guilty or not." 1 *Phil. Ev.* 283, 7 ed. *notis.* And in *R. v. Edwards*, 4 *T. R.* 440, where a witness had been guilty of an infamous crime and had been punished for it, it was considered he might be asked whether he had not undergone the punishment: and see *R. v. Barker*, 3 *C. & P.* 589; *R. v. Edwards*, 4 *T. R.* 440; where it was held a witness might be asked whether he had stood in the pillory: and see 3 *Esp.* 94; 2 *Camp.* 637; 2 *Hawk. c.* 46, s. 169; and further, *post*, *Mapt.* Vol. V.

Tending to a  
forfeiture.

A witness is also privileged from answering any question, the answer to which might subject him to a forfeiture of his estate; and it should seem a party is not bound to answer so as to subject himself to any forfeiture of interest. 1 *Phil. Ev.* 7 ed.; *Lambert v. Rogers*, 2 *Mer.* 489.

Tending to an  
action or debt.

A witness was not, it seems, formerly compellable to answer any question which might subject him to a civil action, or tend to charge himself with a debt. Pending the impeachment, Lord *Melville's cases*, 29 *How. State Trials*, 746. 763; 1 *Phil. Evid.* 7 ed. 279; *Cobbett's Parliamentary Debates*, vol. 6. p. 167.

46 Geo. III. c. 27.

But now, by stat. 46 Geo. III., c. 27, intitled "An act to declare the law with respect to witnesses refusing to answer;" reciting, "Whereas doubts have arisen whether a witness can by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself, or to expose him to any penalty or forfeiture, but the answering of which may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit at the instance of H. M., or of some other person or persons;" it is therefore declared and enacted, "that a witness cannot by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse him, or to expose him to penalty or forfeiture of any nature whatever, by reason only, or on the sole ground, that the answering of such question may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit, either at the instance of H. M., or of any other person or persons."

But the right which the parties to a suit have to refuse answering any question is not in any degree affected by this statute; and therefore, on a question of settlement, a rated parishioner is not compellable by the adverse parish to give evidence, as he is directly interested as party to the appeal, and does not come within the words or meaning of the act. *R. v. Woburn*, 10 *East*, 395; and see *R. v. Hardwick*, 11 *East*, 579; 1 *M. & S.* 636. These cases were decided before the 54 Geo. III., c. 170, *ante*, 74.

Tending to com-  
promise rights.

In general a person is not bound to produce documents, the publication of which may compromise his own or his principal's rights; as to produce for inspection title-deeds or the like. Therefore, on a question of settlement, a mortgagee, a rated inhabitant of the appellant parish, subpoenaed by the respondent parish, is not compellable, under a subpoena *duces*

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*tecum*, to produce the title deeds of his mortgagor. *R. v. Upper Bodington*, 4 D. & R. M. C. 233. It was also there held, that his attorney could not be allowed to produce an abstract of the deeds, or to give parol evidence of their contents. And see *Copeland v. Watts*, 1 Stark. C. N. P. 95.

WITNESSES,  
EXAMINA-  
TION OF.

We have already seen what confidential communications to attorneys and counsel are privileged from being divulged in a court, as also certain other communications relating to matters of state, &c., *ante*, 68 to 70.

If a witness chooses to answer questions which he need not, the answer is conclusive. *Watson's Trial by Gurney*, 288; *Rose v. Blackmore*, 1 R. & M. C. N. P. 383.

It has been said, that if a witness answer any question on a matter rendering himself liable to forfeiture or punishment, he cannot afterwards claim his privilege, but must answer throughout. *East v. Chapman*, 1 M. & M. 47; 2 C. & P. 570, S. C., *cor. Abbott*, C. J.

**What Answers are Evidence**—Our preceding inquiries as to what should be proved, and the degree and kind of proof to be adduced, will be here applicable, *ante*, 19 to 36.

What answers  
are evidence.

**Memorandum to refresh Memory**—A witness cannot be permitted to read his evidence—5 St. Tr. 445; 2 Hawk. c. 46, s. 168; but he may refresh his memory from any book or paper made by himself at the time, or shortly after the occurrence of the facts to which it relates, provided he can afterwards swear to the fact from his own recollection; though if he can only maintain its truth by finding it entered there, the papers must be themselves given in evidence. *Doe v. Perkins*, 3 T. R. 749; 8 East, 289; 2 Hawk. c. 46, s. 168. *Sed quære* if the document need be made by himself. See *Id.* and *Henry v. Lee*, 2 Chit. Rep. 124, where it was considered that it need not; but according to the later case of *Meagoe v. Simmons*, 3 C. & P. 75; 1 M. & M. 121, S. C., *cor. Lord Tenterden*, C. J., it must be. It has been said he may look at papers, in order to refresh his memory, which were not written by himself, but which he has repeatedly inspected—*Burrough v. Martin*, 2 Camp. 112; but he will not be allowed to refresh his memory with a copy of a paper made by himself six months after he wrote the original, though the original is proved to be so covered with figures as to be unintelligible. *Jones v. Stroud*, 2 C. & P. 196. The memorandum being unstamped will be no objection to his looking at it to refresh his memory. 4 Esp. 213; 8 B. & C. 14.

Refreshing me-  
mory.

It has been said that it is necessary he should swear absolutely to the fact which he is called to prove, and that a mere persuasion and belief will not be sufficient proof for the consideration of a jury. 1 Dyer, 53, b, n. 15; 2 Hawk. c. 46, s. 167. But it is now settled that there are cases in which a belief will be available in evidence. Thus a subscribing witness to a deed may swear that he has totally forgotten that he signed it; but on being shown his signature, he may depose that he believes he saw the execution, and the Court will be satisfied with his answer. 3 Wils. 427; 1 Chit. C. I. 617.

If the counsel for defendant, in cross-examination, put a paper into the witness's hand to refresh his memory, the opposite counsel has a right to look at it, without being bound to read it in evidence; and the opposite counsel may also ask the witness when it was written, without being bound to put it in. *R. v. Marsden*, 2 C. & P. 603, *cor. Tenterden*, C. J.

**Cross-examination**—When the examination in chief of the witness is concluded, but not before (*Colledge's case*, 6 How. St. Tr. 592), the prisoner or his counsel has power to cross-examine him as to every part of his testimony. 4 Bla. Com. 355.

Cross-examina-  
tion.

When once a witness is sworn, though he give no evidence for the party calling him, he may be cross-examined. *Phillips v. Mer*, 1 Esp.

WITNESSES,  
EXAMINA-  
TION OF.

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*N. P. C. 357.* However, circumstances may arise which will not give this right to the opposite counsel; as where the plaintiff's counsel called "Captain S.," and "Capt. Hugh S." answered and was sworn; and the plaintiff's counsel, after asking him a few questions, ascertained that it was "Capt. Francis S." whom they meant to examine. This was held not to give the other side a right to cross-examine Capt. Hugh S., as he was only examined by mistake. *Clifford v. Hunter*, 3 C. & P. 16; 1 M. & M. 113, S. C.

If the prisoner is not assisted by an advocate, it is the duty of the Court to ask any questions which they think may tend to his benefit. 1 *Chit. C. L.* 407. 621.

When not advis-  
able to cross-exa-  
mine.

If the witness tell the *whole* truth, a cross-examination may be dangerous, as it may have the effect of rendering his story more circumstantial, and impressing the jury with a stronger opinion of its truth. It is better, in such a case, either not to cross-examine him at all, or to confine the questions to his credibility, by impugning his means of knowledge, his disinterestedness, his integrity, or his veracity. If the witness tell only *part* of the truth, then the opposite counsel, if the residue be favourable to his client, will immediately proceed to cross-examine him as to it; but if unfavourable, the counsel will either refrain altogether from cross-examining him, or will confine his questions to the witness's credibility, as above mentioned. If, on the other hand, the evidence of the witness be false, then the whole force of the cross-examination must be directed to his credibility; and afterwards the truth may be proved by other witnesses. *Arch. C. Pl. & Evid.* 116, 117.

What questions  
may be put.

With respect to what questions may be put to a witness on cross-examination, the practice appears rather confused; inasmuch that no general rule can be well laid down on the subject. Certain it is the opposite party is allowed greater latitude in the cross-examination than the party examining in chief.

Thus leading questions may be asked, though, indeed, the witness must not have put to him the very words he is to echo back again. *Peake's Evid.* 206; *R. v. Hardy*, 20 *How. St. Tri.* 755.

And the questions must not assume facts to have been proved, or that particular answers have been given contrary to the facts. *Stark. Evid. Part II.*, 132; 4 *Esp.* 74. In strictness a witness cannot be asked if at a former trial he swore differently from what he is now swearing; but an examined copy of the record of the former trial, or at least the *Nisi Prius* record (if the cause has been tried at *Nisi Prius*) should be proved—*Barnes*, 449; 2 *Stark.* 364; and then it should be proved that the witness swore at that trial, either by having it read from the judge's notes, or proved upon oath from the notes or recollection of any person who was present at the time. 3 *Taunt.* 262; 12 *Mod.* 318; *Gilb. Ev.* 68, 69. So it is not allowable on cross-examination, in the statement of a question to a witness, to represent the contents of a letter, and to ask him whether he wrote a letter to any person with such contents, or contents to the like effect, without having first shown the witness the letter, and having asked him whether he wrote that letter. *Queen's case*, 2 B. & B. 286. And if, on cross-examination, a witness admits a letter to be of his handwriting, he cannot be questioned by counsel whether statements such as the counsel may suggest are contained in it; but the whole letter must be read. *Id.* 288. In the ordinary course of proceeding, such letter must be read as part of the cross-examining counsel's case. The Court, however, may permit it to be read at an earlier period if the counsel suggest that he wishes to have the letter read immediately, in order to found certain questions upon it; considering it, however, as part of the evidence of the counsel proposing such a course, and subject to the consequences thereof. *Id.*

The questions must be either relevant and pertinent to the matter in issue, or calculated to elicit the witness's title to credit. In order to try a witness's credit, facts may be supposed, apparently connected with the

cause, which have no real existence except in the imagination of the counsel. *Peake's Evid.* 206; 1 *Phill. Evid.* 276; *Stark. Evid. Part II. Cross*, 135. But how far questions may be asked for the same purpose, which have no seeming tendency to bear on the point in issue, appears still to be dubious. It is, perhaps, better left to the discretion of the Court, in each particular case, to prevent the counsel from too great a digression from the matter in issue. 1 *Chit. C. L.* 622. At all events a witness cannot be cross-examined as to any distinct collateral fact for the purpose of afterwards impeaching his testimony by contradicting him. *Stark. Evid. Part II.* 134; 7 *East*, 108; 2 *Stark.* 156. And should such questions be put and answered, evidence cannot be afterwards adduced for the purpose of contradiction. 2 *Camp.* 638; 2 *Stark.* 156; 1 *Chit. C. L.* 622, 2nd edition.

If a witness, when examined in chief as to the occurrence of a fact, answer that he does not remember it, the counsel on the opposite side cannot give evidence of a former declaration by the witness of the fact having occurred, unless he have in cross-examination questioned the witness as to such declaration; for the fact may have occurred, and the witness have formerly declared his knowledge of it, and yet he may not recollect it at the time of his examination. *The Queen's case*, 2 *Brod. & Bing.* 299.

**Re-examination**—When the cross-examination is completed, the counsel by whom the witness was called is entitled to re-examine him for the purpose of explaining any matter into which confusion has been introduced by the questions of the adversary; but he can only put questions on matters touched on or referred to in the cross-examination. *Talfourd's Dick. Sess.* 382. If a witness, upon his cross-examination, admit his having used certain expressions in a conversation with a person not a party to the cause, the opposite counsel, in re-examining the witness, is confined to such questions as may elicit the meaning of the expressions, and the motives of the witness for using them. But where a witness deposes to certain expressions being used by a party to the cause, the counsel for that party is entitled to re-examine the witness as to the whole of the conversation in which the expressions occurred; because the expressions are given in evidence in such a case as an admission of the party, and the whole of the admission should be taken together. 2 *Brod. & Bing.* 294.

Re-examination.

Where any new matter occurs to the counsel who called the witness, which he considers important, and respecting which he is not allowed to examine the witness, he may request the Court to do so; and the Court generally complies with such request. Sometimes, indeed, where the counsel has omitted to bring forward some merely formal proof, the Court will allow it to be afterwards adduced, though the case has been closed.

**Evidence for Defendant**—After the prosecutor has concluded his case, the defendant, if not entitled to an acquittal on some point of law, is called on to give in his evidence for the defence. See the course of a trial, *post*, *Trial, Sessions*, Vol. V. The mode of conducting such evidence may be collected from the preceding observations: and see particularly some points relative to discrediting the testimony of witnesses, *ante*, 78 to 81; and as to evidence of character, *ante*, 35, 36.

Evidence for defendant.

**Evidence in reply**—When the defendant's evidence is closed, the prosecutor's counsel may offer any evidence in reply which is strictly applicable to the defence, and which could form no part of his original case. Thus he may give specific contradictions to the witnesses on their denials on cross-examination, he may call persons to swear that they would not believe the witnesses on their oaths, and may apply an answer to any matter of excuse which the prisoner has set up, and which he could not anticipate; but he must not make a new case, or seek to fill up the chasms

Evidence in reply.

WITNESSES,  
EXPENSES OF.

or supply the deficiencies of that on which he originally relied. *Talfourd's Dick. Sess.* 387; 3 *Car. & P.* 464.

When evidence is offered in reply in cases of misdemeanor, the defendant's counsel has a right to address the jury on such evidence. *Id.*

Which party shall conclude.

The counsel of that party which doth begin to maintain the issue ought to conclude. *Tri. per Pais*, 220.

## V. Expenses of Witnesses and their Privileges during Attendance.

Expenses of witnesses.

The expenses of witnesses, and as to how far they may refuse attendance without a payment of them, have been already considered, *ante*, *Costs*, Vol. I., and see *ante*, 83.

Privileges of.

Witnesses, whether subpoenaed, or bound by recognizance to appear, or appearing voluntarily after being asked to do so (1 *H. Bla.* 636; 8 *T. R.* 536), are protected from arrest whilst attending the Court, not only on the day mentioned in the subpoena, &c., but also on every day of the same sittings, assizes, or sessions, until the cause is tried. They are also privileged in like manner, during a *reasonable* time, before and after the trial, whilst coming to or returning from the place where the sittings, assizes, or sessions are held. 2 *Bla. Rep.* 1113; 2 *Stra.* 986; *Tidd*, 9th ed., 195 to 198; 1 *Chit. C. L.* 614. If a witness under these circumstances be arrested, the Court out of which the subpoena issued, or the judge of the Court in which the cause is to be or has been tried, will, upon application, order him to be discharged. *Id.*

## VI. Bill of Exceptions and Demurrer to Evidence.

Bill of exceptions.

When an exception is made by any party to a witness, which is overruled by the Court, the opposite side have, in *civil* proceedings, the power of appealing from his decision by tendering a *bill of exceptions*. But this practice does not obtain in criminal proceedings—at all events in treason and felony. 1 *Chit. C. L.* 622. See *Tidd*, 9th ed. 862; *Rosc.* 109.

Demurrer to evidence.

A demurrer to evidence is a proceeding by which the judges are called upon to determine what the law is upon certain facts which are brought forward in evidence, and is therefore analogous to a demurrer upon facts alleged in pleading. 2 *H. Bla.* 205; *Tidd*, 9th ed. 865, 6.—It can be of very little use and is rarely ever adopted in criminal proceedings, since the crown is never compellable to join in demurrer; but the judge directs the jury to find a special verdict, the legal effect of which the Court will afterwards determine. 5 *Co.* 104; 2 *H. Bla.* 187.

## VII. Forms.

(No. 1.)

Subpoena to give evidence at the sessions.

*William the fourth, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith. To A. B., C. D., and E. F., greeting. We command you and every of you, that all business being laid aside, and all excuses whatsoever ceasing, you do in your proper persons appear before our justices assigned to keep the peace in our county of \_\_\_\_\_, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the [general quarter sessions of the peace] to be holden at \_\_\_\_\_, in and for the said county, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, at the hour of ten in the forenoon of the same day, to testify the truth, and give evidence on behalf of [the inhabitants of the parish of \_\_\_\_\_, in the said county,] against [A. O., in a case of bastardy.] And this you are in no wise to omit, nor any of you to omit, on pain of one hundred pounds. Witness \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of our reign.*

There may be four witnesses put in one subpoena. 2 *Cowp. R.* 846; 1 *Phill. Ev.* 3, *ante*, 82.

(No. 2.)

To Mr. A. W.

By virtue of his majesty's writ of subpoena to you directed, and herewith shown to you, you are personally to be before his majesty's justices of the peace for the county of \_\_\_\_\_, at [the general quarter sessions of the peace] to be holden for the said county at \_\_\_\_\_, in the said county, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_ next, to testify the truth, and to give evidence on behalf of [the inhabitants of the parish of \_\_\_\_\_ in the said county,] against [A. O., in a case of bastardy.] And this you are not to omit, upon pain of one hundred pounds. Dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_.

A subpoena ticket thereon.

By the Court,

C.

(No. 3.)

William the fourth, &c. [as in the common subpoena, ante, 92, to the words "to testify the truth," &c. and then proceed as follows:] And also that you, or one of you, do produce and show forth at the time and place aforesaid a certain [bill of exchange, purporting to bear date on, &c. and to be made and drawn by one \_\_\_\_\_ upon and accepted by one \_\_\_\_\_, and whereby the said \_\_\_\_\_ requested the said \_\_\_\_\_, two months after the date thereof, to pay to him the said \_\_\_\_\_, or his order, the sum of \_\_\_\_\_ for value received,] then and there to testify and show, before the grand inquest, of all and singular those things which you or either of you know, or the said bill of exchange doth import, of and concerning a certain bill of indictment to be preferred, &c. (Proceed as in writ, ante, 92.)

Subpoena duces tecum at the sessions.

(No. 4.)

[Commencement as usual, post, Recognizance, Vol. V.]—The condition of this recognizance is such, that if the above bound A. W. shall personally appear at the next general quarter sessions of the peace (or at the next general assize) to be holden at \_\_\_\_\_, in and for the said county, and then and there give such evidence as he knoweth, upon [a bill of indictment to be exhibited by A. I., of \_\_\_\_\_, yeoman, to the grand jury, against A. O., late of \_\_\_\_\_ in the said county, yeoman, for the feloniously taking and carrying away \_\_\_\_\_, the property of \_\_\_\_\_;] and in case the said bill be found a true bill, then if the said A. W. shall then and there give evidence to the jurors that shall pass on the trial of the said A. O. upon the said bill of indictment, and not depart thence without leave of the Court, this recognizance to be void, otherwise of force.

Condition of a recognizance to appear and give evidence at the sessions or assizes.

Summons of a Witness. Post, 104, (No. 4.) See title Summons, Vol. V.

## Examinations by Justices before Trial. (a)

UNDER this title will be considered the mode in which an offence should be investigated by a magistrate on an accused party being brought before him before trial, previous to discharging, bailing, or committing such accused for trial.

As to the examinations of parties on the trial of an indictment, &c., see ante, 84 to 91; as to the examination of them on convictions, see ante, Convictions, Vol. I.

We will divide our considerations under this title as follows, viz.

(a) See, in general, 1 Chit. C. L. 72 to 92.

- I. *Time and Place of Examination*, 94.
- II. *Examination of Witnesses against Accused*, 94.
- III. *Compelling Attendance of Witnesses*, 95.
- IV. *Witnesses refusing to answer*, 95.
- V. *Examination of Accused*, 96.
- VI. *Examinations to be put into Writing, &c.* 97.
- VII. *Obstructing Examination*, 98.
- VIII. *Remanding Accused for further Examination*, 98.
- IX. *Discharging Accused*, 101.
- X. *Bailing or committing him*, 102.
- XI. *Recognizance to prosecute and give Evidence*, 102.
- XII. *How Examinations, &c. to be kept, and Right of Party to Copies*, 103.
- XIII. *Certifying Examinations, &c.* 103.
- XIV. *Forms*, 104.

### I. Time and Place of Examination.

Time and place of examination.

The accused being arrested and in custody should as speedily as possible be taken before a justice of the peace of competent jurisdiction, to hear and be examined concerning the offence imputed to him. If it be late in the evening, and no justice of the peace sitting in his public capacity, it is not reasonable, unless in crimes of a very heinous nature, or other peculiar circumstances justify it, that a justice of the peace should be called upon to examine into the charge at such an unreasonable hour.

The examination may take place either in public or private. The justice may exclude an attorney or counsel if he likes—*Cox v. Coleridge*, 1 B. & Cres. 37; 2 D. & R. 86, S. C. See *Daubney v. Cooper*, 10 B. & Cres. 237; but not the accused. *Dick, J., Examination*. In many cases a private examination is desirable.

### II. Examination of Witnesses against Accused.

Examination of accusers and witnesses.

The first step in the investigation as to the offence is to call for and examine the witnesses for the accusers.

The whole proceedings of the examination should be in the presence and hearing of the accused. 1 *Leach*, 202, 309, 500, 503, a. 5 *Mod.* 163; *Reg. v. Commins*, 4 D. & R. M. C. 94.

The witness should be informed as to the purpose for which he is required to give evidence, or, in other words, that there is a person under charge against whom he is required to give evidence, otherwise the witness could not be punished for refusing to give evidence. *Cropper v. Horton*, 4 D. & R. M. C. 42.

Before administering the oath to the witness, the magistrate had better inquire who and what the witness is; and in some cases it would be as well shortly to ascertain what he intends to prove.

It seems that no witness ought to be examined who is not competent, according to the general rules of evidence, to give evidence, and as to which see *ante*, 63 to 78.

After the competency of the witness is ascertained, he should be sworn

### III. IV.] Examinations by Justices before Trial.

95

before the justice as in other cases; *ante*, 85. The following is the usual form of oath prescribed to be taken by a Christian: "*You shall true answer make to such questions as shall be demanded of you; so help you God.*" As to the other forms, see *ante*, 85, 86.

OF  
WITNESSES.

The examination of the witness must be upon oath administered previous to the examination, or such examination will amount to nothing. *Dalt.*, J., c. 164, s. 3; 1 *Hale*, 586; *R. v. Kiddy*, 4 D. & R. 734.

Even a peer must be examined on oath, and not upon his honour. *Dick's Jus.*, Examination III.

If a magistrate committed a party without an oath made before him, he would be liable to an action if the prisoner were acquitted. 1 *Hale*, 586; *Dalt.*, J., c. 164; 1 *Leach*, 202, 309; 2 T. R. 225, 231.

After the witness, being competent, is duly sworn, the magistrate proceeds to examine him. As to what questions may be asked, see *ante*, 86, 7. The witnesses should be examined before the accused, and he may cross-examine them; *ante*, 89, 90. They should, especially if they appear unwilling, be examined separately; and no one who has already been completely examined should be permitted, if it be possible to avoid it, to inform any other who has yet to be examined to what particulars his evidence has extended. Indeed, in most cases, it would be best and fairest to keep all the witnesses away but the one under examination. See *Dalt.*, J., 165; *Taylor v. Lawson*, 3 C. & P. 543.

The answers to the examinations, as they are given, should be immediately put into writing in a plain and intelligible manner, and as near as possible in the very words used by the witness. *Leach*, 202, 209. See further, *post*, 98. See the form of taking such depositions of the witnesses, *post*, (No. 3.) The examination, when put into writing, is usually read over, and tendered to the witness for signature; and he should sign it, though he is not actually obliged to do so. Such signature is not absolutely necessary, but is only taken for precaution, and facility of future proof. See *Fleming's case*, 2 *Leach*, 854; *Lambe's case*, 2 *Leach's C. C.* 625; *post*, 98, 99.

### III. Compelling Attendance of Witnesses.

We have already noticed the power of a magistrate to compel the attendance of a witness, *ante*, 82. If a person who it is supposed can give material evidence against the accused will not voluntarily attend, such attendance may be enforced by a summons issued against him by the justice, and directed to a constable. Such summons should be personally served on him, and the original shown to him at the same time; *ante*, 82. See the form, *post*, (No. 4.) He might be indicted for a disobedience to it, or the officer may, it seems, on a warrant against the witness, founded on his refusal to obey the summons, even enforce his attendance. 2 *Hale*, 282; 1 *Chit. C. L.* 76: *sed vid. Shuttleworth*, 8, 9.

Compelling attendance of witnesses.

It should seem that, upon the reasonable request of the defendant, the magistrate has a similar power to bring before him any witness who may be able to give material evidence on his behalf. 3 *Inst.* 79, 4 *Bla. Com.* 359.

On the application and notice of two inhabitants of a parish, a constable may be compelled to appear before a magistrate to enter into a recognizance to prosecute a party for keeping a disorderly house within the district. 25 Geo. II. c. 36, s. 5; and see 58 Geo. III., c. 70, s. 7, *ante*, *Disorderly House*, Vol. I., and see various other statutes throughout the titles of this work, compelling the attendance of witnesses.

### IV. Witness refusing to answer.

It does not appear to be expressly decided whether a justice of the peace has jurisdiction to commit to prison a person who refuses to be examined on

Witness refusing to answer.



**WITNESSES  
REFUSING TO  
ANSWER.**

oath and give evidence as a witness touching a charge against a party then before the justice on examination. It seems clear he cannot be committed for such a refusal without there is a person charged with the offence, and without he (the witness) is apprised of that fact and the nature of the charge. *Cropper v. Horton*, 4 D. & R. M. C. 42 (a). But it seems he may be committed for such a refusal where there is a person charged, and he is apprised of that fact and the nature of the charge. At all events, it was decided in *Bennett v. Watson*, 3 Maule & S. 1., that a justice of the peace might commit a feme covert who was a material witness upon a charge of felony brought before him, and who refused to appear at the sessions to give evidence, or to find sureties for her appearance.

A witness might, it seems, be indicted at common law for the refusal; *ante*, 91.

### V. Examination of Accused.

**Examination of  
accused.**

If the slightest case even of suspicion be made out against the accused, he should be asked by the justice if he has any thing to say against the charge. He should not be put on his oath. 1 *Hale*, 585; 2 *Hale*, 52, 120, 284; *Bull. N. P.* 284; 2 *Hawk. c.* 46, s. 87. Where the examination of a prisoner before the magistrate purports to have been taken on oath, no evidence on the trial is admissible to show that in fact the examination was not on oath (b).

A prisoner, when taken on suspicion before a magistrate, is to be allowed to speak voluntarily, and give his account freely; and he ought not to be pressed to answer, examined, or questioned by the magistrate like a common witness: and in *R. v. Wilson*, *Holt's N. P. C.*, 597, when a person had been so examined, his account was rejected by *Richards*, C. B., as inadmissible, though nothing like a threat or promise had been used. 1 *Phill. Ev.* 106.

If the offender, upon his examination before the justice of the peace, shall

(a) *Et per Bayley, J.* "The facts found in this case do not raise the question first submitted to our consideration, and therefore I shall studiously forbear giving any opinion upon that point. The question then is, whether the warrant of commitment given in evidence, or even the facts proved, dehoes the commitment, show a sufficient cause for the imprisonment. At all events, before the commitment could be justified, it must distinctly appear that the party committed was apprised that there was some person under charge, against whom his evidence was required to be given. Now there is nothing either in or out of the warrant to enable me to say that there had been an information upon oath, or any person charged before the magistrate, so as to render it necessary that the plaintiff should be examined as a witness. The parole evidence upon this subject is very unsatisfactory; and on reading the warrant, I cannot collect that there had been an information on oath before the magistrate against any particular person under charge, for it contains merely a general assertion that the plaintiff was committed

for refusing to give evidence touching a certain riot and disturbance committed. I am therefore of opinion that the defendant has not made out a sufficient justification of the alleged trespass."

(b) *R. v. Smith and Hornage*, *York Spring Ass.* 1816; 1 *Stark. N. P.* 242. This was an indictment for sacrilege alleged to have been committed in Sheffield church. The prosecutors tendered in evidence the examination of Hornage before the magistrate previous to his commitment. This was written under the following words, which, except as to the name, were printed:—"The examination of — Hornage, taken on oath before me," &c., and was undersigned by the magistrate. Upon the objection being taken, the examination was rejected because it purported to have been taken on oath; and *LeBlanc, J.*, would not permit a witness to be examined for the purpose of showing that no oath had in fact been administered to the prisoner, saying that he could not allow that which had been sent in under the hand of a magistrate to be disputed.

\* The Lord Chief Justice, though present, gave no opinion.

confess the matter, it shall not be amiss that he subscribe his name or mark to it. *Dalt.* c. 164.

The examination of the prisoner, when reduced into writing, ought to be read over to him, and tendered to him for his signature: it ought to be subscribed also by the magistrate. See the 7 Geo. IV., c. 64, s. 2, *infra*. The signature, however, of the prisoner is not essentially necessary, but only for precaution and for the facility of future proof. In *Lambe's case*, 2 *Leach*, C. C. 625, it was held, that a written examination containing the prisoner's confession, taken by a committing magistrate, and read over to the prisoner, who admitted it to be true, but refused to sign it, would have been evidence at common law, and was not rendered inadmissible by any provision in *stata*. 1 & 2 and 2 & 3 *Ph. & M.* In this case the examination was rendered admissible by the prisoner acknowledging the truth of its contents; but if the prisoner had not made such admission, and had refused to sign it after it had been read over to him, it could not have been received in evidence. *R. v. Telicote*, 1 *Stark. C. N. P.* 483. 1 *Phil. Evid.* 115. 7 ed. Whether he be silent or not, it is best that the justice should put down in writing the facts exactly as they take place before him. See further as to this, *infra*, and as to the form, *post*, 104. (No. 3.)

See further as to confessions of the accused, and the care to be adopted by justices in taking and regarding them. *Confession*, Vol. I.

The accused may, if he choose, call witnesses, and they may be examined on oath, like the witnesses against him—*Dalt.* c. 165; and their examination should be put into writing, like the rest, 4 *Bla. Com.* 360.

If more than one person be accused, each of them should be examined apart from the rest, in order that an opportunity may be afforded of detecting any variations in their story. 1 *Chit. C. L.* 83.

OF ACCUSED  
PARTY.

His signature.

Witnesses.

Several offenders.

## VI. Taking down Examination in Writing.

By the 7 Geo. IV. c. 64, s. 2—reciting “it is expedient to amend and extend the provisions of two acts, the first passed in the first and second years of the reign of King Philip and Queen Mary, entitled ‘An act appointing an order to justices of peace for the bailment of prisoners,’ and the second passed in the second and third years of the same reign, entitled ‘An act to take examination of prisoners suspected of manslaughter or felony’”—it is enacted, “that the two justices of the peace, before they shall admit to bail, and the justice or justices, before he or they shall commit to prison, any person arrested for *felony*, or on *suspicion of felony*, shall take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing; and the two justices shall certify such bailment in writing; and every such justice shall have authority to bind, by recognizance, all such persons as know or declare any thing material touching any such felony, or suspicion of felony, to appear at the next court of oyer and terminer, or gaol delivery, or superior criminal court of a county palatine, or great session or sessions of the peace, at which the trial thereof is intended to be, then and there to prosecute, or give evidence against the party accused; and such justices and justice respectively shall subscribe all such examinations, informations, bailments, and recognizances, and deliver, or cause the same to be delivered, to the proper officer of the Court in which the trial is to be, before or at the opening of the Court.”

Sect. 3 enacts, “that every justice of the peace before whom any person shall be taken on a charge of *misdemeanor*, or *suspicion thereof*, shall take the examination of the person charged, and the information upon oath of

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Examination to be put into writing, &c. before bailing or committing in felonies.

7 Geo. 4, c. 64.

Power to bind by recognizance, &c.

Examinations, &c. to be delivered to the court.

Examinations on charges of misdemeanor.

TAKING DOWN  
IN WRITING.

7 Geo. 4, c. 64.

those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison or require bail from the person so charged; and in every case of bailment shall certify the bailment in writing, and shall have authority to bind all persons, by recognizance, to appear to prosecute, or give evidence against, the party accused, in like manner as in cases of felony; and shall subscribe all examinations, informations, bailments, and recognizances, deliver, or cause the same to be delivered, to the proper officer of the Court in which the trial is to be, before or at the opening of the Court, in like manner as in cases of felony."

Sect. 4 relates to proceedings before coroners; see *Coroner*, Vol. I. 878.

Penalty on justices  
and coroners.

Sect. 5 enacts, "that if any justice or coroner shall offend in any thing contrary to the true intent and meaning of these provisions, the Court, to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition, ought to have been delivered, shall, upon examination and proof of the offence, in a summary manner, set such fine upon every such justice or coroner as the Court shall think meet."

Provisions to ap-  
ply to all justices  
and coroners.

Sect. 6 enacts, "that all these provisions relating to justices and coroners shall apply to the justices and coroners not only of counties at large, but also of all other jurisdictions."

Observations.  
Enactments.

*Observations thereon*—We have before had occasion to notice these provisions, *ante*, 53. The statute wholly repeals the statutes 1 & 2 Ph. & M. c. 13, and 2 & 3 Ph. & M. c. 10. No variation is made by these provisions in the law as it previously stood, as it regarded the taking down the examinations of witnesses and the accused in cases of *felony*; but in cases of *misdemeanor* it is otherwise, the new law placing the examinations respecting them on the same footing as those in *felony*. By the old law, the justice was not bound to take any examinations in writing in cases of *misdemeanor*. *R. v. Paine*, 1 Salk. 281; 1 Ld. Raym. 729; and 1 Burn J., 24 ed. 1004—5.

Depositions, how  
to be taken.

*Depositions, how to be taken*—The depositions should be taken down in writing in the very words used by the witness, or as near as possible in those words, and not in any law technicalities, or words not made use of by him. In almost all cases it would be infinitely better if the depositions were taken in the first person, and that if, after the introductory part, which generally concludes with the words "who saith as follows," the deposition proceeded to state, "I saw, &c., at such a time and place," instead of saying "he, this examinant," and "he, this deponent"—terms which many witnesses do not understand, and perhaps may conceive to mean some other person. *Car. C. L.* 13.

Only so much as is material need be taken down. See the words of the statute, *ante*, 97.

Great care should be observed in drawing up the formal parts of the depositions. Great numbers have of late been returned to the judges at assizes, which could not be admitted in evidence if the parties examined were dead, on account of formal errors.

The formal mode of taking down the examination is usually as follows: "The examination of A. B. of, &c., taken on oath, &c." But if the original information and evidence taken before the warrant was issued contain a complete case, it is the practice, after reswearing the accuser and witnesses, to read over their former depositions in their presence and that of the prisoner, and then to state to the latter that he is at liberty to ask the prosecutor and witnesses any questions respecting the charge against him; and, if he declines so doing, the examinations are not again gone over, but a fresh jurat is made to them; and this even before a fresh magistrate. The papers are then to be signed by the parties deposing, and also by the justice before whom they are taken; but these formalities

### VIII.] *Obstructing examination. Remanding accused.*

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are not absolutely requisite. 1 *Leach*, 458; 2 *Leach*, 854; 1 *Chit. C. L.* 80. The depositions at the police-office, Bow-street, are generally taken in a book, and, when completed, a fair copy is made while the parties wait, and then all of them, as well as the magistrate, again authenticate them by their signature. 1 *Chit. C. L.* 80.

TAKING DOWN  
IN WRITING.

The magistrate is to put all proper questions to the prisoner, taking down his statement in writing as he proceeds, and, after closing his examination, should read over the whole, and ask him if it be true; and if it contain any admission, should then require him to sign it, and should sign it himself. *Dalt. J.*, 164. And an examination thus taken may be given in evidence against the prisoner on his trial—1 *Hale*, 586—though not against any other persons whom he may have incidentally accused. 2 *Hawk. c.* 46, s. 31 to 34; 1 *Chit. C. L.* 86.

We have already seen how far these depositions and examinations are admissible in evidence, *ante*, 53.

During the whole of the proceedings, it is prudent for the justice to have his clerk or other intelligent person present, in order that no difficulty might arise in proving the identity of the deposition in case of a refusal to subscribe it by a witness. *Dick, J., Examination*, III.

In *R. v. Reed, M. & M. C. N. P.* 401, it was held, that if the examination of a prisoner, taken in writing, is inadmissible, by reason of irregularity, parol evidence of what he said at the time of the examination may be received. See *R. v. Hollingshead*, 4 *C. & P.* 242, and *notes*.

It is presumed that what is stated on oath before a magistrate is taken down in writing, and therefore parol evidence of such statement is not receivable, unless it be first shown that it was not so taken down. *Phillips v. Wimburn*, 4 *C. & P.* 273.

### VII. *Obstructing the Examination, &c.*

If any person obstructs the examination, or is guilty of any other contempt, by insulting the justice or otherwise, he may be committed by such justice to prison, and may be indicted. See 1 *Str.* 421; 14 *East*, 85; 6 *T. R.* 62, 63, n. *ante*, Vol. I. p. 757: *sed vide Pettit v. Addington*, *Peake, C. N. P.* 62, where Lord Kenyon doubted the justice's power, as he was not sitting except as a ministerial officer. Such a commitment must be in writing—2 *Marsh.* 377; 7 *Taunt.* 63; and for a time certain—*Rex v. James*, 5 *B. & Ald.* 894; 1 *D. & R.* 559. S. C.; and not until he retract, or make a personal submission or apology—14 *East*, 142. As to the justice's power to commit a witness for refusing to be examined, see *Cropper v. Horton*, 4 *D. & R. M. C.* 42, *ante*, 96.

Obstructing the  
examination.

It may be as well to observe, that a prisoner, when examined before a justice on a charge of felony, is not entitled, as of right, to have a person skilled in the law, or any other, present as an advocate on his behalf, it being a preliminary investigation only, and not conclusive on him. *Cor v. Coleridge*, 1 *B. & Cres.* 37; 2 *D. & R.* S. C.; *R. v. Borron*, 3 *B. & Ald.* 432; *Daubney v. Cooper*, 10 *B. & Cres.* 237, reported fully, *ante*, *Constitution*, Vol. I. p. 829.

Right of third  
persons to be  
present.

### VIII. *Remanding Accused for further Examination.*

The justice should take and complete the examination of all concerned, and discharge or commit the accused for trial as soon as the nature of the case will permit him—*Fortes.* 142, 143: but he is in all cases allowed a reasonable time for this purpose before he makes his final decision.

Remanding ac-  
cused for further  
examination.

There can be no doubt a magistrate may commit for re-examination. *Davis v. Capper*, 10 *B. & Cres.* 32. But the magistrate should take care that he commits for *re-examination*, and not for the purpose of extorting a confession, or the like.

Power to commit

REMANDING  
ACCUSED.

## Form of detainer.

If by some reasonable occasion, as the absence of a witness or the like, the justice cannot at the return of the warrant take the examination, he may by word of mouth command the constable or any other person to detain in custody the prisoner till the next day, and then to bring him before the justice for further examination. And this detainer is justifiable by the constable or any other person, without showing the particular cause for which he was to be examined, or any warrant in writing. 1 *Hale*, 585; 2 *Hale*, 120: and see *Davis v. Capper*, 10 *B. & Cres.* 32.

## Time of detainer.

Where, however, the detainer is for a long time, there had better be a warrant, in writing, for that purpose. See form, *post*. (No. 4.)

The time of the detainer must be no longer than is necessary for such purpose; and the magistrate ought not arbitrarily to commit the party. *Davis v. Capper*, 10 *B. & Cres.* 28. In *Scavage v. Tateham*, it was holden that a party could not be detained sixteen days; and it was there said that the space of three days is a reasonable time. *Cro. Eliz.* 829; 2 *Hawk.* c. 16, s. 12. See the case of *Kendal & Roe*, 12 *Howell's St. Tri.* 1376. But there is evidently no precise limitation of the time: all that is to be regarded is, whether the time be *reasonable*, which is a question of law and fact, and must depend on the circumstances of each particular case; and in the practice of the best-regulated police-offices, there are many instances of prisoners being detained much more than twenty days, between their first being brought before a justice and their commitment for trial, and being brought up for examination several different days during the interval. *Dick, J., Examination; Arbuckle v. Taylor*, 3 *Dow*, 184; *Davis v. Capper*, 10 *B. & Cres.* 28. *Rex v. Gooding*, 1 *Burn, J.* 24 *ed.* 1001 *n.* (a)

(a) Mr. Justice *Park*, in his charge to the grand jury at Monmouth summer assizes, 1823, said, "You are here assembled as grand jurors, though many of you are magistrates, and through you I must address what I am about to say to magistrates in general. There has been a great irregularity in the commitment of the man in the borough gaol charged with horse-stealing. It is the duty of those who administer justice never to neglect the petitions of the poor; and I received a letter purporting to be signed by this prisoner, stating and complaining that he had been committed on the 27th of May last for further examination, that he never had been further examined, and that he never had been, up to that time (the 26th July), committed for trial! I took for granted it was like many of those letters which persons in my situation often receive; but when the calendar was presented to me on Tuesday morning, at Hereford, I then found he was, on the 30th July, committed for trial; a period of two calendar months and three days after he was first examined! I received from a magistrate of the borough, this morning, an account of various proceedings, and probably satisfactory reasons could be given for this delay, and it is not to find fault with this that I mention it. I do it as a matter of caution to all magistrates, and to state what I conceive to be the

law on the subject. That a magistrate may commit for further examination there can be no doubt, because it is not always that the witnesses can be brought forward in the first instance, or the matter may not be ripe for trial; but the further and absolute commitment must be in a reasonable time. What is a reasonable time is a mixed question of law and fact, which those who are to exercise a judgment upon it must decide at the time, but, generally speaking, and without exception almost, two whole months cannot be a reasonable time. A magistrate ought as speedily as possible to make all inquiry. I state that with the greatest confidence, because I can state it on the authority of the twelve judges of England; for a case was submitted to us about two years ago, by H. M.'s command, in which that point incidentally came under consideration; and the judges were of opinion, that a further commitment could only be for a reasonable time, and that the jury must have found the commitment to be only for a reasonable time, otherwise the man would have been acquitted. It is distressing to see in the calendar of so respectable a county a commitment of this description, and that a man committed on the 27th of May, 1823, for further examination, should not have been further examined until the 30th of July following." 1 *Burn, J.* 24 *ed.* 1008.

If the examination do not take place in a reasonable time, an action might lie against the justice. *Per Lord Eldon, C., in Arbuckle v. Taylor*, 3 *Dow's Rep.* 184:—"What is a reasonable time may be difficult to say; whether one, two, three, four, or five days; for what may be reasonable time in one case may not be so in another: but a magistrate is bound to terminate his commitment for further examination in a reasonable time; and I cannot entertain a doubt that an action might be maintained against a magistrate for committing for further examination, if his view and purpose in so doing were to put the party under the same hardship and oppression as would belong to a commitment for custody in order to trial." And in the late case of *Davis v. Capper*, 10 *B. & Cres.* 28, it was fully settled that trespass would lie against a magistrate for committing a party charged with felony for re-examination for an unreasonable time, though without any improper motive.

It also appears, from that case, that a warrant of commitment for an unreasonable time is wholly void.

It would be as well further to observe, that commitments for further examination stand upon grounds and principles different from commitments for custody in order for trial, which we have already noticed, *ante*, Commitment for safe Custody, Vol. I. See 3 *Dow's Rep.* 183. "A commitment for further examination is not a proceeding *against* the party, but a proceeding for his benefit. It is a proceeding with a view to protect him, against a commitment for trial, if, during a reasonable time for examination, it can be found there is no ground upon which there ought to be a commitment for custody in order to trial. And if you were to say, that where a party is committed for further examination bail shall be required before that further examination takes place, you put him to this inconvenience, that he must give security to stand a trial which he may never have to stand."—*Per Lord Eldon, C., 3 Dow.* 183, 184. A commitment for further examination must not be made use of as a commitment for custody in order to trial.—*Id.*

It has been said that the magistrate ought not to detain him in prison in his own house, but should send him to the common gaol of the county; for otherwise, when the justices come to deliver the gaol, he is not in the gaol, and may not be delivered, and so shall lie longer than is reasonable. *Cro. Eliz.* 830. But according to other authorities, because it may be unreasonable to take the information and examinations presently, or possibly it may take longer time, the prisoner may be continued in the custody of the officer, or may be detained in the justice's house, or committed to some near safe place of custody till the final examinations can be completed. 2 *Hale*, 120; 1 *Hale*, 585; *Moore*, 408; 1 *Chit. C. L.* 74; *Davis v. Capper*, 10 *B. & Cres.* 32.

REMANDING  
ACCUSED.

Nature of commitments for further examination.

Place of detention.

## IX. Discharging Accused.

If he be charged with suspicion only of felony, yet if there be no felony at all proved to be committed, or if the fact charged as a felony be in truth no felony in point of law, the justice of peace may discharge him; as if a man be charged with felony for stealing of a parcel of the freehold, or for carrying away what was delivered him, and such like, for which, though there may be cause to bind him over for a trespass, the justice may discharge him as to felony, because it is not felony. 2 *Hale*, 121; *Pult.* 146, b.

But if there be an express charge of felony, on oath, against the prisoner, though his guilt appear doubtful, the justice cannot wholly discharge him, but must bail or commit him; and it is said, that if a person be killed by another, though it be *per infortunium* or even *se defendendo*, which is not properly felony, yet the justice ought not to discharge him, for he must

When magistrate may discharge accused.

When he must bail or commit.

DISCHARGING  
ACCUSED.

undergo his trial, and therefore must be sent to prison, or admitted to bail. 2 *Hale*, 121; 1 *Hawk.* c. 29, 2 *id.* c. 15; *Dalt.*, J., 164: *sed vid. Dick.*, J., *Commitment*, II. n. a. And, in modern practice, though exculpatory evidence is received at the instance of the prisoner, and certified with the other depositions, unless it appear in the clearest manner that the charge is malicious, as well as groundless, it is not usual for the magistrate to discharge him, even when he believes him to be altogether innocent. 1 *Chit. C. L.* 89.

The same observations will, for the most part, apply as to discharging a party accused of a misdemeanor.

## X. Bailing, or committing the Accused.

Bailing or committing accused.

As to bailing or committing the accused, see *Bail*, Vol. I., *Commitment*, Vol. I.

## XI. Recognizance to prosecute and give Evidence.

Recognizance to prosecute and give evidence.

When the justice has decided upon bailing or committing the accused, he should take the recognizance of the prosecutor to prosecute, as also the recognizance of the material witnesses to appear against the party accused at the next court of oyer and terminer or gaol delivery, or superior criminal court of a county palatine, or great sessions, or sessions of the peace, as the case may require. *Dalt.*, J., c. 164. The words of the 7 Geo. IV., c. 64, s. 2 & 3, *ante*, expressly give the justice power to do so. If more than one are to be bound to prosecute, the recognizances should not be taken separately. Where goods above the value have been obtained by false pretences, the recognizance to prosecute should be in double the value of the goods. 30 Geo. II., c. 24, s. 2.

Infants and married women.

Infants and married women, who cannot legally bind themselves, must procure others to be bound for them. Infancy, however, is no ground for discharging a forfeited recognizance to appear and prosecute for a felony. 13 *Price*, 673.

Refusing to give evidence.

If the prosecutor or witness refuse to give such recognizance, the magistrate has power to commit him, this being virtually included in his commission, and by necessary consequence upon the above-mentioned statute 7 Geo. IV., c. 64, s. 2 & 3; 3 *M. & S.* 1; 1 *Hale*, 586; 2 *Hale*, 121, 282; 2 *Hawk.* c. 8, s. 58; and *Cropper v. Horton*, 4 *D. & R. M. C.* 42, *ante*, 96. This doctrine was confirmed in a late case, where a married woman refused to enter into a recognizance for her appearance at sessions to give evidence against a felon, and the magistrate committed her, and the Court of King's Bench held that the commitment was legal. *Bennett v. Watson*, 3 *M. & S.* 1, *ante*, 96. But a justice of the peace is not authorised by law to commit a witness willing to enter into a recognizance for his appearance, to give evidence against an offender, merely because such witness is unable to find a surety to join him in such recognizance; nor ought the justice to require such surety: the party's own recognizance (at the peril of commitment) is all that ought to be required. *Per Graham, B., Bodmin Summer Assizes*, 1817; 1 *Burn J.*, 24 *ed.* 1013.

Form of recognizance.

The party himself need not sign either of these recognizances. *Dalt.*, J., c. 176; *Dick. Sess.* 87.

The recognizance is an obligation of record, as soon as it is taken and acknowledged, although not made up by the justice, and only entered in his book. *Dalt.*, J., c. 168; *post*, *Recognizance*, Vol. V.

The recognizance is afterwards drawn up on parchment, and subscribed by the justice before whom it is taken. The 7 Geo. IV., c. 64, s. 2 & 3, *ante*, 97, requires such subscription by the justice.

As to estreating the recognizances, see, *post*, *Fines and Recognizances*, Vol. II.

## XII. *How Examinations, &c. to be kept, and Right of Party to have Copies, &c.*

The justice should take due care over the examinations, information, and recognizances, until they be delivered over to the proper officer, in pursuance of the 7 Geo. IV., c. 64, s. 2 & 3, *ante*, 97. It is discretionary for him to let any one, not properly authorised, see them: even the party accused has no right to demand a copy of the depositions, though in cases of treason or felony he must be put in possession of a list containing the names of the witnesses. *R. v. Holland*, 4 T. R. 691; 1 *Phill. Ev.* 7 ed. 427, 8.

*How examinations, &c. to be kept.  
Right of party to copy of.*

A *mandamus* will not lie to compel a magistrate to produce depositions taken before him on a charge of felony, for the purpose of founding an indictment for perjury against the deponents: the magistrate must be subpoenaed to produce the depositions, which may be read in evidence before the grand jury. In *re one of the justices for the county of Bedford*, 1 *Chit. Rep.* 627. In this case, on a motion for a rule to show cause why a writ of *mandamus* should not be issued, directed to a magistrate for the county of Bedford, commanding him to produce certain depositions taken before him on a charge of felony, in order to enable the party against whom the complaint was made to institute a prosecution against the deponents for perjury—*Abbott, C. J.* said, "This is an application completely without precedent; and as no case is cited in support of it, I see no reason why we should assume a power which it does not appear the law has afforded us, I am not aware of any thing at all analogous to such a motion. We have no power to issue a *mandamus* to a magistrate for any such purpose as that stated at the bar."—*Bayley, J.* "You may subpoena the magistrate before the grand jury; and from hearing the depositions taken before him read, the grand jury may make a presentment." *Rule refused.*

*Compelling parties to produce depositions.*

But in the case of *R. v. Smith*, 1 *Stra.* 126, a rule was granted, after time had been taken to deliberate, to compel a justice of the peace to cause an examination taken before him to be produced at the trial, and to give the party a copy in the mean time: and in *Welch v. Richards, Barnes*, 468, in an action for a malicious prosecution, a rule was obtained for the committing magistrate to show cause why he should not permit the plaintiff to inspect and take a copy of the information at his own expense, and cause the original information to be produced at the trial; and after cause shown, the rule was made absolute on the authority of the case in 1 *Stra.* 126.

And where the plaintiff, in an action on a deed, has had the same taken from him under a warrant against him for a felony, the Court will, on an affidavit of demand upon the magistrate and constable, direct them to give plaintiff a copy to declare on, and to produce the deed on the trial, the plaintiff undertaking to pay the expenses. *Harris v. Aldrit*, 2 *Chit. Rep.* 229.

## XIII. *Certifying the Examinations, &c.*

The 7 Geo. IV., c. 64, s. 2 & 3, *ante*, 97, requires the justice to subscribe the examinations, information, and recognizances, and deliver, or cause to be delivered, the same to the proper officer of the Court in which the trial is to be before or at the opening of the Court.

Formerly the justice used personally to attend with the informations, in order to certify them; but now they are handed over by the clerk of the justices to the clerk of the peace or assizes.

*Certifying examinations, &c.*



## XIV. Forms.

## No. 1.

General form of oath to be administered to witnesses. (a)

Deposition of a witness.

*"You shall true answer make to all such questions as shall be demanded of you; so help you God."*

## No. 2.

\_\_\_\_\_, to wit. The examination of C. D., of \_\_\_\_\_, labourer, taken on oath this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, before me, J. P., one of [or us, &c.] His Majesty's justices of the peace in and for the county aforesaid, in the presence and hearing of A. B., charged this day before me [or us], the said justice, for that he the said A. B., on, &c., at, &c., [describing the offence generally, as in a warrant or commitment. See the various titles of offences].

Which said C. D. saith as follows: I saw, &c. [stating the deposition of the witness, as nearly as possible in the very words he uses. See ante, 98. Then let him subscribe his name to the deposition, if he will do so; but such subscription is not absolutely requisite. Ante, 97].

Taken before me [or us], the day and year above mentioned.

J. P.

## No. 3.

Examination of accused.

\_\_\_\_\_, to wit. The examination of A. B., of \_\_\_\_\_, labourer, taken this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, before me, J. P. esquire, one of [or us, &c.], His Majesty's justices of the peace in and for the county aforesaid:

The said A. B. being charged before me [or us], the said justice, on the oath of C. D., of, &c. for that he the said A. B., on, &c., at, &c., [describing the offence generally, as in a warrant or commitment]: Upon his examination now taken before me, saith, &c. [stating what the accused says, as nearly as possible in the very words he uses.]

If the accused be silent, or declines saying any thing in his behalf, the examination, after stating the offence with which the party is charged, as above, should proceed thus: "And the witnesses against the said A. B., being examined in his presence, the said A. B. is now asked by me if he wish to say any thing in his own behalf; whereupon the said A. B. answereth nothing, or saith," [stating what the accused may say, as nearly as possible in the very words he uses. Get him to sign the examination, if he will do so.]

Taken before me, the day and year above mentioned.

J. P.

## No. 4.

Summons of a witness. (b)

\_\_\_\_\_. To the constable of \_\_\_\_\_ Whereas information hath been made before me, J. P., esquire, one of His Majesty's justices of the peace for the said county, that A. D., late of \_\_\_\_\_, in the county aforesaid, on, &c., at, &c., [describing the offence generally, as in a warrant or commitment]: and that C. D., of, &c. is a material witness to be examined concerning the same: These are therefore to require you to summon the said C. D. to appear before me, at \_\_\_\_\_, in the said county, on the \_\_\_\_\_ day of \_\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon of the same day, to testify his knowledge concerning the premises. Herein fail you not. Given under my hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_

J. P.

(a) See ante, 98.

(b) As to this summons, see ante, 95.

## No. 5.

## FORMS.

*J. P., esquire, one of His Majesty's justices of the peace for the said county, to the constable of \_\_\_\_\_, in the said county, and to the keeper of the [common gaol] at \_\_\_\_\_, in the said county:*

Commitment for further examination. (a)

*These are to command you the said constable, in His said Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of A. B., charged this day before me, the said justice, on the oath of C. D., on suspicion that he the said A. B. on, &c., at, &c., [describing the offence generally, as in the warrant for apprehension]: but inasmuch as E. F., a material and necessary witness against the said A. B., resides at \_\_\_\_\_, a distance of \_\_\_\_\_ miles from the said dwelling-house of the said C. D., [or as the case may be], and he the said C. D. hath not been able to procure the attendance of the said E. F., but will use his best endeavour to do so on the \_\_\_\_\_ day of \_\_\_\_\_ instant: you the said keeper are hereby required to receive the said A. B. into your custody in the said common gaol until \_\_\_\_\_ next, the \_\_\_\_\_ day of \_\_\_\_\_ instant, when you are hereby required to bring the said A. B. before me at \_\_\_\_\_, in the said county, or before such others of His Majesty's justices of the peace for the said county as shall be then and there present, to be re-examined and further dealt with according to law. Herein fail you not. Given under my hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord*

*J. P.*

## No. 6.

County of \_\_\_\_\_ } *Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of \_\_\_\_\_, A. I., of \_\_\_\_\_, in the said county, yeoman, to wit. \_\_\_\_\_ personally came before me, H. C., doctor of laws, one of the justices of our said Lord the King, assigned to keep the peace in and for the said county, and acknowledged himself to owe to our said Lord the King the sum of \_\_\_\_\_ of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lord the King, his heirs and successors, if he the said A. I. shall fail in the condition indorsed. H. C.*

Recognizance to prefer a bill of indictment, and give evidence.

*The condition of the within-written recognizance is such, that whereas one A. O., late of \_\_\_\_\_, was this present day brought before the justice within-mentioned by the within-bounden A. I., and was by him charged with [the felonious taking and carrying away \_\_\_\_\_ of the goods of him the said A. I.], and thereupon was committed by the said justice to the common gaol in and for the said county: if, therefore, he the said A. I. shall and do, at the next [general] quarter sessions of the peace [or, gaol delivery], to be holden in and for the said county, prefer, or cause to be preferred, one bill of indictment of the said [felony] against the said A. O., and shall then also give evidence there concerning the same, as well to the jurors that shall then inquire of the said [felony], as also to them that shall pass upon the trial of the said A. O., that then the said recognizance to be void, or else to stand in full force for the King.*

## No. 7.

County of \_\_\_\_\_ } *Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of \_\_\_\_\_, A. W., of \_\_\_\_\_, in the said county, yeoman, to wit. \_\_\_\_\_ did come before me, H. C., doctor of laws, one of the justices of our said Lord the King, assigned to keep the peace in and for the said county, and did acknowledge himself to owe to our said Lord the King the sum of [ten] pounds of lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lord the King, his heirs and successors, if he the said A. W. shall fail in the condition hereon indorsed [or, underwritten, as the case may be.]*

Recognizance to give evidence.

*The condition of the within-written [or, above-written] recognizance is such,*

(a) See ante, 99, 100, as to this.

## FORMS.

*that if the within [or, above] bounden A. W. shall personally appear at the next [general] quarter sessions of the peace [or, gaol delivery], to be holden at in and for the said county, and then and there give such evidence as he knoweth, upon a bill of indictment to be exhibited by A. I. of, &c., [ycoman,] to the grand jury, against A. O., late of, &c., [labourer,] for [feloniously stealing, &c., the property of the said A. I.]; and in case the said bill be found a true bill, then, if the said A. W. shall then and there give evidence to the jurors that shall pass on the trial of the said A. O., upon the said bill of indictment, and not depart thence without leave of the Court; then this recognizance to be void, or else remain in its full force.*

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**Exceptions, Bill of, see ante, 92. Statement of, in Information and Conviction, see Conviction, Vol. I. p. 824. Statement of, in Indictment, see Indictment, Vol. III. 346. Proof of, see ante, 21.**

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**Exchequer Bills. See Larceny, Vol. III. 569., Forgery, Vol. II. p. 833.**

## Excise and Customs.\*

Customs and  
Excise defined.

THE *Customs* are duties payable on merchandize brought into or carried out of the country, or carried coastwise. The *Excise* duties, on the other hand, are an *inland* imposition, and are imposed sometimes on the manufacturer or dealer, sometimes on the commodity itself, or the retail sale.

The *Custom* duties, which are paid on the first introduction of goods into the country, are liable to objection on that account, as the merchant is obliged to charge in the price of the commodity, not only the tax itself, but also a commercial profit on such tax, and the advance of his money in paying the same; and when the goods have to pass through the hands of various dealers, the accumulated profits on the tax may exceed the amount of the tax itself. (a)

The *Excise* duties fall more lightly on the consumer than *Custom* duties to the same amount, because they are generally paid in a much later stage. The expense of collecting them is also easier: but the *frauds* to which this branch of the revenue is exposed have occasioned it to be protected by provisions which some have considered too rigorous and inquisitorial for the temper of a free nation. The frauds that might be committed, unless a strict watch was kept, have made it necessary to give the *Excise-officers* a power to enter and search the houses of persons who deal in excisable commodities, at any hour of the day, and, in many cases, of the night; and the proceedings for a transgression against the law are so summary and expeditious, that a person may be convicted within a very short time in a very large penalty, by two commissioners or justices of the peace, to the total exclusion of the trial by jury and disregard of the common law. The regulations of the *Excise*, however, are not without advantages ulterior to the production of revenue, inasmuch as they are the means of preserving some species of goods from adulteration, which might be highly prejudicial to the health of the community. The imposition of heavy duties on articles which may be called the necessities of life, as on salt, leather, soap, and candles, or on manufactured goods, is liable to objection on account of the influence of such a measure in depress-

\* In all the former editions of this work, these subjects have been considered together, because the laws of the Customs and Excise, so far as justices, constables, and other peace officers are concerned, are in some measure connected and interwoven with each other; and though a better arrangement might be adopted, the editor of this edition thinks it is more convenient to adhere to the same order.

For the *History and particulars* of the laws of the Customs and Excise antecedent to the recent enactments, and for the decisions thereon, many of which are applicable to the existing law, see 3 *Chitty's*

*Commercial Law*, 690 to 847; *Tucker on Trade*, 38; 2 *Sinclair on Revenue*, 358 to 411; 3 *Smith's Wealth of Nations*, b. 5, a. 2, p. 347; 1 *Bla. Com.* 313 to 320; *Highmore on Excise*, vol. I.; *Pope's Laws of Customs and Excise*; *Bac. Ab. Smuggling*, A; *Com. Dig. Trade*; *Paley on Convictions*, 2 ed. And see all the statutes at length in *Chitty's Coll. Stat. tit. Customs and Excise*, vol. II.

(a) *Tucker on Trade*, 38, 124. But the method of bonding and warehousing goods has, in a great measure, removed this objection.

## DEFINITION.

ing trade and industry, and the interest of manufacturers seems also to require that the *importation* of foreign raw materials should be preserved, as much as possible, unencumbered with duty. (a) The duties on *importation* constitute, at the present day, the principal branch of those that are levied under the name of Customs, and the goods which are charged with duties on *exportation* are comparatively few. (b) Formerly, indeed, duties were imposed on the exportation of almost every commodity, under an idea that such duties were not paid by the natives, but by the foreign merchant: but this opinion is now exploded. Experience has proved that foreign nations will not give beyond a certain price for any commodity whatever; and that, by taxing goods exported, we should either force them to give up the consumption, or to trade with other places for a supply. (c) The duties on goods carried *coastwise* are imposed principally on three commodities; namely, coals, slate, and stone. (d) Indeed, it is one of the principal advantages of the uniform system of taxation, which, with a few exceptions of no great consequence, takes place in all the different parts of the united kingdom, that it leaves the *interior* commerce of the country, the *inland* and *coasting* trade, almost entirely free. The inland trade is almost perfectly free, and the greater part of goods may be conveyed from one end of the kingdom to the other without having occasion for a permit or licence, and without being subject to any question, visit, or examination, from the revenue-officers. There are a few exceptions, but they are such as can give no interruption to any important branch of the inland commerce of the country. Goods carried coastwise indeed, in general, require certificates or coast cockets. But, except coals, slate, and stone, such goods are in general duty free. This freedom of interior commerce, which is the effect of the uniformity of the system of taxation, is highly important in its influence on the prosperity of the kingdom, as every great country is necessarily the best and most extensive market for the greater part of the productions of its own industry. (e) We will consider so much of laws affecting the Customs and Excise as practically interest the public in general, and magistrates and peace-officers in particular, under the two following heads and appropriate subdivisions, viz.:

## I. Of the Customs, 108 to 224.

## II. Of the Excise, 224 to 730.

(a) See *Tucker on Trade*, 38; 2 *Sinclair on the Revenue*, 358 to 411; 3 *Smith's Wealth of Nations*, b. 5, c. 2, p. 347, &c.; 1 *Bla. Com.* 313 to 320; *Highmore on Excise*, vol. I.; *Preliminary Observations on Revenue*.

(b) See the 7 Geo. IV., c. 111, Schedules.

(c) 2 *Sinclair*, 360; and see as to coals carried coastwise, 2 *Sinclair*, 361; *Smith's Wealth of Nations*, b. 5, c. 2; *Highmore on Excise*, introduction.

(d) See 7 Geo. IV., c. 111, Schedules.

(e) *Smith's Wealth of Nations*, b. 4, c. 5; 2 *Sinclair*, 361.

## I. Of the Customs.

BEFORE the year 1787, the multiplicity of enactments relative to the Customs created the greatest difficulty and confusion. These inconveniences were first remedied by the statute introduced in that year by Mr. Pitt, called the Customs Consolidation Act, viz. 27 Geo. III., c. 13, followed by several other acts, and lastly by the 59 Geo. III., c. 52; but at length the present admirable system of legislation was introduced, and all the prior enactments were repealed by the 6 Geo. IV., c. 105, and new duties and regulations were introduced by several other acts of the same sessions, and which were altered by subsequent acts, (a) viz.:

The present law in general, and acts relating thereto.

- 6 Geo. IV., c. 105, An act to repeal the several laws relating to the Customs.
- c. 106, An act for the *management* of Customs.
- c. 107, An act for the general *regulation* of the Customs.
- c. 108, An act for the *prevention* of *smuggling*.
- c. 109, An act for the encouragement of *British shipping*.
- c. 110, An act for the registering *British vessels* (see title *Ships*), and see further 10 Geo. IV., c. 43, s. 12.
- c. 111, An act for granting *duties of Customs*.
- c. 112, An act for the *warehousing* of goods.
- c. 113, An act to grant certain *bounties* and allowances of Customs.
- c. 114, An act to regulate the trade of the British possessions abroad.
- c. 115, An act for regulating the trade of the *Isle of Man*.
- c. 116, An act for regulating vessels carrying *passengers* to foreign parts.
- 7 Geo. IV., c. 48, An act to alter and amend the several laws relating to the Customs.
- c. 53, An act to regulate the importation of silk goods until the tenth day of October, 1828, and to encourage the silk-manufactures by the repeal of certain duties.
- 7 & 8 Geo. IV., c. 56, An act to amend the laws relating to the Customs.
- 9 Geo. IV., c. 25, An act to authorise the appointment of persons to act as solicitors, on behalf of His Majesty, in any court or jurisdiction in revenue matters.
- c. 60, An act to amend the laws relating to the importation of corn.
- c. 76, An act to amend the laws relating to the Customs.
- 10 Geo. IV., c. 23, An act to impose duties on the importation of silk and silk goods, and to allow drawbacks on the exportation thereof.
- c. 43, An act to amend the laws relating to the Customs.
- 11 Geo. IV., c. 1, An act for the relief of parishes from the expense of maintaining the wives and families of men convicted under the laws for the prevention of smuggling, and sentenced to serve His Majesty in his naval service.

It would be beyond the limits of a work of this nature to particularize every part of these enactments. (b) It will be found, however, that those which fall within the jurisdiction of justices of the peace, and the inferior peace-officers, and which interest the public in general, are fully stated. The subject is arranged under the following heads:

(a) There are some regulations in the Excise act, 7 & 8 Geo. IV. c. 53, which might with propriety be extended to the Customs.

(b) See the acts, collected and printed at length, in 2 *Chitty's Col. Stat. tit. Customs*.

## Excise and Customs.

## Division of the Subject.

- I. *Of the Repeal of the former Acts, page 111.*  
[6 Geo. IV., c. 105, and 7 Geo. IV., c. 48.]
- II. *Present Duties of Customs, page 112.*  
[6 Geo. IV., c. 111, and subsequent acts.]
- III. *Management of Customs, page 160 to 174.*  
[6 Geo. IV., c. 106.]
  - (1.) *The Commissioners in the United Kingdom and abroad.*
  - (2.) *The Officers of the Customs, Hours of Attendance, Fees, &c.*
  - (3.) *The Receiver General.*
  - (4.) *The administering Oaths.*
  - (5.) *The Offence of bribing Officers.*
  - (6.) *Seizures.*
  - (7.) *Surveyors General, and the Examination of Witnesses.*
  - (8.) *Commissioners in Ireland.*
  - (9.) *Of Lands and Buildings for the Customs.*
  - (10.) *Of the Signatures of the Lords of the Treasury.*
- IV. *Regulation of Customs, page 174 to 176.*  
[6 Geo. IV., c. 107.]
- V. *Prosecution and Punishment of Smuggling, Seizures, Rewards, &c., page 176 to 197.*  
[6 Geo. IV., c. 108.]
  - (1.) *Regulations as to Vessels and Boats.*
  - (2.) *Licences to Vessels.*
  - (3.) *Forfeitures, Penalties, and Seizures, and by whom to be made.*
  - (4.) *Penalties for Smuggling, &c.*
  - (5.) *Of Felonies against these Laws.*
  - (6.) *Of the Officers, their Protection and Reward.*
- VI. *Proceedings before Justices, &c., page 197 to 207.*  
[6 Geo. IV., c. 108, s. 73.]
- VII. *The Forms of Proceedings prescribed by 207 to 210.*  
[6 Geo. IV., c. 108, Schedule.]
  - (1.) *Information against a Subject of His Majesty.*
  - (2.) *Conviction thereon.*
  - (3.) *Commitment thereon.*
  - (4.) *Distress-Warrant thereon.*
  - (5.) *Information where Offender a Seaman, and fit for Service.*
  - (6.) *Conviction thereon.*
  - (7.) *Commitment to serve in Navy.*
  - (8.) *Information where Offender not a Subject.*

## I. Of the Customs.

111

DIVISION OF  
THE SUBJECT.

- (9.) *Conviction thereon.*
- (10.) *Commitment thereon.*
- (11.) *Information against an Officer of Customs.*

## VIII. The Practice or Course of Proceedings before Magistrates and others, for Penalties, Forfeitures, &c. page 210 to 224.

- (1.) *The Time when Prosecutions must be commenced.*
- (2.) *By whom.*
- (3.) *Against whom.*
- (4.) *Before whom.*
- (5.) *Of the Information and Requisites.*
- (6.) *Of the Process against the Offender.*
- (7.) *When the Offender may be apprehended.*
- (8.) *Proceedings on hearing Information.*

*Proof of Service of Summons.*

*Appearance and Confession.*

*Time for Defence.*

*Evidence against Offender.*

*what to be proved, and what to be preserved.*

*Who are Witnesses.*

*Mode of taking the Evidence.*

*The Defence and Evidence for Defendant.*

*The Judgment and Mitigation of Penalty.*

- (9.) *Forms and Requisites of Conviction.*
- (10.) *Of staying Proceedings by Nolle prosequi.*
- (11.) *Of Execution on the Conviction.*
- (12.) *Of Appeals, Affidavit, and Petition.*
  - 1. *Form of Petition.*
  - 2. *Form of Affidavit in Support thereof.*
  - 3. *Proceedings thereon.*
- (13.) *Removal by Habeas Corpus and Certiorari.*
- (14.) *Liability and Indemnity to Magistrates and Officers.*

## IX. Of Proceedings before Justices under the Registry Act.

[6 Geo. IV., c. 110, and 7 & 8 Geo. IV., c. 56, s. 20. For detention of certificate of register, see 5 Vol. tit. Ships, and see *Bowen v. Fox*, 10 Bar. & Cres. 41.]

## I. Repeal of the former Enactments.

[6 Geo. IV., c. 105, and 7 Geo. IV., c. 48.]

I. Repeal of  
former acts,  
6 Geo. 4, c. 105.

The 6 Geo. IV. c. 105, s. 1, recites, "That the laws of the Customs have become intricate by reason of the great number of the acts relating thereto which have been passed through a long series of years, and that it is therefore highly expedient, for the interests of commerce and the ends of justice, and also for affording convenience and facility to all persons who may be

6 Geo. 4, c. 105.



**REPEAL OF  
FORMER ACTS.**

subject to the operation of those laws, or who may be authorised to act in the execution thereof, *that all the statutes now in force relating to the Customs should be repealed*, and that the purposes for which they have from time to time been made should be secured by new enactments, exhibiting more perspicuously and compendiously the various provisions contained in them :” and the statute then enacts that, “after the 5th July, 1826, so much and such parts of the several statutes thereafter mentioned, made in the parliaments of England and Great Britain respectively, as relate to the *trade and navigation* of this kingdom, or to the *importation and exportation* of goods, wares, and merchandise, or as relate to the *collection* of the revenue of Customs, or prevention of smuggling, as are hereinafter set forth, shall be repealed;” and then, in sections 2 to 387, repeals the provisions in upwards of 380 acts relating to Great Britain, and partly to Ireland; and, in sections 388 to 343, repeals 56 acts relating to Ireland.

7 Geo. 4, c. 48,  
52.

The 7 Geo. IV., c. 48, s. 52, still more explicitly declares the repeal of all the former acts, and after reciting “that it is expedient that no doubt should remain whether any, or what if any, former or other acts, relating in any way to the Customs continue to have any force,” enacts, “that all statutes and acts, and all parts thereof, made in the respective parliaments of England, of Great Britain, of Ireland, and of the united kingdom, relating to the *revenue of Customs*, to navigation, or to the prevention of smuggling, in any part of the British dominions, which were in force on 5th July, 1826, besides the several acts and parts of acts expressly repealed by 6 Geo. IV., c. 105, as hereinbefore amended, by this act shall be, and the same are hereby repealed, save and except such acts and parts of acts as are hereinafter mentioned and described, and declared to be saved and excepted from the effect of *this general repeal*, viz.” &c. The excepted acts are then enumerated, viz.: 18 Geo. III., c. 12; 13 Geo. III., c. 31; 51 Geo. III., c. 47; 59 Geo. III., c. 54; 55 Geo. III., c. 26; 1 & 2 Geo. IV., c. 87; 3 Geo. IV., c. 60; 6 Geo. IV., c. 64; 56 Geo. III., c. 127; 59 Geo. III., c. 69; 4 Geo. IV., c. 77; 5 Geo. IV., c. 1; 4 Geo. IV., c. 80; 4 Geo. IV., c. 88; 55 Geo. III., c. 57; 55 Geo. III., c. 141; and the 5 Geo. IV., c. 64; and all other acts relating to the British and Irish fisheries: and the 6 & 7 W. III., c. 10; 15 Geo. III., c. 27; 31 Geo. III., c. 36; 6 Geo. IV., c. 78; 43 Geo. III., c. 25; 4 Geo. IV., c. 25; and 21 & 22 Geo. III., c. 1.

**II. Duties of  
Customs.**

**II. Present Duties of Customs.**

[6 Geo. IV., c. 111; id. c. 113; 7 Geo. IV., c. 48, c. 53; 7 & 8 Geo. IV., c. 56; 9 Geo. IV., c. 76; 10 Geo. IV., c. 43.]

The *duties of Customs* have been already defined, and distinguished from the duties of *Excise*. (a) They are now known under the denominations of duties of Customs *inwards*, duties of Customs *outwards*, and duties of Customs *coastwise*.

**Importation  
duties.**

The *importation* duties are more numerous than those levied on exportation; and in order to restrain the introduction of goods of *foreign manufacture*, and encourage our own manufactures, they are frequently larger in amount in respect of manufactured goods than on such as are imported in a raw state. As, for instance, the duty on ostrich feathers, when dressed, is 1*l.* 10*s.* the pound; but, if undressed, only 10*s.* (b) The duties imposed on *goods* are not in general demandable upon *wearing-*

(a) *Ante*, 107, 108.

(b) See 6 Geo. IV. c. 111.

*apparel* accompanying the proprietor, and *bonâ fide* part of his baggage, and worn and used, provided such articles do not exceed what may be reasonably allowed, according to the rank of the party in whose baggage the same may be found. (a) So *British-built carriages*, actually in use by passengers, as then travelling, are allowed to pass inwards and outwards without payment of duties, and without entries under the restrictions respecting baggage: (b) and there is an exception in favour of *chintzes*, *calicoes*, &c., from the *East Indies*, actually used and worn; (c) and goods *wrecked* are not to be deemed *imported*, so as to be subject to duty. (d) But *foreign watches* and *fowling-pieces*, whether new or used, must be regularly entered and charged, though part of the baggage of a passenger. (e)

DUTIES OF  
CUSTOMS.

The duties on *exportation* observed are fewer than those on importation of manufactured goods, and are to be regulated by the demands of the foreign consumers; because, if the duty upon a particular article should be too high, they would be induced to dispense with it, or to trade with other places for a supply. The necessity of obtaining purchasers of our produce and manufactures became so apparent in the last century, that all the duties on the exportation of British goods and manufactures were repealed by 8 Geo. I., c. 15, s. 7, with a very few exceptions. But since that time many alterations have been made; and it will be found, at present, that a duty of 10s. is imposed upon every 100l. of the value of goods of the growth, produce, or manufacture, of the united kingdom, with a very few exceptions, exported to any port whatever.

Exportation  
duties.

The duties payable on goods carried *coastwise* from one part of the united kingdom to the other are imposed on coal, culm, and cinders, on slate and on stone, the produce of the united kingdom. These charges may be readily ascertained by a reference to the tables annexed to 6 Geo. IV., c. 111, and subsequent acts presently stated, *post*, 120, &c.

Coastwise duties.

The 6 Geo. IV., c. 111 (entitled "*An act for granting duties of Customs*"), after reciting the repeal of the prior duties by 6 Geo. IV., c. 105, and the expediency of granting other duties of Customs in lieu thereof, enacts, that "after the 5th January, 1826, this statute (6 Geo. IV., c. 111) shall come into full force and operation for granting duties of Customs:" and then

§ G. 4, c. 111.  
imposes duties of  
(Customs, and  
enacts that instead  
of all other duties  
of Customs (with  
certain excep-  
tions), the duties  
and drawbacks  
specified in the  
tables annexed  
shall be paid.

Sect. 2 enacts, that "in lieu of all other duties of Customs (except the duties upon corn, grain, meal, or flour), there shall be raised, levied, collected, and paid unto His Majesty, his heirs and successors, upon goods, wares, and merchandize imported into, or exported from, the united kingdom, or carried coastwise from one port or place in the united kingdom to another port or place in the same, the several duties of Customs, and there shall be allowed the several drawbacks, as the same are respectively inserted, described, and set forth in figures in the tables to that act annexed, and denominated respectively, 'Tables of Duties of Customs inwards,' Tables of Duties of Customs outwards, and 'Tables of Duties of Customs coastwise.'"

Sect. 4 enacts, "that the duties and drawbacks by this act imposed and allowed shall be under the management of the Commissioners of His Majesty's customs; and shall be ascertained, raised, levied, collected, paid, and recovered and allowed, and applied or appropriated under the

Duties and draw-  
backs to be under  
commissioners of  
Customs.

- (a) *Chapman v. Lamb*, 2 Stra. 943; 1817; *Pope*, 138; 1 *Chitty, Com. Law*, 712.  
*Bac. Ab. Smuggling*, (D. 2); *Dyson v. Ld. Villiers, Bac. Ab. Smuggling*, (F. 7); *Com. Dig. Trade*, (C. 2); *Letter from the Treasury*, 7 June, 1814; *Pope*, tit. 138, and *Another Letter from the Treasury*, 2 Jun. 1817; *Pope*, 138; 1 *Chitty's Commercial Law*, 711, 712.  
(b) *Letter from Treasury*, 26 Sept. 1817; *Pope*, 138; 1 *Chitty, Com. Law*, 712.  
(c) *Order of Customs*, 14 Nov. 1817; *Pope*, tit. 91, and *id.* 138; 1 *Chitty, Com. Law*, 712.  
(d) *Vaughan*, 166; *Moor*, 224; 5 *Burr*. 2738; *Com. Dig. Trade*, (C. 3).  
(e) *Order of Customs*, 3 Dec. 1816; *Pope*, 138.

DUTIES OF  
CUSTOMS.

6 Geo. 4. c. 111.  
Reciprocal duties  
to be levied on  
foreign merchan-  
dise.

Drawback on ex-  
portation of fo-  
reign rice or  
paddy.

Conditions on  
which such draw-  
back paid.

Drawback on  
camphor refined  
in U. K.

Juice of lemons,  
limes, and oranges,  
how strength as-  
certained.

provisions of an act passed in the present session of parliament, entitled  
*'An act for the general regulations of the Customs.'*"

Sect. 5 enacts, "that it shall be lawful for His Majesty, by and with the advice of his privy council, by his order in council, from time to time to order and direct that there shall be levied and collected any additional duty, not exceeding one-fifth of the amount of any existing duty, upon all or any goods, wares, or merchandize, the growth, produce, or manufacture of any country which shall levy higher or other duties upon any article the growth, produce, or manufacture of any of His Majesty's dominions, than upon the like article the growth, produce, or manufacture of any other foreign country; and in like manner to impose such additional duties upon all or any goods when imported in the ships of any country which shall levy higher or other duties upon any goods when imported in British ships, than when imported in the national ships of such country, or which shall levy higher or other tonnage, or port or other duties upon British ships than upon such national ships, or which shall not place the commerce or navigation of this kingdom upon the footing of the most favoured nation in the ports of such country; and either to prohibit the importation of any manufactured article the produce of such country, in the event of the export of the raw material, of which such article is wholly or in part made, being prohibited from such country to the British dominions; or to impose an additional duty, not exceeding one-fifth as aforesaid, upon such manufactured article; and also to impose such additional duty in the event of such raw material being subject to any duty upon being exported from the said country to any of His Majesty's dominions; and all duties imposed by any such order shall be deemed to be duties imposed by this act."

Sect. 6 enacts, "that upon the exportation from the united kingdom of any foreign rice or paddy which shall have been cleaned therein, and which shall have paid the duties payable on the importation thereof under this act, there shall be allowed and paid for every hundredweight thereof a drawback equal in amount to the duty paid on every four bushels of the rough rice or paddy from which the same shall have been cleaned."

Sect. 7 enacts, "that such drawback upon rice so exported shall be paid and allowed only upon such clean rice as shall be deposited for the purpose of exportation, within one calendar month from the day on which the duty thereon had been paid, in some warehouse (in which rice may be warehoused on importation without payment of duty), and shall there remain secured until duly shipped to be exported from such warehouse. Provided also, that the exporter of such rice shall make oath before the collector or comptroller that the rice so warehoused for exportation was cleaned from the rough rice or paddy upon which the duties had been so paid."

Sect. 8 enacts, "that such drawback as is mentioned, specified, and set forth in the table of duties inwards to this act annexed shall be allowed upon the exportation of any camphor which shall be refined in the united kingdom from a larger quantity imported unrefined, provided oath be made by the refiner or refiners thereof, before the collector or comptroller, that the said refined camphor was produced solely from camphor which had been imported into the united kingdom unrefined, and for which the duties of Customs had been paid."

Sect. 9. 'And for ascertaining the degrees of specific gravity of strength according to which the duty on the juice of lemons, limes, and oranges imposed by this act shall be collected and paid;' be it enacted, "that such degrees of such specific gravity or strength shall be ascertained by a glass citrometer, which shall be graduated in degrees in such manner that, distilled water being assumed as unity at the temperature of sixty degrees by Fahrenheit's thermometer, every degree of the scale of such citrometer shall be denoted by a variation of four one-thousandth parts of the specific gravity of such water."

Sect. 10 enacts, "that it shall be lawful to import into the united

kingdom any flax, and any wood being eight inches square or upwards, fit for ship-building, and any bark or any solid vegetable extract to be used solely for the purpose of tanning leather, such articles being the growth or produce of the colony of New South Wales, or any of the settlements or dependencies thereof, or of Norfolk Island, or Van Dieman's Land, or of New Zealand, and imported direct from the said places during the remainder of the period of ten years, to be reckoned from the first day of January, one thousand eight hundred and twenty-three, without payment of any duty whatever for the same. Provided always, that before such goods shall be entered as being the growth or produce of any of the said places, except New Zealand, the master of the ship or vessel importing the same shall produce and deliver to the collector or comptroller of the Customs at the port of importation a certificate, under the hand of the proper officer at the place where such goods were taken on board, testifying that proof had been made, in manner required or authorized by any law in force for the time being, in such place, that such goods were of the growth or produce thereof, stating the name of the place, and the quantity and quality of the goods, and the name of the vessel in which they are laden, and of the master thereof; and such master shall also make oath before the collector or comptroller of the customs at the port of importation, that such certificate was received by him at the place where such goods were taken on board, and that the goods so imported are the same as are mentioned and referred to in such certificate; and before any such goods shall be entered as being the produce of New Zealand, the master of the importing ship shall make oath, before the collector or comptroller of the Customs at the port of importation, that such goods were taken on board such ship at New Zealand."

Sect. 11 enacts, "that it shall be lawful for the importer of any goods, subject to any of the duties imposed by this act, to warehouse such goods upon the first entry thereof under the laws in force for the warehousing of goods without payment of duty upon such first entry; and that all goods which shall have been so warehoused before the commencement of this act, and shall remain so warehoused after the commencement of the same, shall become liable to the duties imposed by this act, in lieu of all former duties."

Sect. 12 enacts, "that, for the purposes of this act, the Cape of Good Hope, and the territories and dependencies thereof, shall be deemed to be within the limits of the East India Company's charter; and the Island of Mauritius shall be deemed to be one of His Majesty's sugar-colonies, and placed upon the same footing in all respects as His Majesty's islands in the West Indies."

Sect. 13 enacts, "that all goods, the produce of places within the limits of the East India Company's charter, having been imported into Malta or Gibraltar in British ships, shall, upon subsequent importation into the united kingdom direct from thence, be liable to the same duties as the like goods would respectively be liable to if imported direct from some place within the limits of the said charter."

Sect. 14 enacts, "that it shall be lawful to import pease for seed, on payment of the duty imposed by this act, at times when the importation of pease may be prohibited on account of the average price thereof; any thing in any other act to the contrary notwithstanding."

Sect. 15 enacts, "that nothing in this act, nor in any other act passed in the present session of parliament, shall extend to alter or affect the right of entering wine for prisage at such reduction of duties as the parties having such right shall be entitled to claim at any of the ports or places in England or Wales, where the right of prisage has not been purchased by the crown."

Sect. 16 enacts, "that nothing in this act nor in any other act passed in the present session of parliament shall extend to repeal or in any way vary or alter or affect an act passed in the fifty-sixth year of the reign of his late Majesty King George the Third, entitled '*An act to reduce the duty on the exportation from Great Britain of small coals of certain descrip-*'

**DUTIES OF CUSTOMS.**

6 Geo. 4, c. 111.  
Flax, wood for ship-building herein described, and bark, may be imported from New South Wales, &c.  
Proceedings before entry of such goods.

Oath by master.

Regulations as to warehousing of goods.

Proviso as to Cape of Good Hope and Mauritius.

Produce of limits of charter imported from Malta or Gibraltar.

Pease for seed.

Wine for prisage.

Small coals carried coastwise, herein described, subject to regulations of 56 Geo. 3, c. 127.

DUTIES OF  
CUSTOMS.

6 Geo. 4, c. 111.

Proviso as to clearing of ships.

Acts of this session coming into force on Jan. 5, 1826, to be the only laws for matters contained therein.

Register bonds, how construed;

liable to stamp duty.

Exemptions of particular acts.

Keels and other vessels employed in the conveyance of coals, carrying more than the quantity allowed, forfeited.

tions; and that all small coals which have been screened through a screen or riddle, the bars of which not being in any part thereof more than three-eighths of an inch asunder, which may be shipped to be sent coastwise from the port of Newcastle or Sunderland to any port in England or Wales on payment of one shilling the chaldron, shall be liable to the same rules, regulations, and restrictions, and subject to the same penalties and forfeitures, as are provided by the said act in respect of coals exported, as far as the same are applicable. Provided always, that no ship shall be cleared from either of the ports aforesaid as being laden with any small coals of the above description, which shall have on board any coals of larger dimensions than before described, or any culm or cinders; and if any coals of such dimensions shall be found on board any ship in any port of England or Wales, although such ship shall have been cleared from either of the ports with such small coals as aforesaid, the whole of the coals laden on board such ship shall be charged with the duty imposed on coals brought coastwise."

Sect. 17. "And whereas it is enacted in the aforesaid act for repealing the several laws relating to the Customs, that such repeal shall take effect from and after the fifth day of July, one thousand eight hundred and twenty-six; and whereas this present act and several other acts relating to the Customs, also passed or to be passed in this present session of parliament is and are to come into operation and have effect from and after the fifth day of January, one thousand eight hundred and twenty-six; and it is expedient to prevent any doubts which might arise from the continuance of any of the acts now in force relating to the Customs after the period when the present and the other aforesaid acts passed or to be passed in this present session of parliament shall come into operation; be it therefore enacted, "that the enactments and provisions contained and expressed in this act and in any other act or acts relating to the Customs passed in the present session of parliament which are to commence and have effect from and after the fifth day of January, one thousand eight hundred and twenty-six, shall be and shall be deemed and construed to be, from and after that period, the only law or laws in force concerning or relating to all matters and things expressed or provided for herein or therein; any thing contained in any of the acts to be repealed on the fifth day of July, one thousand eight hundred and twenty-six, by the aforesaid act of repeal, or in any other act or acts to the contrary notwithstanding."

Sect. 18 enacts, "that all bonds given by the owners or masters of British ships upon the registering of the same, and all bonds given by the masters of British ships upon their taking the charge or command of the same, shall be deemed to be bonds for preventing frauds or evasions of the duties of Customs, as well as for other purposes, and shall be liable to the same duties of stamps as any bonds given for or in respect of the duties of Customs, or for preventing frauds or evasions thereof, are or shall be liable to under any act for the time being in force for granting duties of stamps."

Sect. 19 enacts, "that nothing in this act or in any other act or acts passed in the present session of parliament shall extend to repeal or in any way to alter or affect the statutes 8 Geo. I., c. 14; 33 Geo. II., c. 15; 37 Geo. III., c. 100; 42 Geo. III., c. 115; 55 Geo. III., c. 26; 1 & 2 Geo. IV., c. 87; 3 Geo. IV., c. 60; 6 Geo. IV., c. 64; 5 Geo. IV., c. 70; 5 Geo. IV., c. 64, or acts relating to the fisheries; 4 Geo. IV., c. 88; 51 Geo. III., c. 47; 59 Geo. III., c. 54, and other acts herein referred to."

Sect. 20 contains a proviso, for the 6 & 7 Wm. III., c. 10; 15 Geo. III., c. 27; 31 Geo. III., c. 36.

Sect. 21 enacts, "that if upon examination of any keel, boat, wain, waggon, barrow, cart, coup, or other vessel or carriage employed in the conveyance of coals, cinders, ashes, or culm for the purpose of being laden or shipped for exportation, or to be carried coastwise, and which shall have been admeasured, weighed, numbered, and marked in manner di-

rected by any act at any time in force for that purpose, there shall be found any greater quantity of coals, cinders, ashes, or culm, than such keel, boat, wain, waggon, barrow, cart, coup, or other vessel or carriage is allowed to carry or convey, according to the numbers, nails, or other marks set thereon, whether such number, nails, or other marks denote the quantity by weight or by measure, every such keel, boat, wain, waggon, barrow, cart, coup, or other vessel or carriage so overloaded, shall be forfeited."

Sect. 22. 'And whereas by the consolidation of the different branches of the public revenue, and of the several duties payable on the importation or exportation of goods, wares, and merchandize, and the appropriation thereof, as directed by the several acts in force in England, the hereditary and temporary revenues of the crown, of subsidies of tonnage and poundage, and of other duties upon goods, wares, and merchandize arising in England, are not now kept distinct and separate at the several offices, but have become blended with other duties of customs and tonnage, both in the collection and appropriation thereof; and whereas it is expedient that provision should be made for ascertaining the annual amount of what such hereditary revenues would have produced in case the same had not been so consolidated, and that an account should hereafter be kept of such annual amount;' be it therefore enacted, "that from and after the said fifth day of January, one thousand eight hundred and twenty-six, the lord high treasurer or commissioners of His Majesty's treasury of the united kingdom of Great Britain and Ireland for the time being, or any three or more of them, shall cause to be prepared and kept an account of what such hereditary revenue arising in England would have amounted to, in case the same had not been and was not consolidated and collected with other duties of Customs and tonnage in the collection and appropriation thereof, in such manner and form as shall appear to the said lord high treasurer or commissioners of His Majesty's treasury for the time being best adapted to ascertain such amount, which account the said lord high treasurer or commissioners for the time being are hereby required to make out or cause to be made out and laid before parliament, together with the public accounts directed to be laid before parliament pursuant to the provisions of the several acts for directing public accounts to be laid annually before parliament."

Sect. 23. "Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to affect or alter the hereditary revenue of His Majesty, his heirs or successors, in Scotland, or other revenues there granted to His late Majesty King George the Second during his life, and reserved to His present Majesty during his life by an act made in the first year of His present Majesty's reign: but the same, and the civil establishment payable out of the same, shall continue to be paid in like manner as heretofore; any thing in this act contained to the contrary notwithstanding."

Sect. 24 enacts, "that all the moneys arising by the duties imposed by this act (the necessary charges of raising and accounting for the same excepted) shall from time to time be paid into the receipt of His Majesty's exchequer in Great Britain, and shall be carried to and made part of the consolidated fund of the united kingdom of Great Britain and Ireland, except only as by this act is specially provided, and shall be appropriated in like manner and to the same services as the duties by this act repealed would have been if this act had not been passed."

Sect. 25 enacts, "that all moneys arising from any duties of Customs, or any arrears thereof, shall be raised, levied, collected, paid, or received from and after the said fifth day of January, one thousand eight hundred and twenty-six, for or on account of any goods, wares, or merchandize whatever, imported or brought into the united kingdom of Great Britain and Ireland, or exported from the said united kingdom, or brought or carried coastwise or from port to port within the united kingdom, although the amount of the said duties may have been computed and ascertained as such duties have been computed and ascertained before the said fifth

**DUTIES OF**

**CUSTOMS.**

G Geo. 4, c. 111.

Account of amount of hereditary revenues of the crown to be kept separate.

Proviso for hereditary revenue in Scotland.

Duties paid in exchequer, and carried to consolidated fund.

Duties due before Jan. 5, 1826, levied after that day, deemed duties under this act.

6 Geo. 4, c. 111.

**Appropriation thereof.**

**To prevent frauds  
in colouring and  
concealing aliens'  
goods.**

**What goods  
deemed as such.**

**Bills of entry to be subscribed, whether goods are on alien or British account.**

**Penalty.**

day of January, one thousand eight hundred and twenty-six, although the goods, wares, or merchandize whereon any such duties of Customs may have been charged or may be charged may have been imported into or exported from the united kingdom, or brought or carried coastwise or from port to port within the united kingdom, on the said fifth day of January, one thousand eight hundred and twenty-six, and although any duties of Customs due and payable or chargeable thereon may have been secured by bond or otherwise before the said fifth day of January, one thousand eight hundred and twenty-six, shall, from and after the said fifth day of January, on and after the said fifth day of January, be appropriated and applied in the same manner and to the same purposes as the duties of Customs by law granted are directed to be appropriated and applied, except as is in any act or acts of parliament, law, usage, or custom to the contrary notwithstanding; and that all moneys arising by any of the duties of Customs hereafter to be paid or allowed, either upon bond or otherwise by way of drawback, bounty, certificate, premium, or allowance, by any other legal document whatever, from and after the said fifth day of January, one thousand eight hundred and twenty-six, although the amount of the same shall have been computed and ascertained in the manner in which they have heretofore been usually computed and ascertained, or shall have become due before the said fifth day of January, one thousand eight hundred and twenty-six, shall and may be paid or received in like manner by the proper officer or officers of the Customs out of the moneys in their hands arising from the duties of Customs respectively.

Sect. 26 enacts, "that to prevent frauds in colouring and counterfeiting of aliens' goods, all wines of the growth of France or Germany, which shall be imported into any of the ports or places in England, Ireland, Wales, or town of Berwick upon Tweed, in any other ship or vessel than which doth truly and without fraud belong to England, Ireland, Wales, or the town of Berwick upon Tweed, and whereof the greater part and three-fourths at least of the mariners are English, shall be deemed to be alien goods, and pay all strangers' customs and duties to the same as if they were such; and port into which they shall be imported; and that all such masts, timber, or boards, as also all foreign salt, pitch, tar, hemp, flax, raisins, figs, prunes, olive oils, all sorts of corn or grain, sugar, potashes, spirits commonly called brandy, wine, or aqua vitae, or wines of the growth of Spain, the Islands of the Canaries or Portugal, Madeira or Western Islands, and all the goods of the growth, produce, or manufacture of Muscovy or Russia, which shall be imported into any of the ports or places in England, Ireland, Wales, or the town of Berwick upon Tweed, in any other than such shipping, and so navigated, as shall be appointed by the said Act, shall be imported into the said places aforesaid, in any other than English-built shipping, and shall be deemed to be alien goods, and pay according to the rate of duty appointed by the said Act, and shall be imported into the town or port into which they shall be imported."

Sect. 27. enacts, "that every merchant or other, passing any goods, or merchandize inwards or outwards, shall, by himself or his servant, factor, or agent, subscribe one or more bill or bills of entry, w<sup>ch</sup> such goods are on alien or British account, and if required make the same before the officer appointed to receive the said duties (authorised by the charter granted to the said mayor and commonal citizens to administer the same); and no entry on alien account sh<sup>l</sup> be permitted by the officers of the Customs to pass, or the goods to be delivered, unless the signature or mark of the city's collector or his appears on the face of such warrant; and if any goods be entered on British account, which are *bonâ fide* aliens' property, the merchants entering the same shall forfeit and pay the sum of fifty pounds to be recovered by action of debt, bill, plaint, or information in any of Majesty's courts of record at Westminster, in the name of the chamber of the said city, on behalf of the said mayor and commonalty and citi-

and the damages so to be recovered shall be paid into the chamber of London for the use of the said mayor and commonalty and citizens."

Sect. 28. 'And whereas part of the fund called the Orphans' Fund, established by an act passed in the fifth and sixth year of the reign of King William and Queen Mary, entitled '*An act for the relief of the orphans and other creditors of the city of London*,' consists of the imposition or duty of fourpence metage thereof for ever, over and above what was lawfully paid for the metage thereof, for every chaldron of all coals or culm usually sold by the chaldron imported into the port of London, or members thereof, and of a like duty of sixpence for every ton of such coals sold by the ton, and so imported, and other part of the fund consists of the further sum of sixpence (over and above all other impositions and duties, and the said sum of fourpence) for every chaldron or ton of coals or culm imported as aforesaid; and it was directed by the said act that the said imposition of sixpence should continue from the twenty-ninth day of September, one thousand seven hundred, for the term of fifty years, and the said impositions and duties have since been continued by subsequent acts of parliament for the further terms of thirty-five and forty-six years, and five years and three quarters of a year, making together the term of eighty-six years and three quarters of a year from the expiration of the said term of fifty years; and whereas it is expedient that screened coals and ashes, for which by this act the reduced duty of one shilling per chaldron is made payable as aforesaid (whether alone or intermixed with cinders), and ashes, should be exempted from the said imposition or duty of sixpence for every chaldron or ton;' be it therefore enacted, "that so much of the said recited act of the fifth and sixth years of the reign of King William and Queen Mary, and the act by which the said imposition is continued, as makes screened coals (whether alone or mixed with cinders or ashes), for which the said reduced duty is by this act made payable as aforesaid, subject to the payment of the said imposition or duty of sixpence for every chaldron or ton of coal or culm imported into the port of London, shall be and the same is hereby repealed. Provided nevertheless, that such screened coals, alone or intermixed as aforesaid, shall be liable to the said imposition or metage of fourpence for every chaldron or ton, and to all other duties and charges payable in respect of coals or culm imported into the port of London, and to all the charges, duties, and payments, regulations, restrictions, and provisions touching the vend and delivery thereof in the port of London, imposed and directed by an act of parliament passed in the forty-seventh year of the reign of His late Majesty King George the Third, entitled '*An act for repealing the several acts for regulating the vend and delivery of coals within the cities of London and Westminster, and the liberties thereof, and certain parts of the counties of Middlesex, Surrey, Kent, and Essex, and for making better provision for the same*.'"

Sect. 29 enacts, "that all screened coals shall be sold under the name or denomination of small screened coals, with or without the addition of the sort of coals of which they respectively shall be, at the option of the owner thereof; and if any vender or venders, dealer or dealers, shall sell any of the said screened coals, either alone or intermixed with cinders, under any other denomination than the sort of coals of which they respectively shall be as aforesaid, or if any vender or venders of, or dealer or dealers in coals, shall knowingly sell screened coals of any sort for and as another sort of coals which they really are not, within England or Wales, every such vender or venders of, or dealer or dealers in coals, shall forfeit and pay for every such offence the sum of twenty pounds per chaldron for every chaldron so sold, not exceeding twenty-five chaldrons for the same offence."

The act then gives the three following schedules, containing the duties and drawbacks on imported and exported goods and those carried coastwise, and which have since been varied in the amount of some of the duties, by the 10 Geo. IV., c. 43.

**DUTIES OF  
CUSTOMS.**

6 Geo. 4, c. 111.  
The Orphans'  
Fund, 5 & 6 W. &  
M. c. 10, s. 10.

So much as there-  
in mentioned of  
5 & 6 W. & M.  
s. 10, and of  
7 Geo. 3, c. 87, re-  
pealed.

Such coals to be  
subject to the du-  
ties of the port of  
London, directed  
by 47 Geo. 3, c. 88.

Dealers selling  
screened coals  
under any other  
denomination.

Penalty.

Schedules.



## TABLE OF DUTIES OF CUSTOMS, INWARDS.

A Table of the DUTIES of CUSTOMS payable on Goods, Wares, and Merchandise imported into the United Kingdom from Foreign Parts, and of the Drawbacks to be on the Exportation of such Goods, Wares, and Merchandise.

	Duty.			
	£.	s.	d.	1
Acacia, per lb.	0	2	0	1
Acetous Acid, <i>see</i> Vinegar.				
Acorns, <i>see</i> Seed.				
Acorus, the lb.	0	0	10	
Adiantum, the lb.	0	0	8	
Agaric, the cwt.	1	18	0	
Agates, or Cornelians, <i>viz.</i>				
— set, for every 100 <i>l.</i> of the value	20	0	0	
— not set, for every 100 <i>l.</i> of the value	10	0	0	
Beads, <i>see</i> Beads.				
Alkali, not being Barilla, <i>viz.</i>				
— any article containing Soda or Mineral Alkali, whereof Mineral Alkali is the most valuable part, (such Alkali not being otherwise particularly charged with duty)				
— if not containing a greater proportion of such Alkali than 20 per centum, the cwt.	0	11	4	
— if containing more than 20 per centum, and not exceeding 25 per centum of such Alkali, the cwt.	0	15	0	
— if containing more than 25 per centum, and not exceeding 30 per centum of such Alkali, the cwt.	0	18	4	
— if containing more than 30 per centum, and not exceeding 40 per centum of such Alkali, the cwt.	1	3	4	
— if containing more than 40 per centum of such Alkali, the cwt.	1	10	0	
Alkanet Root, the lb.	0	0	10	
Alkermes, Confection of, the oz.	0	1	8	
Almond Paste, for every 100 <i>l.</i> of the value	60	0	0	
Almonds, <i>viz.</i>				
— Bitter, the cwt.	1	11	8	
— Bitter, the produce of any British possession, the cwt.	0	15	10	
— Jordan, the cwt.	4	15	0	
— Jordan, the produce of any British possession, the cwt.	2	7	6	
— of any other sort, the cwt.	2	7	6	
Aloes, <i>viz.</i>				
— Hepatica or Barbadoes Aloes, the lb.	0	1	3	
— Socotorina, the lb.	0	2	6	
— the produce of the Cape of Good Hope, and imported direct from thence, the lb.	0	0	3	
— of any other sort, the lb.	0	0	9	
Alum, the cwt.	0	17	6	
— Roch, the cwt.	0	11	8	
Amber, <i>viz.</i>				
— Beads, <i>see</i> Beads.				
— Oil of, <i>see</i> Oil.				
— Rough, the lb.	0	1	8	
— Manufactures of Amber, not otherwise enumerated or described, the lb.	0	12	0	
Ambergris, <i>viz.</i>				
— the produce of British fishing, the oz.	0	2	0	
— the produce of foreign fishing, the oz.	0	5	0	
Ambra Liquida, the lb.	0	3	4	
Anacardium, <i>see</i> Cashew Nuts.				

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
Anchovies, (a) the lb.	0	1	0	—	—	—
Angelica, (b) the lb.	0	0	10	0	0	6
Annotto, or Rocon, viz.						
— Flag, the lb.	0	0	5	—	—	—
— Roll, or any other sort, not otherwise enumerated or described, the lb.	0	1	0	—	—	—
Antimony, viz.						
— Crude, the cwt.	0	15	0	—	—	—
— Regulus of Antimony, the cwt.	2	0	0	—	—	—
Apples, the bushel	0	4	0	—	—	—
— dried, the bushel	0	7	0	—	—	—
Aquafortis, the cwt.	0	14	3	—	—	—
Arangoes, for every 100 <i>l.</i> of the value	20	0	0	—	—	—
Archelia, <i>see</i> Orchal.						
Argol, the cwt.	0	2	0	—	—	—
— the produce of and imported from any British possession, the cwt.	0	1	0	—	—	—
Aristolochia, the lb.	0	0	10	0	0	6
Arquebussade Water, <i>see</i> Spirits.						
Arrow Root or Powder, the lb.	0	0	2	—	—	—
— the produce of any British possession, the lb.	0	0	1	—	—	—
Arsenic, viz.						
— White, the cwt.	0	14	1	—	—	—
— of any other sort, the cwt.	0	18	8	—	—	—
Asafoetida, the lb.	0	0	10	0	0	6
Asarum Root, the lb.	0	0	8	0	0	5
Ashes, viz.						
— Pearl and Pot, the cwt.	0	6	0	—	—	—
— the produce of any British possession, and imported direct from thence	Free.			—	—	—
— Soap and Wood, the cwt.	0	1	8	—	—	—
— not otherwise enumerated or described, for every 100 <i>l.</i> of the value	20	0	0	—	—	—
Asphaltum, the lb.	0	0	10	0	0	6
— the produce of and imported from any British possession, the lb.	0	0	5	—	—	—
Asses, each	0	10	0	—	—	—
Auripigmentum, <i>see</i> Orpiment.						
B.						
Bacon, the cwt.	1	8	0	—	—	—
Balaustia, the lb.	0	0	10	—	—	—
Balm of Gilead, <i>see</i> Balsam.						
Balsam, viz.						
— Canada, the lb.	0	1	3	0	0	10
— Copaiba or Capivi, the lb.	0	2	0	0	1	4
— Riga, the lb.	0	1	0	—	—	—
— and further as Foreign Spirits, for every gallon	1	10	0	—	—	—
— Balm of Gilead, Balsam of Peru, of Tolu, and all Balsams not otherwise enumerated or described, the lb.	0	4	6	—	—	—
Bandstrung Twist, the dozen knots, each knot containing 32 yards	0	5	0	—	—	—
Barilla, viz.						
— if not containing a greater proportion of Mineral Alkali than 20 per centum,						
— to the 6th January, 1829, the ton	8	10	0	—	—	—
— from the 5th of January, 1829, to the 6th of January, 1830, the ton	6	10	0	—	—	—
— from and after the 5th January, 1830, the ton	5	0	0	—	—	—
— if containing more than 20 per centum, and not more than 25 per centum of Mineral Alkali,						
— to the 6th January, 1829, the ton	11	5	0	—	—	—
— from the 5th January, 1829, to the 6th of January, 1830, the ton	8	12	0	—	—	—
— from and after the 5th January, 1830, the ton	6	12	0	—	—	—
— if containing more than 25 per centum, and not more than 30 per centum of Mineral Alkali,						
— to the 6th January, 1829, the ton	14	10	0	—	—	—

(a) By 10 Geo. IV. c. 43, only 2*d.*(b) By 10 Geo. IV. c. 43, only 3*d.*

	Duty.			£
	£.	s.	d.	£.
<i>Barilla continued.</i>				
— from the 5th January, 1829, to the 6th January, 1830, the ton	11	0	0	
— from and after the 5th January, 1830, the ton	8	10	0	
— if containing more than 30 per centum, and not more than 40 per centum of Mineral Alkali,				
— to the 6th January, 1829, the ton	18	10	0	
— from the 5th January, 1829, to the 6th January, 1830, the ton	14	0	0	
— from and after the 5th January, 1830, the ton	11	0	0	
— if containing more than 40 per centum of Mineral Alkali,				
— to the 6th January, 1829, the ton	22	6	8	
— from the 5th January, 1829, to the 6th January, 1830, the ton	17	0	0	
— from and after the 5th January, 1830, the ton	13	0	0	
<i>Bark, viz.</i>				
— Angustura Bark, the lb.	0	2	0	
— Cascarilla Bark, <i>see</i> Eleutheria Bark, in Bark.				
— Cinchona Bark, <i>see</i> Peruvian Bark, in Bark.				
— Clove Bark, the lb.	0	0	10	
— Cork-Tree Bark, <i>see</i> Oak Bark, in Bark.				
— Eleutheria, or Cascarilla Bark, the lb.	0	0	6	
— Guaiacum Bark, the cwt.	1	8	0	
— Jesuits' Bark, <i>see</i> Peruvian Bark, in Bark.				
— Oak Bark, the cwt.	0	0	8	
— Oak Bark, solid vegetable extract from Oak Bark, <i>see</i> Extract.				
— Black Oak, or Quercitron Bark, for the purpose of dying, imported from any country not in Europe, the cwt.	0	2	0	
— otherwise imported, for every 100L of the value	20	0	0	
— Peruvian or Jesuits' Bark, the lb.	0	2	0	
— Extract or Preparation of, <i>see</i> Extract.				
— Red Mangrove Bark, the cwt.	0	0	8	
— Sassafras Bark, the lb.	0	0	8	
— Simarouba Bark, the lb.	0	1	0	
— Winter's Bark, the lb.	0	0	8	
— the produce of any British possession, the lb.	0	0	4	
— Bark not otherwise enumerated or described, being for the use of dyers or of tanners, and for no other use or purpose whatever, for every 100L of the value	20	0	0	
— the produce of any British possession, for every 100L of the value	10	0	0	
— Bark not particularly enumerated or described, nor otherwise charged with duty, whether pulverized or not, the lb.	0	2	0	
<i>Bar Wood, the ton</i>	0	7	0	
<i>Basket Rods, the bundle not exceeding three feet in circumference at the band</i>	0	3	2	
<i>Baskets, for every 100L of the value</i>	20	0	0	
<i>Bast Ropes, the cwt.</i>	0	10	0	
<i>Bast or Straw Hats or Bonnets, see Hats.</i>				
— Plating, or other manufacture of Bast or Straw, for making hats or bonnets, <i>see</i> Plating.				
<i>Bdellium, the lb.</i>	0	1	8	
<i>Beads, viz.</i>				
— Amber Beads, the lb.	0	12	0	
— Beads, Arango, for every 100L of the value	20	0	0	
— Coral Beads, the lb.	0	15	10	
— Crystal Beads, the 1000	1	8	6	
— Jet Beads, the lb.	0	3	2	
— Beads, not otherwise enumerated or described, for every 100L of the value	30	0	0	
<i>Beans, Kidney or French Beans, the bushel</i>	0	0	10	
<i>Beef Wood, unmanufactured, imported from New South Wales, the ton</i>	0	5	0	
<i>Beer, viz.</i>				
— Mum, the barrel, containing 32 gallons	3	1	1	
— Spruce Beer, the barrel, containing 32 gallons	3	6	0	
— or Ale of all other sorts, the barrel, containing 32 gallons	2	13	0	
<i>Benjamin, or Benzoin, the lb.</i>	0	2	0	
<i>Berries, viz.</i>				
— Bay, the cwt.	0	11	1	
— Juniper, the cwt.	0	11	1	

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Berries continued.</i>						
— Yellow, for dyers' use, the cwt.	0	14	0	—		
— Berries for dyers' use, not otherwise enumerated or described, the cwt.	0	12	0	—		
— Berries not for dyers' use, not otherwise enumerated or described, for every 100 <i>l.</i> of the value	30	0	0	—		
Besozar Stones, the oz.	0	2	6	—		
Birds, viz. Singing Birds, the dozen	0	8	0	—		
Bitumen Judaicum, the lb.	0	0	10	0	0	6
Blacking, the cwt.	3	12	0	—		
Bladders, the dozen	0	0	6	—		
Blubber, <i>see</i> Train Oil, in Oil.						
Bole Armenic or Armenian Bole, the cwt.	0	8	0	0	5	4
Bones of Cattle and other animals, and of fish, except Whale Fins, for every 100 <i>l.</i> of the value	1	0	0	—		
Bonnets, <i>see</i> Hats.						
Books, viz.						
— being of editions printed prior to the year 1801, bound or unbound, the cwt.	1	0	0	—		
— being of editions printed in or since the year 1801, bound or unbound, the cwt.	5	0	0	—		
(a) <i>Note.</i> —For the description of Books prohibited to be imported <i>see</i> the Act for the Regulation of the Customs, and Acts for securing Copyrights.						
Boracic Acid, the lb.	0	0	4	—		
Borax or Tincal, viz.						
— Refined, the lb.	0	0	6	—		
— Unrefined, the lb.	0	0	3	—		
Botargo, the lb.	0	1	0	—		
Bottles, viz.						
— of earth or stone, empty, the dozen	0	3	2	—		
— and further, full or empty, for every cwt.	0	5	0	—		
— of glass covered with wicker, the dozen quarts' content	1	2	0	—		
— and further, for every cwt.	4	0	0	—		
— of green or common glass, not of less content than one pint, and not being phials, viz.						
— full, the dozen quarts' content	0	4	0	—		
— empty, the dozen quarts' content	0	2	0	—		
— of glass, not otherwise enumerated or described, for every 100 <i>l.</i> of the value	25	0	0	—		
— and further, for every cwt.	4	0	0	—		
<i>Note.</i> —Flasks in which Wine or Oil is imported are not subject to duty.						
Boxes of all sorts, for every 100 <i>l.</i> of the value	20	0	0	—		
Box-wood, viz.						
— the produce of and imported from any British possession, the ton	1	13	4	—		
— of any other place, or if otherwise imported, the ton	7	18	6	—		
Brass, viz.						
— manufactures of, not otherwise enumerated or described, for every 100 <i>l.</i> of the value	30	0	0	—		
— Powder of, for japanning, the lb.	0	2	6	—		
— Wire, <i>see</i> Wire.						
Brazil Wood, not otherwise enumerated or described, the ton	5	0	0	—		
Brasileto or Jamaica Wood, (b) the ton	0	16	8	—		
Bricks or Clinkers, the 1000	1	2	6	—		

(a) By 10 Geo. IV., c. 43, Schedule.

Boots, Shoes, and Calashes, viz.

- Women's Boots and Calashes, the dozen pairs,	1	10	0
- - - If lined or trimmed with Fur or other trimming, the dozen pairs,	1	16	0
- Women's Shoes with Cork or double soles, quilled Shoes and Clogs, the dozen pairs,	1	6	0
- - - If trimmed or lined with Fur or any other trimming, the dozen pairs,	1	9	0
- Women's Shoes of Silk, Satin, Jean, or other Stuffs, Kid, Morocco, or other Leather, the dozen pairs,	0	18	0
- - - If trimmed or lined with Fur or other trimming, the dozen pairs,	1	4	0
- Children's Boots, Shoes, and Calashes not exceeding seven inches in length, to be charged with two-thirds of the above duties.			
- Men's Boots, the dozen pairs,	2	14	0
- Men's Shoes, the dozen pairs,	1	4	0
- Children's Boots and Shoes not exceeding seven inches in length to be charged with two-thirds of the above duties.			

(b) By 10 Geo. IV., c. 43, Brasileto Wood imported from a British possession, the ton, &amp;c.; not so imported, the ton, &amp;c. &amp;c.

	Duty.			£
	£.	s.	d.	£
Brimstone, viz.				
— rough, the cwt.	0	0	6	
— refined, the cwt.	0	6	0	
— in Flour, the cwt.	0	9	9	
Bristles, viz.				
— dressed, the dozen lbs.	0	12	0	
— rough or undressed, the dozen lbs.	0	3	7	
Brocade of gold or silver, from the 5th July, 1826, for every 100 <i>l.</i> of the value	30	0	0	
— of silk, <i>see</i> Silk Manufactures.				
Bronze, all works of art made of bronze, the cwt.	1	0	0	
— Powder, for every 100 <i>l.</i> of the value	25	0	0	
Buck Wheat, the quarter	0	14	0	
Bugles of all sorts, the lb.	0	4	0	
Bullion and Foreign Coin, of gold or silver, and Ore of gold or silver, or of which the major part in value is gold or silver, duty free.				
Bulrushes, the load, containing 63 bundles	0	12	0	
Burrchas, <i>see</i> Caoutchouc.				
Burrs for Mill-stones, <i>see</i> Stones.				
Butter, the cwt.	1	0	0	
Buttons, from the 5th July, 1826, for every 100 <i>l.</i> of the value	20	0	0	
C.				
Cables, tarred or untarred, whether in use or otherwise, the cwt.	0	10	9	
Calaminaris Lapis, <i>see</i> Lapis.				
Calamus Aromaticus, the lb.	0	0	10	
Calves Velves, the cwt.	0	11	6	
Cambogium, <i>see</i> Gamboge.				
Cambrics, <i>see</i> Linen.				
Camomile Flowers, the lb.	0	0	6	
Camphor, viz.				
— refined, the lb.	0	0	10	
— unrefined, the lb.	0	0	5	
Camwood, the ton	0	15	0	
Cancrorum Oculi, the lb.	0	1	3	
Candles, viz.				
— Spermaceti, the lb.	0	2	6	
— Tallow, the cwt.	3	3	4	
— Wax, the lb.	0	2	6	
Candlewick, the cwt.	4	8	8	
Canella Alba, (a) the lb.	0	0	8	
Canes, viz.				
— Bamboo, the 1000	1	14	0	
— Rattans, not ground, the 1000	1	0	0	
— Reed Canes, the 1000	1	6	6	
— Walking Canes or Sticks, mounted, painted, or otherwise ornamented, for every 100 <i>l.</i> of the value	30	0	0	
— Whangoes, Jumboo, Ground Rattans, Dragon's-blood, and other Walking Canes or Sticks, the 1000	4	0	0	
Cantharides, the lb.	0	3	6	
Caoutchouc, or Elastic Gum, the lb.	0	0	5	
Capers, the lb.	0	1	0	
Capita Papaverum, the 1000	0	3	6	
Capsicum, <i>see</i> Pepper.				
Cardamoms, the lb.	0	2	0	
— Extract or Preparation of, <i>see</i> Extract.				
Cards, viz. Playing Cards, the dozen packs	4	0	0	
Cariophyllorum Cortex, <i>see</i> Clove Bark, in Bark.				
— Oleum, <i>see</i> Oil of Cloves.				
Carmine, the oz.	0	4	0	
Carrabe, <i>see</i> Succinum.				
Carriages of all sorts, for every 100 <i>l.</i> of the value	30	0	0	
Casks, empty, for every 100 <i>l.</i> of the value	50	0	0	

(a) By 10 Geo. IV., c. 43, only 1*l.*

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
Cassia, viz.						
Buda, the lb.	0	1	0	—		
Fistula, the lb.	0	0	10	0	0	6
Lignea, (a) the lb.	0	1	0	—		
Castor, the lb.	0	5	0	0	3	4
Casts of Busts, Statues, or Figures, the cwt.	0	2	6	—		
Catechu, <i>see</i> Terra Japonica.						
Catlings, Harpstrings, or Lutestrings, the gross, containing 12 dozen knots	0	6	4	—		
Caviare, the cwt.	0	12	0	—		
Cedar Wood, the ton	3	16	0	—		
the produce of and imported from any British possession (except the Cape of Good Hope) the ton	1	0	0	—		
the produce of the Cape of Good Hope, and imported direct from thence, the ton	0	10	0	—		
Chalk, viz.						
prepared or otherwise manufactured, and not otherwise enumerated or described, for every 100 <i>l.</i> of the value	40	0	0	—		
unmanufactured, and not otherwise enumerated or described, for every 100 <i>l.</i> of the value	20	0	0	—		
Charts, <i>see</i> Maps.						
Cheese, the cwt.	0	10	6	—		
Cherries, the cwt.	0	18	8	—		
dried, the lb.	0	0	8	—		
Chillies, <i>see</i> Pepper.						
China Root, the lb.	0	1	3	0	0	10
China or Porcelain Ware, viz.						
plain, for every 100 <i>l.</i> of the value	15	0	0	—		
painted, gilt, or ornamented, for every 100 <i>l.</i> of the value	30	0	0	—		
Chip, Manufactures of, to make Hats or Bonnets, <i>see</i> Plaiting.						
Chocolate and Cocoa Paste, viz.						
the produce of and imported from any British possession, the lb.	0	1	9	—		
the produce of any other place, or if otherwise imported, the lb.	0	4	4	—		
Cider, the tun	21	10	0	—		
Cinders, the ton	2	0	0	—		
Cinnabaris Nativa, the lb.	0	0	3	0	0	2
Cinnamon (b), the lb.	0	3	6	0	3	2
the produce of and imported from any British possession, the lb.	0	2	6	0	2	3
Citrat of Lime, the lb.	0	1	6	—		
Citron preserved with Salt, for every 100 <i>l.</i> of the value	20	0	0	—		
preserved with Sugar, <i>see</i> Succades.						
Citron Water, <i>see</i> Spirits.						
Civet, the oz.	0	4	9	—		
Clinkers, <i>see</i> Bricks.						
Clocks, for every 100 <i>l.</i> of the value	25	0	0	—		
Cloves, the lb.	0	3	0	0	2	7
the produce of and imported from any British possession, the lb.	0	2	0	0	1	9
Coals, the ton	2	0	0	—		
Cobalt, the lb.	0	0	3	—		
Coculus Indicus, the lb.	0	2	6	—		
Extract or Preparation of, <i>see</i> Extract.						
Cochineal, the lb.	0	1	0	—		
Dust, the lb.	0	0	5	—		
the produce of any British possession, the lb.	0	0	4	—		
Dust, the lb.	0	0	1½	—		
Cocoa Nuts, viz.						
the produce of any British possession in America, the lb.	0	0	6	—		
the produce of any British possession within the limits of the East India Company's Charter, the lb.	0	0	9	—		
the produce of any other place, the lb.	0	1	3	—		

(a) By 10 Geo. IV., c. 48, imported from any British possession, only *ad.*(b) By 10 Geo. IV., c. 48, the lb. 1½: if imported from any British possession, only *ad.*

	Duty.		
	£.	s.	d.
Cocoa-Nut Husks, or Cocos Shells, the lb.	0	0	2
Cocoa Paste, <i>see</i> Chocolate.			
Cocus Wood, the produce of any British possession, the ton	0	3	0
Codilla, <i>see</i> Flax.			
Coffee, <i>viz.</i>			
— the produce of any British possession in America, the lb.	0	0	6
— the produce of any British possession within the limits of the East			
— India Company's Charter, the lb.	0	0	9
— the produce of any other place, the lb.	0	1	3
Coin, <i>viz.</i>			
— of Copper, <i>see</i> Copper.			
— Foreign, of Gold or Silver, <i>see</i> Bullion.			
Coker or Coco Nuts, <i>see</i> Nuts.			
Coloquintida, or Colocynth, the lb.	0	1	8
Columba Root, the lb.	0	2	0
Comfits, the lb.	0	2	6
Copper, <i>viz.</i>			
— Ore, the cwt.	0	12	0
— old, fit only to be remanufactured, the cwt.	0	15	0
— in Plates, and Copper Coin, the cwt.	1	10	0
— unwrought, <i>viz.</i>			
— in Bricks or Pigs, Rose Copper, and all Cast Copper, the cwt.	1	7	0
— in part wrought, <i>viz.</i>			
— Bars, Rods, or Ingots, hammered or raised, the cwt.	1	15	0
— Wire, <i>see</i> Wire.			
— Manufactures of Copper not otherwise enumerated or described, and Copper Plates engraved, for every 100 <i>l.</i> of the value	30	0	0
— the produce of any British possession within the limits of the East			
— India Company's Charter, <i>viz.</i>			
— Ore, the cwt.	0	1	0
— old, fit only to be remanufactured, the cwt.	0	9	2
— in Plates and Copper Coin, the cwt.	0	15	0
— unwrought, <i>viz.</i>			
— in Bricks or Pigs, Rose Copper, and all Cast Copper, the cwt.	0	9	2
— in part wrought, <i>viz.</i>			
— Bars, Rods, or Ingots, hammered or raised, the cwt.	1	11	3
— Manufactures of Copper, not otherwise enumerated or described, and Copper Plates engraved, for every 100 <i>l.</i> of the value	30	0	0
Copperas, <i>viz.</i>			
— Blue, the cwt.	0	5	0
— Green, the cwt.	0	5	0
— White, the cwt.	0	15	0
Coral, <i>viz.</i>			
— Beads, <i>see</i> Beads.			
— in Fragments, the lb.	0	1	0
— whole, polished, the lb.	0	12	0
— unpolished, the lb.	0	5	6
— of British Fishing or taking, the lb.	0	0	6
Cordage tarred or untarred, whether in use or otherwise (standing or running rigging in use excepted), the cwt.	0	10	9
Cordial Waters, <i>see</i> Spirits.			
Cork, the cwt.	0	8	0
Corks, ready made, the lb.	0	7	0
Corn, <i>see</i> Act 3 Geo. IV. c. 60.			
Cornu Cervi Calcinatum, the lb.	0	0	8
(a)			
Costus, the lb.	0	1	0
Cotton, <i>viz.</i>			
— Manufactures of, for every 100 <i>l.</i> of the value	10	0	0

(a) By 10 Geo. IV., c. 43, Cortex Eleutheria is liable to duty of 1*d.* per lb.

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Cotton continued.</i>						
— Manufactures of, and further, if printed, for every square Yard	0	0	3½	—		
— Wool, or Waste of Cotton Wool, <i>see</i> Wool.						
Couhage or Cowitch, the lb.	0	1	3	0	0	10
Cowries, for every 100 <i>l.</i> of the value	20	0	0	—		
Cranberries, the gallon,	0	0	6	—		
Crayons, for every 100 <i>l.</i> of the value	40	0	0	—		
Cream of Tartar, the cwt.	0	4	8	—		
Crystal, <i>viz.</i>						
— Beads, <i>see</i> Beads.						
— rough, for every 100 <i>l.</i> of the value	20	0	0	—		
— cut, or in any way manufactured, for every 100 <i>l.</i> of the value	30	0	0	—		
Cubebs, the lb.	0	2	0	—		
Cucumbers, <i>viz.</i>						
— pickled, including the vinegar, the gallon	0	3	0	—		
— preserved in salt and water, for every 100 <i>l.</i> of the value	20	0	0	—		
Culm, the ton	2	0	0	—		
Currants, the cwt.	2	4	4	2	0	0
Cuttle Shells, the 1000	0	12	6	—		
D.						
Damaak Tabling, Towelling, or Napkinning, <i>see</i> Linen.						
Dates, the cwt.	4	10	3	4	0	0
Derelict Foreign Liquors, Derelict, Jetsam, Flotsam, Lagan, or Wreck, brought or coming into Great Britain or Ireland, are subject to the same duties and entitled to the same drawbacks as liquors of the like kind regularly imported.						
Diagrydium, <i>see</i> Scammony.						
Diamonds—duty-free.						
Diaper Tabling, Towelling, or Napkinning, <i>see</i> Linen.						
Dice, the pair	1	6	2	—		
Dittany, the lb.	0	1	0	0	0	8
Down, the lb.	0	1	3	—		
Dragon's Blood, <i>see</i> Sanguis Draconis.						
Drawings, <i>see</i> Prints.						
Drugs, not particularly enumerated or described, nor otherwise charged with duty, for every 100 <i>l.</i> of the value	20	0	0	—		
Dust, perfumed, <i>see</i> Powder.						
E.						
Earthenware, not otherwise enumerated or described, for every 600 <i>l.</i> of the value	15	0	0	—		
Eels, <i>see</i> Fish.						
Ebony, <i>viz.</i>						
— the produce of any British possession, and imported direct from thence, the ton	0	15	0	—		
— the produce of any other country, or if otherwise imported, the ton	24	14	0	—		
— Green Ebony, the produce of and imported from any British possession, the ton	0	3	0	—		
Eggs, the 120	0	0	10	—		
Elastic Gum, <i>see</i> Caoutchouc.						
Embroidery and Needlework, from the 5th July, 1828, for every 100 <i>l.</i> of the value	30	0	0	—		
Emery Stones, <i>see</i> Stone.						
Enamel, the lb.	0	7	2	—		
Essence, <i>viz.</i>						
— of Bergamot or of Lemon, the lb.	0	4	6	—		
— of Spruce, for every 100 <i>l.</i> of the value	20	0	0	—		
— not otherwise enumerated or described, the lb.	0	4	6	—		
Euphorbium, the lb.	0	0	8	0	0	5
Extract, <i>viz.</i>						
— Cardamoms,						
— Coculus Indicus,						
— Grains, <i>viz.</i>						
— ————Guinea Grains,						
— ————of Paradise,						
— Liquorice,						
— Nux Vomica,						
			Extract or Preparation of, for every 100 <i>l.</i> of the value	75	0	0



	Duty.		
	£.	s.	d.
<i>Extract continued.</i>			
— Oak Bark, solid vegetable Extract from Oak Bark, or other vegetable substances, to be used for the purpose of tanning leather, and for no other purpose whatever, the cwt.	0	3	0
— the produce of New South Wales and its dependencies, and imported direct from thence, until the 1st January, 1833, duty-free.			
— Opium, { Extract or Preparation of, for every			
— Pepper, viz. Guinea Pepper, { 100l. of the value	25	0	0
— Peruvian or Jesuits Bark, Extract or Preparation of, the lb.	0	5	0
— Quassia, Extract or Preparation of, for every 100l. of the value	50	0	0
— Radix Rhataniæ, Extract or Preparation of, the lb.	0	5	0
— Vitriol, Extract or Preparation of, for every 100l. of the value	25	0	0
— Extract or Preparation of any article, not being particularly enumerated or described, nor otherwise charged with duty, for every 100l. of the value	20	0	0
F.			
<i>Feathers, viz.</i>			
— for Beds, in Beds or not, the cwt.	2	4	0
— Ostrich, dressed, the lb.	1	10	0
— undressed, the lb.	0	10	0
— not otherwise enumerated or described, viz.			
— dressed, for every 100l. of the value	20	0	0
— undressed, for every 100l. of the value	10	0	0
<i>Figs, the cwt.</i>	1	1	6
<i>Filtering Stones, see Stones.</i>			
<i>Fish, viz.</i>			
— Eels, the ship's lading	13	1	3
— Lobsters—duty-free.			
— Oysters, the bushel	0	1	6
— Stock Fish, the 120	0	5	0
— Sturgeon, the keg, not containing more than 5 gallons	0	9	0
— Turbots			Free.
— Fresh Fish, of British taking, and imported in British ships or vessels			Free.
— Cured Fish, of British taking and curing			Free.
<i>Fishing Nets, Old, see Rags.</i>			
<i>Flasks, see Bottles.</i>			
<i>Flax, and Tow, or Codilla, of Hemp or Flax, whether dressed or undressed, viz.</i>			
— until the 6th July, 1826, the cwt.	0	0	4
— from the 6th July, 1826, until the 6th July, 1827, the cwt.	0	0	3
— from the 6th July, 1827, until the 6th July, 1828, the cwt.	0	0	2
— from and after the 6th July, 1828, the cwt.	0	0	1
<i>Flint Stones for Pottery, see Stones.</i>			
<i>Flocks, the cwt.</i>	0	19	0
<i>Flotsam, see Derelict.</i>			
<i>Flower Roots, for every 100l. of the value</i>	20	0	0
<i>Flowers, Artificial, not made of silk, for every 100l. of the value.</i>	25	0	0
<i>Fossils not otherwise enumerated or described, for every 100l. of the value</i>	20	0	0
<i>— Specimens of, see Specimens.</i>			
<i>Frames for Pictures, Prints, or Drawings, for every 100l. of the value</i>	20	0	0
<i>Frankincense, see Olibanum.</i>			
<i>Furriers waste, for every 100l. of the value</i>	20	0	0
<i>Furs, see Skins.</i>			
<i>Fustic, the ton</i>	0	4	6
— the produce of any British possession in America, or on the West Coast of Africa, the ton	0	3	0
G.			
<i>Galangal, the lb.</i>	0	0	6
<i>Galbanum, the lb.</i>	0	1	4
<i>Galls, the cwt.</i>	0	11	2
<i>Gamboge, the lb.</i>	0	1	8
<i>Garnets, viz.</i>			
— cut, the lb.	1	10	0
— rough, the lb.	0	10	0
<i>Gauze of Thread, for every 100l. of the value</i>	30	0	0

	Duty.			Drawbac		
	£.	s.	d.	£.	s.	d.
Gentian, the lb.	0	0	6	0	0	4
Ginger, the cwt.	2	13	0	—	—	—
— preserved, the lb.	0	3	2	—	—	—
— the produce of any British possession, the cwt.	0	11	6	0	10	0
— — — — — preserved, the lb.	0	0	3	—	—	—
Ginseng, the lb.	0	1	6	0	1	0
Glass, from and after 5th January, 1826, viz.						
— Crown Glass, or any kind of Window Glass (not being Plate Glass or German Sheet Glass), the cwt.	8	6	8	—	—	—
— German Sheet Glass, the cwt.	10	0	0	—	—	—
— Plate Glass, superficial measure, viz.						
— not containing more than 9 square feet, from the 5th January, 1826, to the 6th January, 1827, the square foot	0	7	0	—	—	—
— — — — — after the 5th January, 1827, the square foot	0	6	0	—	—	—
— containing more than 9 square feet, and not more than 14 square feet, from the 5th January, 1826, to the 6th January, 1827, the square foot	0	9	0	—	—	—
— — — — — after the 5th January, 1827, the square foot	0	8	0	—	—	—
— containing more than 14 square feet, and not more than 36 square feet, from the 5th January, 1826, to the 6th January, 1827, the square foot	0	10	6	—	—	—
— — — — — after the 5th January, 1827, the square foot	0	9	6	—	—	—
— containing more than 36 square feet, from the 5th January, 1826, to the 6th January, 1827, the square foot	0	12	0	—	—	—
— — — — — after the 5th January, 1827, the square foot	0	11	0	—	—	—
— Manufactures not otherwise enumerated or described, and old broken Glass fit only to be remanufactured, for every 100l. of the value	20	0	0	—	—	—
— — — — — and further, for every cwt.	4	0	0	—	—	—
Glovers' Clippings, fit only to make Glue, the cwt.	0	4	9	—	—	—
Gloves, viz.						
— Habit Gloves, from the 5th July, 1826, the dozen pair	0	4	0	—	—	—
— Men's Gloves, from the 5th July, 1826, the dozen pair	0	5	0	—	—	—
— Women's Gloves or Mitts, from the 5th July, 1826, the dozen pair	0	7	0	—	—	—
Glue, the cwt.	0	12	0	—	—	—
Grains, viz.						
— Guinea Grains, the lb.	0	2	0	—	—	—
— — — — — Extract or Preparation of, <i>see</i> Grains, in Extract of Paradise, the lb.	0	2	0	—	—	—
— — — — — Extract or Preparation of, <i>see</i> Grains, in Extract.	0	0	10	—	—	—
Graffia, the lb.	0	0	5	—	—	—
— the produce of any British possession, the lb.	20	0	0	—	—	—
Grapes, for every 100l. of the value	20	0	0	—	—	—
— Rape of, <i>see</i> Rape of Grapes.	0	1	8	—	—	—
Grease, the cwt.	0	2	0	—	—	—
Grosvs for Dogs, the cwt.	0	2	0	—	—	—
Gum, viz.						
— Ammoniac, the lb.	0	1	3	0	0	10
— Animi, rough, and in no way cleaned, the lb.	0	0	5	—	—	—
— — — — — scraped, or in any way cleaned, the lb.	0	0	6	—	—	—
— Arabic, the cwt.	0	12	0	—	—	—
— Cashew, the cwt.	0	7	6	0	5	0
— Copal, rough, and in no way cleaned, the lb.	0	0	5	—	—	—
— — — — — scraped, or in any way cleaned, the lb.	0	0	6	—	—	—
— Elemi, the lb.	0	0	8	0	0	5
— Guaiacum, the lb.	0	1	10	0	1	2
— Juniper, <i>see</i> Gum Sandarack.	0	1	6	0	1	0
— Kino, or Gum Rubrum Astringens, the lb.	0	1	6	0	1	0
— Lac, viz.						
— — — — — Cake Lac } for every 100l. of the value	10	0	0	—	—	—
— — — — — Lac Lake } for every 100l. of the value	5	0	0	—	—	—
— — — — — Lac Dye } for every 100l. of the value	5	0	0	—	—	—
— — — — — Seed Lac } for every 100l. of the value	5	0	0	—	—	—
— — — — — Stick Lac }						

	Duty.		
	£.	s.	d.
<i>Gum Lac continued.</i>			
— Shell Lac, for every 100 <i>l.</i> of the value	20	0	0
— Opopanax, the lb.	0	3	6
— Rubrum Astringens, <i>see</i> Gum Kino.			
— Sagapenum, the lb.	0	9	10
— Sandarack, or Juniper, the cwt.	0	19	0
— Sarcocolla, the lb.	0	0	10
— Senegal, the cwt.	0	12	0
— Tacamahaca, the lb.	0	2	0
— Tragacanth, the lb.	0	1	0
— Gum, not particularly enumerated or described, or otherwise charged with duty, for every 100 <i>l.</i> of the value	20	0	0
Gunpowder, the cwt.	3	0	0
Gypsum, the ton	1	11	8
— the produce of and imported from any British possession, the ton	0	1	3
H.			
<i>Hair, viz.</i>			
— Camels' Hair or Wool, the lb.	0	0	1
— the produce of and imported from any British possession			Free.
— Cow, Ox, Bull, or Elk Hair, the cwt.	0	10	0
— Goats' Hair, <i>see</i> Wool.			
— Hats made of Hair, <i>see</i> Hats.			
— Horse Hair, for every 100 <i>l.</i> of the value	20	0	0
— Human Hair, the lb.	0	5	0
— not otherwise enumerated or described, for every 100 <i>l.</i> of the value	20	0	0
— Manufactures of Hair or Goats' Wool, or of Hair or Goats' Wool and any other material, not particularly enumerated, or otherwise charged with duty, for every 100 <i>l.</i> of the value	30	0	0
Hams, the cwt.	1	8	0
Harp Strings, <i>see</i> Catlings.			
<i>Hats, viz.</i>			
— Bast, Chip, Cane, or Horse Hair Hats or Bonnets, each Hat or Bonnet not exceeding 22 inches in diameter, the dozen	1	0	0
— each Hat or Bonnet exceeding 22 inches in diameter, the dozen	2	0	0
— Straw Hats or Bonnets, each Hat or Bonnet not exceeding 22 inches in diameter, the dozen	3	8	0
— each Hat or Bonnet exceeding 22 inches in diameter, the dozen	6	16	0
— made of or mixed with felt, hair, wool, or beaver, the hat	0	10	6
Hay, the load containing 36 trusses, each truss being 56 <i>lbs.</i>	1	4	0
Head Matter, <i>see</i> Train Oil, in Oil.			
Heath, for Brushes, the cwt.	0	9	2
Hellebore, the lb.	0	0	6
<i>Hemp, viz.</i>			
— dressed, the cwt.	4	15	0
— rough or undressed, or any other vegetable substance of the nature and quality of undressed hemp, and applicable to the same purposes, the cwt.	0	4	8
— the produce of any British possession			Free.
Hessen Canvas, <i>see</i> Linen.			
<i>Hides, viz.</i>			
— Horse, Mare, Gelding, Buffalo, Bull, Cow, or Ox Hides, in the hair, not tanned, tawed, curried, or in any way dressed, <i>viz.</i>			
— dry, the cwt.	0	4	8
— wet, the cwt.	0	2	4
— the produce of, and imported from the West Coast of Africa, each hide not exceeding 14 <i>lbs.</i> weight, the cwt.	0	2	4
— tanned and not otherwise dressed, the lb.	0	1	0
— the produce of any British possession, <i>viz.</i>			
— dry, the cwt.	0	2	4
— wet, the cwt.	0	1	2
— tanned, and not otherwise dressed, the lb.	0	0	6
— Tails, <i>see</i> Tails.			
— Loash Hides, the lb.	0	1	8

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Hides continued.</i>						
— Muscovy or Russia Hides, tanned or coloured, the Hide(s)	0	15	0	—		
— Hides, or pieces of Hides, raw or undressed, not particularly enumerated or described, nor otherwise charged with duty, imported from any British possession in America, for every 100 <i>l.</i> of the value	5	17	6	—		
— Hides, or pieces of Hides, raw or undressed, not particularly enumerated or described, nor otherwise charged with duty, for every 100 <i>l.</i> of the value	20	0	0	—		
— Hides, or pieces of Hides, tanned, tawed, curried, or in any way dressed, not particularly enumerated or described, nor otherwise charged with duty, for every 100 <i>l.</i> of the value	75	0	0	—		
Hones, the 100	1	3	0	—		
Honey, the produce of any British possession, the cwt.	0	5	0	—		
— the produce of any other place, the cwt.	0	15	0	—		
Hoofs of Cattle, for every 100 <i>l.</i> of the value	20	0	0	—		
Hoops, viz. (b)						
— of Iron, the cwt.	1	3	9	—		
— of Wood, the 1000	0	15	0	—		
Hops, the cwt.	8	11	0	—		
Horns, Horn Tips, and pieces of Horns, not otherwise charged with duty, the cwt.	0	2	4	—		
Horses, Mares, or Geldings, each	1	0	0	—		
Hulled Barley, <i>see</i> Pearl Barley.						
Hungary Water, <i>see</i> Spirits.						
I. and J.						
Jalap, the lb.	0	2	0	0	1	4
Japanned Ware, for every 100 <i>l.</i> of the value	20	0	0	—		
Jet, the lb.	0	2	0	—		
— Beads, <i>see</i> Beads.						
Jetsam, <i>see</i> Derelict.						
Jewels, Emeralds, Rubies, and all other Precious Stones (except Diamonds), viz.						
— set, for every 100 <i>l.</i> of the value	20	0	0	—		
— not set, for every 100 <i>l.</i> of the value	10	0	0	—		
Jews' Pitch, <i>see</i> Bitumen Judaicum.						
India Rubbers, <i>see</i> Caoutchouc.						
Indigo, the lb.	0	0	4	—		
— the produce of any British possession, the lb.	0	0	3	—		
Ink for Printers, the cwt.	1	1	0	—		
Inkle, viz.						
— unwrought, the lb.	0	0	10	—		
— wrought, the lb.	0	5	2	—		
Iris Root, <i>see</i> Orrice Root.						
Iron, viz. (c)						
— in bars or unwrought,						
— the produce of any British possession, and imported from thence, the ton	0	2	6	—		
— the produce of any other country, the ton	1	10	0	—		
— slit or hammered into rods, and iron drawn or hammered less than $\frac{3}{4}$ of an inch square, the cwt.	0	5	0	—		
— Cast, for every 100 <i>l.</i> of the value	10	0	0	—		
— Hoops, <i>see</i> Hoops.						

(a) By 10 Geo. IV., c. 43, schedule,

Hides, Muscovy or Russia Hides tanned, coloured, shaved, or otherwise dressed, the Hide	0	5	0
- Pieces tanned, coloured, shaved, or otherwise dressed, the lb.	0	2	6
- Hides, or pieces of Hides, tanned, tawed, curried, or in any way dressed, not particularly enumerated or described, nor otherwise charged with duty, for every 100 <i>l.</i> of the value	40	0	0

(b) By 10 Geo. IV., c. 43, schedule,

Hoops, Wood, viz.			
- not exceeding six feet in length, the 1000	0	5	0
- exceeding six feet, and not exceeding nine feet in length, the 1000	0	7	6
- exceeding nine feet, and not exceeding twelve feet in length, the 1000	0	10	0
- exceeding twelve feet, and not exceeding fifteen feet in length, the 1000	0	12	6
- exceeding fifteen feet in length, the 1000	0	15	0

(c) By 10 Geo. IV., c. 43, schedule, Iron, Chromate of, a duty of 5*s.* the ton is imposed.

	Duty.		
	£.	s.	d.
Iron <i>continued</i> .			
— old broken and old cast Iron, the ton	0	12	0
— Ore, the ton	0	5	0
— Pig Iron, the ton	0	10	0
— the produce of and imported from any British possession, the ton	0	1	3
— Wire, <i>see</i> Wire.			
— wrought, not otherwise enumerated or described, for every 100 <i>l</i> . of the value	20	0	0
Isinglass, the cwt.	2	7	6
— the produce of and imported from any British possession, the cwt.	0	15	10
Juice of Lemons, Limes, or Oranges, <i>viz.</i>			
— raw, the gallon, for every degree of specific gravity or strength	0	0	0
— concentrated, the gallon, for every degree of specific gravity or strength	0	0	0
— the produce of and imported from any British possession, whether concentrated or raw, the gallon, for every degree of specific gravity or strength	0	0	0
Junk, old, <i>see</i> Rags, old.			
Kelp, <i>see</i> Alkali.			
Lac, <i>see</i> Lac, in Gum.			
Lace, <i>viz.</i>			
— Silk Lace, for every 100 <i>l</i> . of the value, until the 6th July, 1826	40	0	0
— after the 5th July, 1826, <i>see</i> Silk Manufactures.			
— Thread Lace, for every 100 <i>l</i> . of the value	30	0	0
— Plain Silk Lace, called Net or Tulle, <i>viz.</i>			
— until the 6th July, 1826, the square yard	0	2	0
— after the 5th July, 1826, <i>see</i> Silk Manufactures.			
Lacquered Ware, for every 100 <i>l</i> . of the value	30	0	0
Lagan, <i>see</i> Derelict.			
Lamp Black, the cwt.	3	6	6
Lapis, <i>viz.</i>			
— Calaminaris, the cwt.	0	1	0
— Lasuli, the lb.	0	3	2
— Tutia, the lb.	0	0	8
Lard, the cwt.	0	8	0
Latten, <i>viz.</i>			
— black, the cwt.	0	14	0
— shaven, the cwt.	1	5	0
Lavender Flowers, the lb.	0	0	10
Lawns, <i>see</i> Linen.			
Lead, <i>viz.</i>			
— black, the cwt.	0	4	0
— Chromate of Lead, the lb.	0	2	0
— Ore, the ton	0	10	0
— Pig, the ton	2	0	0
— red, the cwt.	0	6	0
— white, the cwt.	0	7	0
Leather, any article made of leather, or any manufacture whereof leather is the most valuable part, not otherwise enumerated or described, for every 100 <i>l</i> . of the value	30	0	0
Leaves of Gold, the 100 leaves	0	3	0
Leaves of Roses, the lb.	0	0	10
Lemons, <i>see</i> Oranges.			
— Peel of, the lb.	0	0	0
— preserved in salt and water, for every 100 <i>l</i> . of the value	20	0	0
— in sugar, <i>see</i> Succades.			
Lentiles, the bushel	0	0	10
Lichen Islandicus, <i>see</i> Moss.			
Lignum, <i>viz.</i>			
— Quassia, <i>see</i> Quassia.			
— Rhodium, the cwt.	1	0	0

	Duty.	Drawback.
	£. s. d.	£. s. d.
<i>Lignum continued.</i>		
— Vitis, the produce of and imported from any British possession, the ton	0 11 2	—
— of any other place, or if otherwise imported, the ton	4 12 8	—
<i>Limes, Juice of, see Juice.</i>		
<i>Linen, or Linen and Cotton, viz.</i>		
— Cambrics, and Lawns, commonly called French Lawns, the piece not exceeding 8 yards in length, and not exceeding seven-eighths of a yard in breadth, and so in proportion for any greater or less quantity,		
— Plain	0 6 0	—
— Bordered Handkerchiefs	0 5 0	—
— Lawns of any other sort, not French, viz.		
— not containing more than 60 threads to the inch of warp, the square yard	0 0 9	—
— containing more than 60 threads to the inch of warp, the square yard	0 1 0	—
— Damasks, and Damask Diaper, viz.		
— from the 5th of January, 1826, to the 6th of January, 1827, the square yard	0 3 0	—
— one-eighth part of one shilling (part of the above duty) to cease on the 6th January, 1827, and the like on every 6th of January for seven succeeding years.		
— from the 5th January, 1834, the square yard	0 2 0	—
— Drillings, Ticks, and Twilled Linens, viz.		
— from the 5th of January, 1826, to the 6th of January, 1827, the square yard	0 0 11	—
— one-eighth part of three pence (part of the above duty) to cease on the 6th of January, 1827, and the like on every 6th of January for seven succeeding years.		
— from the 5th of January, 1834, the square yard	0 0 8	—
— Sail Cloth, the square yard	0 0 7½	—
— Plain Linens, and Diaper, not otherwise enumerated or described, and whether chequered or striped with dyed yarn or not, viz.		
— not containing more than 20 threads to the inch of warp,		
— from the 5th of January, 1826, to the 6th of January, 1827, the square yard	0 0 3	—
— one-eighth part of three farthings (part of the above duty) to cease on the 6th of January, 1827, and the like on every 6th of January for seven succeeding years.		
— from the 5th of January, 1834, the square yard	0 0 2½	—
— containing more than 20 threads, and not more than 24 threads to the inch of warp,		
— from the 5th of January, 1826, to the 6th of January, 1827, the square yard	0 0 3½	—
— one-eighth part of a halfpenny (part of the above duty) to cease on the 6th January, 1827, and the like on every 6th January for seven succeeding years.		
— from the 5th of January, 1834, the square yard	0 0 3	—
— containing more than 24 threads, and not containing more than 30 threads to the inch of warp,		
— from the 5th of January, 1826, to the 6th of January, 1827, the square yard	0 0 5	—
— one-eighth part of a penny (part of the above duty) to cease on the 6th of January, 1827, and the like on every 6th of January for seven succeeding years.		
— from the 5th of January, 1834, the square yard	0 0 4	—
— containing more than 30 threads, and not containing more than 40 threads to the inch of warp,		
— from the 5th of January, 1826, to the 6th of January, 1827, the square yard	0 0 6	—
— one-eighth part of three halfpence (part of the above duty) to cease on the 6th of January, 1827, and the like on every 6th January for seven succeeding years.		

	Duty.		
	£.	s.	d.
<i>Linen continued.</i>			
<i>Plain Linens and Diaper continued.</i>			
from the 5th of January, 1834, the square yard . . .	0	0	4½
containing more than 40 threads, and not containing more than 60 threads to the inch of warp,			
from the 5th of January, 1826, to the 6th of January, 1827, the square yard . . .	0	1	0
one-eighth part of fourpence (part of the above duty) to cease on the 6th of January, 1827, and the like on every 6th of January for seven succeeding years.			
from the 5th of January, 1834, the square yard . . .	0	0	8
containing more than 60 threads, and not containing more than 80 threads to the inch of warp,			
from the 5th of January, 1826, to the 6th of January, 1827, the square yard . . .	0	1	2
one-eighth part of fourpence (part of the above duty) to cease on the 6th of January, 1827, and the like on every 6th of January for seven succeeding years.			
from the 5th of January, 1834, the square yard . . .	0	0	10
containing more than 80 threads, and not containing more than 100 threads to the inch of warp,			
from the 5th of January, 1826, to the 6th of January, 1827, the square yard . . .	0	1	4
one-eighth part of fourpence (part of the above duty) to cease on the 6th of January, 1827, and the like on every 6th of January for seven succeeding years.			
from the 5th of January, 1834, the square yard . . .	0	1	0
containing more than 100 threads to the inch of warp,			
from the 5th of January, 1826, to the 6th of January, 1827, the square yard . . .	0	2	0
one-eighth part of sixpence (part of the above duty) to cease on the 6th of January, 1827, and the like on every 6th of January for seven succeeding years.			
from the 5th of January, 1834, the square yard . . .	0	1	6
or, and instead of the duties herein-before imposed upon linens of all sorts, at the option of the importer, for every 100l. of the value . . .	40	0	0
<i>Note.</i> —No increased rate of duty to be charged on any Linen or Lawns for any additional number of threads not exceeding two threads for such as are not of thirty threads to the inch, nor for any additional number of threads not exceeding five threads for such as are of thirty threads and upwards to the inch.			
Printed Linen, in addition to the rated duties thereon, for every square yard . . .	0	0	3
Sails, for every 100l. of the value . . .	30	0	0
Foreign-made Sails, on board any ship or vessel belonging to any of His Majesty's subjects, whether in use or not, for every 100l. of the value . . .	30	0	0
Manufactures of Linen, or of Linen mixed with Cotton or with Wool, not particularly enumerated, or otherwise charged with duty, from and after 5th January, 1826, for every 100l. of the value . . .	25	0	0
and further, if printed, for every square yard . . .	0	0	3
Linseed Cakes, the cwt. . .	0	0	2
Liquorice Juice, or Succus Liquoritiæ, the cwt. . .	3	15	0
Powder, the cwt. . .	5	10	0
Root, the cwt. . .	3	3	4
Extract or Preparation of, <i>see</i> Extract.			
<i>Liquors.</i> Foreign Liquors, Derelict, Jetsam, Flotsam, Lagan, or Wreck, brought or coming into Great Britain or Ireland, are subject to the same duties, and entitled to the same drawbacks, as liquors of the like kind regularly imported.			
Litharge of Gold or Silver, the cwt. . .	0	2	0
Litmus, the cwt. . .	0	4	0
Liverwort, <i>see</i> Lichen Islandicus, in Moss. . .			
Logwood, the ton . . .	0	4	6

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Logwood, continued.</i>						
the produce of any British possession in America, or on the West Coast of Africa, the ton	0	3	0	—		
Lapinea, the cwt.	0	5	0	—		
Lutestringa, <i>see</i> Catlings.						
<i>M.</i>						
Macaroni, the lb.	0	0	8	—		
Mace, the lb.	0	4	6	0	4	0
the produce of and imported from any British possession, the lb.	0	3	6	0	3	2
Madder, the cwt.	0	6	0	—		
Root, the cwt.	0	1	6	—		
Magna Græcia Ware, for every 100 <i>l.</i> of the value	5	0	0	—		
Mahogany, <i>viz.</i>						
of the growth of Bermuda, or any of the Bahama Islands, and imported direct from thence respectively, and Mahogany imported direct from the Bay of Honduras, in a British ship, cleared out from the port of Belize, the ton	3	16	0	—		
of the growth of the island of Jamaica, and imported direct from thence, the ton	5	0	0	—		
of the growth of any other place, or otherwise imported or cleared out, the ton	11	17	6	—		
Mangoes, the gallon	0	6	0	—		
Manna, the lb.	0	1	3	0	0	10
Manuscripts, the lb.	0	0	2	—		
Maps or Charts, plain or coloured, each map or chart, or part thereof	0	0	6	—		
Marble, <i>see</i> Stone.						
Marbles for children, <i>see</i> Toys.						
Marmalade, the lb.	0	1	3	—		
the produce of any British possession, the lb.	0	0	3	—		
Mastic, the lb.	0	1	4	0	0	10
Mats, <i>viz.</i>						
of Russia, the 100	1	3	9	—		
not otherwise enumerated or described, for every 100 <i>l.</i> of the value	20	0	0	—		
Matting, for every 100 <i>l.</i> of the value	20	0	0	—		
Mattresses, for every 100 <i>l.</i> of the value	20	0	0	—		
Mead or Metheglin, the gallon	0	6	7	—		
Medals, <i>viz.</i>						
of gold or silver	Free.					
of any other sort, for every 100 <i>l.</i> of the value	5	0	0	—		
Medlars, the bushel	0	5	0	—		
Melasses, the cwt.	1	3	9	—		
the produce of and imported from any British possession, the cwt.	0	10	0	—		
Melting Pots, for goldsmiths, <i>see</i> Pots.						
Mercury prepared, for every 100 <i>l.</i> of the value	30	0	0	—		
Metal, <i>viz.</i>						
Bell Metal, the cwt.	1	0	0	—		
Leaf Metal (except Leaf Gold) the packet containing 250 leaves	0	0	8	—		
Metheglin, <i>see</i> Mead.						
Mill Boards, the cwt.	3	8	2	—		
Mill Stones, <i>see</i> Stone.						
Minerals, not otherwise enumerated or described, for every 100 <i>l.</i> of the value	20	0	0	—		
Specimens of, <i>see</i> Specimens.						
Models of Cork or Wood, for every 100 <i>l.</i> of the value	5	0	0	—		
Morels, the lb.	0	2	9	—		
Moss, <i>viz.</i>						
Lichen Islandicus or Liverwort, the lb.	0	0	8	—		
Rock, for dyers' use, the ton	0	15	0	—		
not otherwise enumerated or described, for every 100 <i>l.</i> of the value	20	0	0	—		
Mother of Pearl Shells, for every 100 <i>l.</i> of the value	5	0	0	—		
Mulca, each	0	10	0	—		
Mum, <i>see</i> Beer.						
Musical Instruments, for every 100 <i>l.</i> of the value	20	0	0	—		
Musk, the oz.	0	5	0	0	3	4



	£.	s.	d.	Duty.
Myrrh, the lb.	0	1	8	
Myrtle Wax, <i>see</i> Wax.				
N.				
Napkinning, <i>see</i> Linen.				
Nardus Celtica, the cwt.	1	0	0	
Indica, <i>see</i> Spikenard.				
Natron, <i>see</i> Alkali.				
Needle Work, <i>see</i> Embroidery.				
Nets, viz. old fishing-nets, fit only for making paper or pasteboard, <i>see</i> Rags.				
Nicaragua Wood, the ton	0	15	0	
Nitre, viz. Cubic Nitre, the cwt.	0	0	6	
Nutmegs, the lb.	0	3	6	
the produce of and imported from any British possession, the lb.	0	2	6	
Nuts, viz.				
— Cashew Nuts, the lb.	0	2	0	
— the produce of any British possession, the lb.	0	0	1	
— Kernels, the lb.	0	0	2	
— Castor Nuts, the lb.	0	0	4	
— Coker or Coco Nuts, the produce of any British possession, the 120 nuts	0	5	0	
— Chestnuts, the bushel	0	2	0	
— Pistachio Nuts, the lb.	0	0	10	
— Small Nuts, the bushel	0	2	0	
— Walnuts, the bushel	0	2	0	
— Nuts not otherwise enumerated or described, for every 100 <i>l</i> . of the value	20	0	0	
Nux Vomica, the lb.	0	2	6	
Extract or Preparation of, <i>see</i> Extract.				
O.				
Oakum, the cwt.	0	4	9	
Ochre or Oaker, the cwt.	0	6	9	
Oil, viz.				
— of Almonds, the lb.	0	0	10	
— of Amber or Succinum, the lb.	0	5	6	
— of Anniseed, the lb.	0	4	0	
— of Bay, the lb.	0	0	3	
— of Cajaputa, the oz.	0	1	0	
— of Caraway, the lb.	0	2	6	
— of Cassia, the oz.	0	1	0	
— of Castor, the lb.	0	1	0	
— the produce of and imported from any British possession, the lb.	0	0	6	
— Chemical Oil, not otherwise enumerated or described, the lb.	0	4	0	
— of Cinnamon, the oz.	0	1	0	
— of Cloves, the oz.	0	2	0	
— of Cocoa Nut, the cwt.	0	2	6	
— of Fennel, the lb.	0	4	0	
— Fish Oil, <i>see</i> Train Oil, in Oil.				
— of Hemp Seed, the tun	39	18	0	
— of Jessamine, the lb.	0	4	0	
— of Juniper, the lb.	0	2	0	
— of Lavender, the lb.	0	4	0	
— of Linseed, the tun	39	18	0	
— of Mace, the oz.	0	2	6	
— of Marjorum, the lb.	0	4	0	
— of Neroli, <i>see</i> Oil of Orange Flower.				
— of Nutmegs, the oz.	0	2	6	
— of Olives, the tun (a)	8	8	0	
— of Orange Flower or Neroli, the oz.	0	2	0	
— of Palm, the cwt.	0	2	6	
— Perfumed Oil, not otherwise enumerated or described, the lb.	0	4	0	
— of Pine, the lb.	0	0	8	
— of Rape Seed, the tun	39	18	0	

(n) By 10 Geo. IV., c. 43, schedule, Oil of Olives imported in a ship belonging to any of the subjects of the Two Sicilies, in addition to the duties imposed by any other act or acts, the tun, *li. 1s.*

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
Oil <i>continued</i> .						
— of Rhodium, the oz.	0	5	0	—		
— Rock Oil, the lb.	0	0	10	—		
— of Rosemary, the lb.	0	4	0	—		
— of Roses, <i>see</i> Otto of Roses.						
— of Rosewood, the oz.	0	5	0	—		
— Salad Oil, <i>see</i> Oil of Olives.						
— of Sandal Wood, the oz.	0	2	6	—		
— of Sassafras, the lb.	0	2	6	—		
— Seal Oil, <i>see</i> Train Oil, in Oil.						
— Seed Oil, not otherwise enumerated or described, the tun	39	18	0	—		
— of Spermaceti, <i>see</i> Train Oil, in Oil.						
— of Spike, the lb.	0	4	0	—		
— of Saccinum, <i>see</i> Oil of Amber.						
— of Thyme, the lb.	0	4	0	—		
— Train Oil, Blubber, Spermaceti Oil, and Head Matter, <i>vis</i> .						
the produce of fish or creatures living in the sea, taken and caught by the crews of British ships, and imported direct from the fishery, or from any British possession, in a British ship, the tun	0	1	0	—		
the produce of fish or creatures living in the sea, of foreign fishing, the tun	26	12	0	—		
— of Turpentine, the lb.	0	0	8	—		
— of Vitriol, the lb.	0	0	6	—		
— Walnut Oil, the lb.	0	0	6	—		
— Whale Oil, <i>see</i> Train Oil, in Oil.						
— Oil, not particularly enumerated or described, nor otherwise charged with duty, for every 100 <i>l</i> . of the value	50	0	0	—		
Oker, <i>see</i> Ochre.						
Olibanum, the cwt.	2	0	0	1 4 2		
Olives, the gallon	0	2	0	—		
Olive Wood, <i>vis</i> .						
the produce of and imported from any British possession, the ton	0	12	4	—		
of any other place, or if otherwise imported, the ton	8	9	6	—		
Onions, the bushel	0	3	0	—		
Opium, the lb.	0	9	0	0 6 0		
Extract or preparation of, <i>see</i> Extract.						
Opopanax Gum, <i>see</i> Gum.						
Orange Flower Water, the gallon	0	3	9	—		
Oranges and Lemons, <i>vis</i> .						
the chest or box, not exceeding the capacity of 5000 cubic inches	0	3	4	—		
the chest or box, exceeding the capacity of 5000 cubic inches, and not exceeding 7300 cubic inches	0	5	0	—		
the chest or box, exceeding the capacity of 7300 cubic inches, and not exceeding 14,000 cubic inches	0	10	0	—		
for every 1000 cubic inches exceeding the above rate of 14,000 cubic inches, and so in proportion for any greater or less excess	0	0	10	—		
loose, the 1000	1	0	0	—		
or, and at the option of the importer, for every 100 <i>l</i> . of the value	100	0	0	—		
Juice of, <i>see</i> Juice.						
Peel of, the lb.	0	0	6	—		
Orchal, Orchelia, or Archelia, the cwt.	0	6	0	—		
Ore, not otherwise enumerated or described, for every 100 <i>l</i> . of the value	20	0	0	—		
of Gold or Silver, <i>see</i> Bullion.						
— Specimens of, <i>see</i> Specimens.						
Orpiment, the cwt.	1	8	6	—		
Orris, or Iris Root, the cwt.	1	8	6	—		
Orsedeu, the lb.	0	1	3	—		
Otto, or Attar, or Oil of Roses, the oz.	0	6	0	—		
P.						
Paddy, <i>see</i> Rice.						
Painters' Colours, not otherwise enumerated or described, for every 100 <i>l</i> . of the value (a)	30	0	0	—		

(a) By 16 Geo. IV., c. 43, schedule, only 10*l*.

	Duty.		
	£.	s.	d.
Paintings on Glass, for every 100 <i>l.</i> of the value . . . . .	30	0	0
— and further, for every cwt. of Glass . . . . .	4	0	0
Paper, viz.			
— Brown Paper, made of old rope or cordage only, without separating or extracting the pitch or tar therefrom, and without any mixture of other materials therewith, the lb. . . . .	0	0	3
— Printed, Painted, or Stained Paper, or Paper Hangings, or Flock Paper, the yard square . . . . .	0	1	0
— Waste Paper, or Paper of any other sort, not particularly enumerated or described, nor otherwise charged with duty, the lb. . . . .	0	0	9
Parchment, the dozen sheets . . . . .	0	10	0
Pasteboards, the cwt. . . . .	3	8	2
Pearl Barley, the cwt. . . . .	0	17	6
Pearls, for every 100 <i>l.</i> of the value . . . . .	5	0	0
Pears, the bushel . . . . .	0	7	6
— dried, the bushel . . . . .	0	10	0
Pellitory, the lb. . . . .	0	0	6
Pelts, <i>see</i> Skins.			
Pencils, for every 100 <i>l.</i> of the value . . . . .	30	0	0
— of Slate, for every 100 <i>l.</i> of the value . . . . .	20	0	0
Pens, for every 100 <i>l.</i> of the value . . . . .	30	0	0
Pepper of all sorts, the produce of and imported from any British possession, the lb. . . . .	0	1	0
— of any other place, or if otherwise imported, the lb. . . . .	0	1	6
Perfumed Dust, <i>see</i> Powder.			
Perry, the tun . . . . .	22	13	8
Pewter, manufactures of, not otherwise enumerated or described, for every 100 <i>l.</i> of the value . . . . .	20	0	0
Pickles of all sorts, not otherwise enumerated or described, including the Vinegar, the gallon . . . . .	0	6	0
Pictures, viz.			
— under two feet square, the picture . . . . .	3	8	0
— two feet square and under four feet square, the picture . . . . .	6	16	0
— four feet square or upwards, the picture . . . . .	10	4	0
Pimento, viz.			
— the produce of any British possession, the lb. . . . .	0	0	5
— the produce of any other place, the lb. . . . .	0	1	3
Pink Root, the lb. . . . .	0	0	10
Pitch, the cwt. . . . .	0	0	10
— the produce of any British possession, the cwt. . . . .	0	0	9
— Burgundy Pitch, the cwt. . . . .	0	14	3
— Jews' Pitch, <i>see</i> Bitumen Judaicum.			
Plants, Shrubs, and Trees, alive . . . . .	Free.		
Plaster of Paris, the cwt. . . . .	0	1	0
Plate, viz.			
— battered, fit only to be remanufactured, <i>see</i> Bullion.			
— of Gold, the oz. troy . . . . .	3	16	9
— of Silver Gilt, the oz. troy . . . . .	0	6	4
— part gilt, the oz. troy . . . . .	0	6	0
— ungilt, the oz. troy . . . . .	0	4	6
Platina, the oz. . . . .	0	1	0
— Ore of, for every 100 <i>l.</i> of the value . . . . .	5	0	0
Platting or other manufactures to be used in or proper for making hats or bonnets, viz.			
— of Bast, Chip, Cane, or Horse Hair, the lb. . . . .	1	0	0
— of Straw, the lb. . . . .	0	17	0
Plums, dried, the lb. . . . .	0	1	3
Polishing Rushes, for every 100 <i>l.</i> of the value . . . . .	20	0	0
— Stones, <i>see</i> Stones.			
Pomatum, for every 100 <i>l.</i> of the value . . . . .	30	0	0
Pomegranates, the 1000 . . . . .	1	10	0
— Peels of, the cwt. . . . .	0	15	0
Poppies' Head, <i>see</i> Capita Papaverum.			

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
Porcelain, <i>see</i> China Ware.						
Potatoes, the cwt.	0	2	0	—		
Pots, <i>viz.</i>						
— Melting Pots for Goldsmiths, the 100	0	3	2	—		
— of Stone, for every 100 <i>l.</i> of the value	30	0	0	—		
Powder, <i>viz.</i>						
— Hair Powder, the cwt.	9	15	0	—		
— perfumed, or Perfumed Dust, the cwt.	13	13	0	—		
— Powder not otherwise enumerated or described, that will serve for the same uses as Starch, the cwt.	9	10	0	—		
Precious Stones, <i>see</i> Jewels.						
Prints and Drawings, <i>viz.</i>						
— plain, each	0	0	1	—		
— coloured, each	0	0	2	—		
Prunelloes, the lb.	0	1	3	—		
Prunes, the cwt.	1	7	6	—		
Q.						
Quassia, the cwt.	8	17	6	—		
— Extract or Preparation of, <i>see</i> Extract.						
Quern Stones, <i>see</i> Stones.						
Quicksilver, the lb.	0	0	6	0	0	3
Quills, <i>viz.</i>						
— Goose Quills, the 1000	0	2	6	—		
— Swan Quills, the 1000	0	12	0	—		
Quinces, the 100	0	4	0	—		
Quinine, Sulphate of, the oz.	0	2	6	—		
R.						
Radix, <i>viz.</i>						
— Contrayerva, the lb.	0	1	8	0	1	1
— Enula Campana, the cwt.	0	13	6	0	9	0
— Eringii, the lb.	0	0	6	0	0	4
— Ipecacuanha, the lb.	0	4	0	0	2	8
— Rhatania, the lb.	0	2	0	0	1	4
— Extract or Preparation of, <i>see</i> Extract.						
— Seneka, the lb.	0	1	9	0	1	2
— Serpentina, or Snake Root, the lb.	0	1	9	0	1	2
Rags, <i>viz.</i>						
— Old Rags, old Ropes, or Junk, or old Fishing-Nets, fit only for making paper or pasteboard, the ton	0	5	0	—		
— Woollen Rags, fit only for manure, the ton	0	7	6	—		
Raisins, <i>viz.</i> (a)						
— Denis or Lexia, the cwt.	1	0	0	0	18	0
— of the Sun, the cwt.	2	2	6	1	18	0
— of any other sort, the cwt.	1	2	0	1	0	0
— of all sorts, the produce of any British possession, the cwt.	0	10	0	0	9	0
Rape Cakes, the cwt.	0	0	2	—		
— of Grapes, the tun	13	6	0	—		
Ratafia, <i>see</i> Spirits.						
Red Wood, or Guinea Wood, the ton	0	15	0	—		
Rennet, the gallon	0	0	6	—		
Resina Jalappa, the lb.	0	6	9	0	4	6
Rhatany Root, <i>see</i> Radix Rhatania.						
Rhinehurst, the cwt.	0	14	3	0	9	6
Rhubarb, the lb.	0	4	0	0	2	8
— the produce of any British possession, the lb.	0	2	6	0	1	8
Rice, <i>viz.</i>						
— not being rough and in the husk, the cwt.	0	15	0	—		
— rough and in the husk, or Paddy, the bushel	0	2	6	—		
— the produce of any British possession,						
— not being rough and in the husk, the cwt.	0	5	0	—		
— rough and in the husk, or Paddy, the bushel	0	0	7½	—		

(a) By 10 Geo. IV., c. 48, schedule, Raisins, not being Raisins of the Sun, and not being the produce of any British possession, the cwt. 1*l.*

	Duty.		
	£.	s.	d.
Rocou, <i>see</i> Annotto.			
Ropes, new, <i>see</i> Cordage.			
— old, <i>see</i> Rags.			
Rosewood, the cwt.	1	0	0
Rosin, or Colophonias, the cwt.	0	4	9
— the produce of any British possession, the cwt.	0	3	2
Rubles, <i>see</i> Jewels.			
S.			
Saccharum Saturni, the lb.	0	0	10
Safflower, the cwt.	0	5	0
Saffron, the lb.	0	2	6
Sago, <i>viz.</i> (a)			
— Pearl, the cwt.	1	10	0
— common, the cwt.	0	15	0
— Powder, the cwt.	1	10	0
Sails, <i>see</i> Linen.			
Sal, <i>viz.</i>			
— Ammoniac, the lb.	0	0	3
— Gem, the cwt.	0	8	0
— Limonum, the lb.	0	4	9
— Prunelle, the lb.	0	0	6
— Succini, the lb.	0	3	2
Salep or Salop, the lb.	0	1	3
Salt			Free.
Saltpetre, the cwt.	0	0	6
Sanguis Draconis, the lb.	0	1	8
Santa Maria Wood, for every 100 <i>l.</i> of the value	20	0	0
— Sapan Wood, the ton	0	15	0
Sarsaparilla, the lb.	0	1	3
— the produce of any British possession, the lb.	0	1	0
Sassafras, the cwt.	0	6	4
Saunders, <i>viz.</i>			
— red, the ton	0	12	0
— white or yellow, the lb.	0	0	10
Sausages or Puddings, the lb.	0	1	3
Scaleboards, the cwt.	3	8	2
Scammony, the lb.	0	6	4
Scilla, <i>see</i> Squilla.			
Seed, <i>viz.</i>			
— Acorns, the bushel	0	1	0
— Ammi or Ammios Seed, the lb.	0	0	6
— Anniseed, the cwt.	3	0	0
— Burnet Seed, the cwt.	1	0	0
— Canary Seed, the cwt.	3	0	0
— Caraway Seed, the cwt.	1	10	0
— Carrot Seed, the lb.	0	0	9
— Carthamus Seed, the lb.	0	0	6
— Castor Seed, the lb.	0	0	4
— Cevadilla Seed, <i>see</i> Sabadilla Seed.			
— Clover Seed, the cwt.	1	0	0
— Cole Seed, from the 5th January, 1826, to the 6th July, 1826, the last	5	0	0
— from and after the 5th July, 1826, the last	0	10	0
— Coriander Seed, the cwt.	0	15	0
— Cummin Seed, the cwt.	1	0	0
— Fennel Seed, the lb.	0	0	9
— Fennugreek Seed, the cwt.	0	9	6
— Flax Seed, <i>viz.</i>			
— until the 6th April, 1826, the bushel	0	0	5

(a) By 10 Geo. IV., c. 48, schedule,

Sago, Pearl, the cwt.	0	15	0
— imported from any British possession, the cwt.	0	10	0
— Powder, the cwt.	0	15	0
— imported from any British possession, the cwt.	0	10	0

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Seed continued.</i>						
— Flax Seed <i>continued.</i>						
— after the 5th April, 1826, the quarter	0	1	0	—		
— Forest Seed, the lb.	0	0	6	—		
— Garden Seed not particularly enumerated or described, nor otherwise charged with duty, the lb.	0	0	6	—		
— Grass Seed of all sorts, the cwt.	1	0	0	—		
— Hemp Seed, the quarter	2	0	0	—		
— the produce of and imported from any British possession, the quarter	0	1	0	—		
— Leek Seed, the lb.	0	1	6	—		
— Linseed, viz.						
— until the 6th of April, 1826, the bushel	0	0	5	—		
— after the 5th of April, 1826, the bushel	0	1	0	—		
— Lucerne Seed, the cwt.	1	0	0	—		
— Maw Seed, the cwt.	3	0	0	—		
— Millet Seed, the cwt.	0	11	6	—		
— Mustard Seed, the bushel	0	8	0	—		
— Onion Seed, the lb.	0	1	6	—		
— Parsley Seed, the lb.	0	1	0	—		
— Peas, when prohibited to be imported as corn, the bushel	0	7	6	—		
— Piony or Penny Seed, the lb.	0	0	6	—		
— Quince Seed, the lb.	0	3	0	—		
— Rape Seed, from the 5th January, 1826, to the 6th July, 1826, the last	5	0	0	—		
— from and after the 5th July, 1826, the last	0	10	0	—		
— Sabadilla or Cevadilla Seed, the lb.	0	1	0	—		
— Shrub or Tree Seed, not otherwise enumerated, the lb.	0	0	6	—		
— Trefol Seed, the cwt.	1	0	0	—		
— Worm Seed, the lb.	0	1	6	0	1	0
— All Seeds not particularly enumerated or described, nor otherwise charged with duty, commonly made use of for extracting oil therefrom, from the 5th January, 1826, to the 6th July, 1826, the last	5	0	0	—		
— from and after the 5th July, 1826, the last	0	10	0	—		
— All other Seed, not particularly enumerated or described, nor otherwise charged with duty, for every 100 <i>l.</i> of the value	30	0	0	—		
<i>Segars, see Tobacco, manufactured.</i>						
Sena, the lb.	0	1	3	0	0	10
<i>Shaving for Hats, see Platting.</i>						
<i>Ships to be broken up, with their tackle, apparel, and furniture (except sails), viz.</i>						
— Foreign Ships or Vessels, for every 100 <i>l.</i> of the value	50	0	0	—		
— British Ships or Vessels entitled to be registered as such, not having been built in the united kingdom, for every 100 <i>l.</i> of the value	15	0	0	—		
<i>Shrubs, see Plants.</i>						
Shumach, the cwt.	0	1	0	—		
<i>Silk, viz.</i>						
— Knubs or Husks of Silk, the lb.	0	0	3	—		
— Raw Silk, the lb.	0	0	3	—		
— Thrown Silk, dyed or not, the lb.	0	7	6	—		
— Waste or Floss Silk not otherwise enumerated or described, the lb.	0	0	3	—		
— Manufactures of Silk, or of Silk and any other material, not particularly enumerated, or otherwise charged with duty, from and after the 5th July, 1826, for every 100 <i>l.</i> of the value	30	0	0	—		
Silk-Worm Gut, for every 100 <i>l.</i> of the value	20	0	0	—		
Skates for sliding, for every 100 <i>l.</i> of the value	20	0	0	—		
<i>Skins, Furs, Pelts, and Tails, viz.</i>						
— Badger Skins, undressed, the Skin	0	1	6	0	1	4
— Bear Skins, undressed, the Skin	0	4	6	—		
— undressed, imported from any British possession in America, the Skin	0	2	6	—		
— Beaver Skins, undressed, the Skin	0	0	8	—		
— undressed, imported from any British possession in America, the Skin	0	0	4	—		

	Duty.
	£. s. d.
<i>Skins continued.</i>	
— Calabar Skins, <i>see</i> Squirrel Skins.	
— Calf Skins and Kip Skins in the Hair, not tanned, tawed, curried, or in any way dressed,	
— dry, the cwt.	0 4 8
— wet, the cwt.	0 2 4
— the produce of and imported from the West Coast of Africa, each Skin not exceeding 7 lbs. weight, the cwt.	0 2 4
— tanned and not otherwise dressed, the lb.	0 1 0
— Cat Skins, undressed, the Skin	0 0 6
— undressed, imported from any British possession in America, the Skin	0 0 3
— Coney Skins, undressed, the 100 Skins	0 1 0
— Deer Skins, undressed, the Skin	0 0 2
— undressed, the produce of and imported from any British possession in America, the 100 Skins	0 1 0
— Indian, half dressed, the Skin	0 0 8
— undressed or shaved, the Skin	0 0 4
— Dog Skins in the Hair, not tanned, tawed, or in any way dressed, the dozen Skins	0 0 10
— Dog Fish Skins, undressed, the dozen Skins	0 5 2
— undressed, of British taking, and imported direct from Newfoundland, the dozen Skins	0 0 1
— Elk Skins in the Hair, not tanned, tawed, curried, or in any way dressed, the Skin	0 1 0
— Ermine Skins, undressed, the Skin	0 0 8
— Fisher Skins, undressed, the Skin	0 1 0
— undressed, imported from any British possession in America, the Skin	0 0 6
— Fitch Skins, undressed, the dozen Skins	0 3 2
— Fox Skins, undressed, the Skin	0 0 8
— undressed, imported from any British possession in America, the Skin	0 0 4
— Tails, undressed, for every 100L of the value	20 0 0
— Goat Skins, <i>viz.</i>	
— raw, or undressed, the dozen Skins	0 2 10
— tanned, the dozen Skins	2 0 0
— Hare Skins, undressed, the 100 Skins	0 1 0
— Husse Skins, undressed, the Skin	0 0 6
— Kid Skins in the Hair, the 100 Skins (a)	0 1 6
— dressed, the 100 Skins	0 10 0
— Kid Skins, <i>see</i> Calf Skins.	
— Lamb Skins, <i>viz.</i>	
— undressed, in the Wool, the 100 Skins (b)	0 1 6
— tanned, or tawed, the 100 Skins	0 10 0
— dressed in Oil, the 100 Skins	4 0 0
— Leopard Skins, undressed, the Skin	0 9 6
— Lion Skins, undressed, the Skin	0 6 0
— Martin Skins, undressed, the Skin	0 0 6
— undressed, imported from any British possession in America, the Skin	0 0 3
— undressed, the produce of any British possession within the limits of the East India Company's Charter, the Skin	0 1 3
— Tails, undressed, the 100 Tails	0 16 3
— Mink Skins, undressed, the Skin	0 0 4
— undressed, imported from any British possession in America, the Skin	0 0 4
— dressed, the Skin	0 2 0
— Mole Skins, undressed, the dozen Skins	0 0 6
— Musquash Skins, undressed, the 100 Skins	0 1 0
— Nutria Skins, undressed, the 100 Skins	0 12 6

(a) By 10 Geo. IV., c. 48, schedule, only 4d.

(b) By 10 Geo. IV., c. 48, schedule,

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Skins continued.</i>						
— Otter Skins, undressed, the Skin	0	1	6	—		
— undressed, imported from any British possession in America, the Skin	0	1	0	—		
— Ounce Skins, undressed, the Skin	0	7	6	—		
— Panther Skins, undressed, the Skin	0	9	6	—		
— Pelts of Goats, undressed, the dozen Pelts	0	3	0	—		
— dressed, the dozen Pelts	0	6	0	—		
— of all other sorts, undressed, the 100 Pelts	0	17	0	—		
— Racoon Skins, undressed, the Skin	0	0	2	—		
— undressed, imported from any British possession in America, the Skin	0	0	1	—		
— Sable Skins, undressed, the Skin	0	8	4	0	7	6
— Tails, or Tips of Sable, undressed, the piece	0	1	3	0	1	1
— Seal Skins in the Hair, not tanned, tawed, or in any way dressed, the Skin	0	0	3	—		
— of British taking, and imported directly from Newfoundland, the Skin	0	0	1	—		
— taken in any foreign fishery, by persons not being British subjects, the Skin	0	1	0	—		
— Sheep Skins, undressed, in the Wool, the dozen Skins	0	1	0	—		
— tanned, or tawed, the 100 Skins	2	0	0	—		
— dressed in oil, the 100 Skins	4	0	0	—		
— Squirrel, or Calabar Skins, undressed, the 100 Skins	0	11	6	0	10	4
— tawed, the 100 Skins	0	17	6	—		
— Tails, undressed, for every 100 <i>l.</i> of the value	20	0	0	—		
— Swan Skins, undressed, the Skin	0	1	0	—		
— Tiger Skins, undressed, the Skin	0	9	6	0	8	6
— Weasel Skins, undressed, the 100 Skins	0	4	9	0	4	3
— Wolf Skins, undressed, the Skin	0	2	0	—		
— undressed, imported from any British possession in America, the Skin	0	1	0	—		
— tawed, the Skin	0	17	6	—		
— Wolverings, undressed, the Skin	0	1	0	—		
— undressed, imported from any British possession in America, the Skin	0	0	6	—		
— Skins and Furs, or pieces of Skins and Furs, raw or undressed, not particularly enumerated or described, nor otherwise charged with duty, for every 100 <i>l.</i> of the value	20	0	0	—		
— Skins and Furs, or pieces of Skins and Furs, tanned, tawed, curried, or in any way dressed, not particularly enumerated or described, nor otherwise charged with duty, for every 100 <i>l.</i> of the value	75	0	0	—		
<i>Slate, see Stone.</i>						
<i>Slick Stones, see Stone.</i>						
<i>Smalts, viz.</i>						
— from the 5th January, 1826, to the 6th January, 1827, the lb.	0	0	8½	—		
— from the 5th January, 1827, to the 6th January, 1828, the lb.	0	0	7½	—		
— after 5th January, 1828, the lb.	0	0	6	—		
<i>Suuff, the lb.</i>	0	6	0	—		
<i>Soup, viz.</i>						
— hard, the cwt.	4	10	0	—		
— soft, the cwt.	3	11	3	—		
— the produce of any British possession in the East Indies, viz.						
— hard, the cwt.	1	8	0	—		
— soft, the cwt.	1	3	0	—		
<i>Soupers' Waste, the ton</i>	0	3	2	—		
<i>Soda, see Alkali.</i>						
<i>Spa Ware, for every 100<i>l.</i> of the value</i>	30	0	0	—		
<i>Specimens of such Minerals, Fossils, or Ores, which are not particularly enumerated or described, nor otherwise charged with duty, each specimen not exceeding in weight 14 lbs.</i>				Free.		
— exceeding in weight 14 lbs. each, for every 100 <i>l.</i> of the value	5	0	0	—		



	Duty.
£. s. d.	
<i>Specimens continued.</i>	
illustrative of natural history, not otherwise enumerated or described	Free.
<i>Speckled Wood, viz.</i>	
the produce of and imported from any British possession, the ton	0 16 3
of any other place, or if otherwise imported, the ton	8 14 2
<i>Spelter, viz.</i>	
until the 6th July, 1826, the cwt.	0 14 0
from the 6th July, 1826, to the 6th July, 1827, the cwt.	0 12 0
after the 6th July, 1827, the cwt.	0 10 0
<i>Spermæci, fine, the lb.</i>	0 1 6
<i>Spikenard, or Nardus Indica, the lb.</i>	0 2 9
<i>Spirits or Strong Waters of all sorts, viz.</i>	
For every gallon of such Spirits or Strong Waters of any strength not exceeding the strength of proof by Sikes's hydrometer, and so in proportion for any greater strength than the strength of proof, and for any greater or less quantity than a gallon, viz.	
not being Spirits or Strong Waters, the produce of any British possession in America, or any British possession within the limits of the East India Company's Charter, and not being sweetened Spirits or Spirits mixed with any article, so that the degree of strength thereof cannot be exactly ascertained by such hydrometer	1 2 6
Spirits or Strong Waters, the produce of any British possession in America, not being sweetened Spirits or Spirits so mixed as aforesaid	0 8 6
Spirits or Strong Waters, the produce of any British possession within the limits of the East India Company's Charter, not being sweetened Spirits or Spirits so mixed as aforesaid	1 0 0
Spirits, Cordials, or Strong Waters respectively (not being the produce of any British possession in America), sweetened or mixed with any article, so that the degree of strength thereof cannot be exactly ascertained by such hydrometer	1 10 0
Spirits, Cordials, or Strong Waters respectively, being the produce of any British possession in America, sweetened or mixed with any article, so that the degree of strength thereof cannot be exactly ascertained by such hydrometer	1 0 0
Foreign Liquors—Derelict, <i>see</i> Derelict.	
<i>Sponge, the lb.</i>	0 2 0
the produce of any British possession, the lb.	0 0 6
<i>Squilla, dried, the cwt.</i>	1 0 0
not dried, the cwt.	0 5 0
<i>Starch, the cwt.</i>	9 10 0
<i>Stavesacre, the cwt.</i>	1 8 0
<i>Steel, or any Manufactures of Steel, not otherwise enumerated or described, for every 100l. of the value</i>	20 0 0
<i>Stibium, see</i> Antimony.	
<i>Sticks, viz. Walking Sticks, see</i> Canes.	
<i>Stone, viz.</i>	
Burns for Mill Stones, the 100	3 16 0
Dog Stones not exceeding 4 feet in diameter, above 6, and under 12 inches in thickness, the pair	6 3 0
Emery Stones, the cwt.	0 2 0
Filtering Stones, for every 100l. of the value	60 0 0
Flint Stones for Pottery, the ton	0 2 6
Grave Stones of Marble, polished, each not containing more than 2 feet square, the foot square, superficial measure	0 2 6
unpolished, the foot square, superficial measure	0 0 10
not of Marble, polished or unpolished, the foot square, superficial measure	0 0 6

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Stone continued.</i>						
— Lime Stone, for every 100 <i>l.</i> of the value	20	0	0	—	—	—
— Marble Blocks, the solid foot	0	3	0	—	—	—
— Marble, in any way manufactured (except Grave Stones and Paving Stones, each not containing more than 2 feet square), the cwt.	0	3	0	—	—	—
— Marble Paving Stones, polished, each not containing more than 2 feet square, the foot square, superficial measure	0	0	10	—	—	—
— rough, the foot square, superficial measure	0	0	6	—	—	—
— Mill Stones above 4 feet in diameter, if 12 inches in thickness or upwards, the pair	11	8	0	—	—	—
— Paving Stones, not of marble, the 100 feet square, superficial measure	0	12	0	—	—	—
— Pebble Stones, the ton	0	13	6	—	—	—
— Polishing Stones, for every 100 <i>l.</i> of the value	20	0	0	—	—	—
— Pumice Stones, the ton	1	13	4	—	—	—
— Quern Stones under 3 feet in diameter, and not exceeding 6 inches in thickness, the pair	0	8	9	—	—	—
— 3 feet in diameter, and not above 4 feet in diameter, and not exceeding 6 inches in thickness, the pair	0	17	6	—	—	—
— Rag Stones, for every 100 <i>l.</i> of the value	20	0	0	—	—	—
— Slate, the produce of the islands of Guernsey, Jersey, Sark, Alderney, or Man, and imported from those islands respectively, for every 100 <i>l.</i> of the value	26	8	0	—	—	—
— Slates, the produce of any other country, not otherwise enumerated or described, for every 100 <i>l.</i> of the value	66	10	0	—	—	—
— Slates in Frames, the dozen	0	3	0	—	—	—
— Slick Stones, the 100	0	8	0	—	—	—
— Stone, sculptured, or Mosaic work, the cwt.	0	2	6	—	—	—
— Stone to be used for the purpose of lithography, the cwt.	0	3	0	—	—	—
— Whetstones, the 100	0	8	9	—	—	—
— Stones not particularly enumerated or described, nor otherwise charged with duty, for every 100 <i>l.</i> of the value	66	10	0	—	—	—
<i>Note.</i> —If any Statue, Group of Figures, or other Stone or Marble Ornament, carved out of the same block, shall exceed one ton weight, the duty to be charged thereon shall be estimated at the rate payable for one ton weight, and no more.						
<i>Storax or Styraç, viz.</i>						
— Calamita, the lb.	0	2	0	0	1	4
— Liquida, the lb.	0	3	4	0	2	2
— in the Tear or Gum, the lb.	0	8	4	0	5	6
<i>Succades, viz.</i>						
— the produce of any British possession in America, the lb.	0	0	3	—	—	—
— the produce of any British possession within the limits of the East India Company's charter, the lb.	0	0	6	—	—	—
— the produce of any other place, the lb.	0	3	2	—	—	—
<i>Succinum, the lb.</i>	0	1	8	0	1	1
<i>Sugar, Brown or Muscovado, or clayed, not being refined, viz.</i>						
— the growth, produce, or manufacture of any British possession within the limits of the East India Company's charter, the cwt.	1	17	0	—	—	—
— the growth, produce, or manufacture of any British possession in America, the cwt.	1	7	0	—	—	—
— of any other place, the cwt.	3	3	0	—	—	—
— refined, the cwt.	8	8	0	—	—	—
<i>Sugar Candy, viz.</i>						
— Brown, the cwt.	5	12	0	—	—	—
— White, the cwt.	8	8	0	—	—	—
<i>Sulphate of Quinine, see Quinine.</i>						
<i>Sulphur Impressions, for every 100<i>l.</i> of the value</i>	5	0	0	—	—	—
<i>Vivum, see Brimstone.</i>						
<i>Sumach, see Shumack.</i>						
<i>Sweep-washers' dirt, containing bullion, see Bullion.</i>						
<i>Sweet Wood, viz.</i>						
— the produce of and imported from any British possession, the ton	0	16	3	—	—	—
— of any other place, or if otherwise imported, the ton	10	13	0	—	—	—
<i>Tails, viz.</i>						
— Buffalo, Bull, Cow, or Ox Tails, the 100	0	6	0	—	—	—

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Tails continued.</i>						
— Fox Tails,						
— Martin Tails,						
— Sable Tails,						
— Squirrel or Calabar Tails,						
} <i>see Skins.</i>						
Talc, the lb.	0	0	8	—		
Tallow, the cwt.	0	3	2	—		
Tamarinds, the lb.	0	0	8	—		
— the produce of any British possession within the limits of the East India Company's charter, the lb.	0	0	6	—		
— the produce of any British possession in America, or on the West Coast of Africa, the lb.	0	0	2	—		
Taploca or Tapioca Powder, the cwt.	1	10	0	—		
Tar, <i>viz.</i>						
— the last containing 12 barrels, each barrel not exceeding 31½ gallons	0	15	0	—		
— the produce of any British possession, the last containing 12 barrels, each barrel not exceeding 31½ gallons	0	12	0	—		
— Barbadoes Tar, the lb. (a)	0	0	5	—		
Tares, the quarter	0	10	0	—		
Tarras, the bushel	0	1	3	—		
Tea,—subject only to the duty of Excise.						
Teasla, the 1000	0	1	0	—		
Teeth, <i>viz.</i>						
— Elephants' Teeth, the cwt.	1	0	0	—		
— Sea Cow, Sea Horse, or Sea Morse Teeth, the cwt.	3	4	0	—		
Telescopes, for every 100 <i>l.</i> of the value	30	0	0	—		
Terra, <i>viz.</i>						
— Japonica or Catechu, the cwt.	0	3	0	—		
— Sienna, the cwt.	1	11	8	—		
— Umbra, the cwt.	0	12	0	—		
— Verde, the cwt.	0	16	0	—		
Thread, <i>viz.</i>						
— Bruges Thread, the dozen lbs.	0	15	0	—		
— Cotton Thread, <i>see</i> Cotton Manufactures.						
— Outnal Thread, the dozen lbs.	0	15	0	—		
— Pack Thread, the cwt.	0	15	0	—		
— Sisters Thread, the lb.	0	4	0	—		
— Whited Brown Thread, the dozen lbs.	0	18	0	—		
— not otherwise enumerated or described, for every 100 <i>l.</i> of the value	25	0	0	—		
Tiles of all sorts, for every 100 <i>l.</i> of the value	50	0	0	—		
Tin, the cwt.	2	10	0	—		
— Manufactures of, not otherwise enumerated or described, for every 100 <i>l.</i> of the value	20	0	0	—		
Tincal, <i>see</i> Borax.						
Tin Foil, for every 100 <i>l.</i> of the value	25	0	0	—		
Tobacco, <i>viz.</i>						
— of the growth or produce of the United States of America, or of any of the territories or dominions of the Emperor of Russia, or of the Ottoman or Turkish Empire, or from any port or place within the limits of the East India Company's charter, unmanufactured, the lb.	0	4	0	—		
— of the growth or produce of any British possession in America, unmanufactured, the lb.	0	3	9	—		
— of the growth or produce of any other place, unmanufactured, the lb.	0	6	0	—		
— manufactured, or Segars, the lb.	0	18	0	—		
— manufactured in the united kingdom, at or within two miles of any port into which Tobacco may be imported, made into Shag, Roll, or Carrot Tobacco, the lb.	—			0	3	6
Tobacco Pipes, for every 100 <i>l.</i> of the value	30	0	0	—		
Tongues, the dozen	0	3	0	—		
Tooth Powder, for every 100 <i>l.</i> of the value	30	0	0	—		
Turnsal, or Turnsole, the cwt.	0	5	0	—		

(a) By 10 Geo. IV., c. 43, schedule, now altered to the cwt., 2*s.* 6*d.*

	Duty.	Drawback.
	£. s. d.	£. s. d.
Tortoise Shell, unmanufactured, the lb.	0 2 0	—
the produce of any British possession in America, or on the West Coast of Africa, the lb.	0 1 0	—
Touch Stones, for every 100 <i>l.</i> of the value	20 0 0	—
Tow, <i>see</i> Flax.		
Toys, for every 100 <i>l.</i> of the value	20 0 0	—
Tracle of Venice, the lb.	0 3 6	—
Trees, <i>see</i> Plants.		
Truffles, the lb.	0 2 6	—
Turbith, the lb.	0 2 6	0 1 8
Turnerick, the lb.	0 0 3	—
the produce of any British possession in America, or on the West Coast of Africa, the lb.	0 0 2	—
Turnery, not otherwise enumerated or described, for every 100 <i>l.</i> of the value	30 0 0	—
Tursole, <i>see</i> Torsal.		
Turpentine, <i>viz.</i>		
not being of greater value than 12 <i>s.</i> the cwt. thereof, the cwt.	0 4 4	—
being of greater value than 12 <i>s.</i> the cwt. thereof, the cwt. (a)	1 6 2	—
of Venice, Scio, or Cyprus, the lb.	0 0 16	0 0 6
Tutic Lapis, <i>see</i> Lapis.		
Twine, the cwt.	1 11 0	—
V.		
Valonia, the cwt.	0 1 6	—
Vanilloes, the lb.	0 16 8	—
Vanish, not otherwise enumerated or described, for every 100 <i>l.</i> of the value	30 0 0	—
Vases, <i>viz.</i>		
ancient, not of stone or marble, for every 100 <i>l.</i> of the value	5 0 0	—
Vellum, the skin	0 7 2	—
Verdigris of all sorts, the lb.	0 2 0	—
Verjuice, the tun	73 12 9	—
Vermicelli, the lb.	0 0 8	—
Vermilion, the lb.	0 1 0	—
Vetches, <i>see</i> Tares.		
Vinegar, or Acetous Acid, the tun	18 18 0	—
Vinelloes, <i>see</i> Vanilloes.		
W.		
Wafers, the lb.	0 1 3	—
Washing Balls, the lb.	0 1 8	—
Watches of Gold, Silver, or other Metal, for every 100 <i>l.</i> of the value	25 0 0	—
Watch Glasses, for every 100 <i>l.</i> of the value	20 0 0	—
and further, for every cwt.	4 0 0	—
Water, <i>viz.</i>		
Arquebusade,	} <i>see</i> Spirits.	
Citron,		
Cordial,		
Hungary,		
Lavender,		
Cologne Water, the flask, thirty of such flasks containing not more than one gallon	0 1 0	—
Mineral or Natural Water, the dozen bottles or flasks, each bottle or flask not exceeding three pints	0 4 0	—
Strong Water, <i>see</i> Spirits.		
Wax, <i>viz.</i> (b)		
Bees' Wax, unmanufactured, the cwt.	3 6 6	—
the produce of and imported from any British possession, the cwt.	2 6 6	—

(a) By 10 Geo. IV., c. 43, schedule, Turpentine being of greater value than 12*s.* the cwt., and not being of greater value than 15*s.* the cwt. thereof, the cwt. 6*s.* 4*d.*

(b) By 10 Geo. IV., c. 43, schedule,

Wax, Bees', *viz.*

unbleached, the cwt.	1 10 0
in any degree bleached, the cwt.	8 0 0
imported from any British possession in Asia, Africa, or America, <i>viz.</i>	
unbleached, the cwt.	0 10 0
in any degree bleached, the cwt.	1 0 0

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
Wax <i>continued.</i>						
— Bees' Wax <i>continued.</i>						
— white, or manufactured, the cwt.	6	3	6	—		
— Myrtle Wax, the lb.	0	1	0	—		
— Sealing Wax, for every 100 <i>l.</i> of the value	30	0	0	—		
Weld, the cwt.	0	1	0	—		
Whale Fins, <i>viz.</i>						
— taken and caught by the crew of a British ship, and imported direct from the fishery, or from any British possession, in a British ship, the ton	1	0	0	—		
— of foreign fishing, the ton	95	0	0	—		
Wheat, the produce of any British possession in North America, and imported directly from thence, the quarter	0	5	0	—		
Whipcord, the lb.	0	1	0	—		
Wine, <i>viz.</i> (a)						
— the produce of His Majesty's settlement of the Cape of Good Hope or the territories or dependencies thereof, imported directly from thence, until the 6th of January, 1830, the gallon	0	2	5	0	2	5
— after the 5th of January, 1830, the gallon	0	3	0	0	3	0
— French Wine, the gallon	0	7	3	0	7	3
— all Wine, not otherwise enumerated or described, the gallon	0	4	10	0	4	10
— Lees:—subject to the same duty as Wine, but no drawback is allowed on the Lees of Wine exported.						
Wire, <i>viz.</i>						
— Brass or Copper, not otherwise enumerated or described, the cwt.	2	10	0	—		
— gilt or plated, for every 100 <i>l.</i> of the value	25	0	0	—		
— Iron, not otherwise enumerated or described, the cwt.	1	0	0	—		
— Latten, the cwt.	1	0	0	—		
— Silver, for every 100 <i>l.</i> of the value	25	0	0	—		
— Steel, the lb.	0	1	10	—		
Wood, the cwt.	0	3	0	—		
Wood, <i>viz.</i>						
— Anchor Stocks, the piece	0	8	4	—		
— of the growth and production of any British possession in America, and imported directly from thence, the piece	0	0	10	—		
— Balks, <i>viz.</i>						
— under 5 inches square, and under 24 feet in length, the 120	18	2	7	—		
— under 5 inches square, and 24 feet in length or upwards, the 120	27	0	0	—		
— 5 inches square or upwards are subject and liable to the duties payable on fir timber.						
— Balks of the growth and produce of any British possession in America, and imported directly from thence, <i>viz.</i>						
— under 5 inches square, and under 24 feet in length, the 120	3	5	0	—		
— under 5 inches square, and 24 feet in length or upwards, the 120	4	17	6	—		
— 5 inches square or upwards are subject and liable to the duties payable on fir timber.						
— Battens, imported into Great Britain, <i>viz.</i>						
— 6 feet in length, and not exceeding 16 feet in length, not above 7 inches in width, and not above 2½ inches in thickness, the 120	10	0	0	—		
— exceeding 16 feet in length, and not exceeding 21 feet in length, not above 7 inches in width, and not exceeding 2½ inches in thickness, the 120	11	10	0	—		
— exceeding 21 feet in length, not above 7 inches in width, or if exceeding 2½ inches in thickness, the 120	20	0	0	—		
— Battens of the growth and produce of any British possession in America, and imported directly from thence into Great Britain, <i>viz.</i>						
— 6 feet in length, and not exceeding 16 feet in length, not above 7 inches in width, and not exceeding 2½ inches in thickness, the 120	1	0	0	—		
— exceeding 16 feet in length, and not exceeding 21 feet in length,						

(a) By 10 Geo. IV., c. 43, schedule.

Wine the produce of His Majesty's settlement of the Cape of Good Hope, or the territories or dependencies thereof, until the 1st January, 1830, the gallon

and after the 1st January, 1830, the gallon

0 2 5  
0 3 0

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Wood continued.</i>						
— <i>Battens, continued.</i>						
and not above 7 inches in width, and not exceeding 2½ inches in thickness, the 120	1	3	0	—		
— exceeding 21 feet in length, not above 7 inches in width, or if exceeding 2½ inches in thickness, the 120	2	0	0	—		
— <i>Battens imported into Ireland, viz.</i>						
— 8 feet in length, and not exceeding 12 feet in length, not above 7 inches in width, and not exceeding 3½ inches in thickness, the 120	8	6	3	—		
— exceeding 12 feet in length, and not exceeding 14 feet in length, not above 7 inches in width, and not exceeding 3½ inches in thickness, the 120	9	14	0	—		
— exceeding 14 feet in length, and not exceeding 16 feet in length, not above 7 inches in width, and not exceeding 3½ inches in thickness, the 120	11	1	8	—		
— exceeding 16 feet in length, and not exceeding 18 feet in length, not above 7 inches in width, and not exceeding 3½ inches in thickness, the 120	12	9	4	—		
— exceeding 18 feet in length, and not exceeding 20 feet in length, not above 7 inches in width, and exceeding 3½ inches in thickness, the 120	13	17	2	—		
— exceeding 20 feet in length, not above 7 inches in width, and not exceeding 3½ inches in thickness, the 120	34	6	1	—		
— <i>Batten Ends imported into Great Britain, viz.</i>						
— under 6 feet in length, not above 7 inches in width, and not exceeding 2½ inches in thickness, the 120	3	0	0	—		
— under 6 feet in length, not above 7 inches in width, and exceeding 2½ inches in thickness, the 120	6	0	0	—		
— <i>Batten Ends of the growth and produce of any British possession in America, and imported directly from thence into Great Britain, viz.</i>						
— under 6 feet in length, not above 7 inches in width, and not exceeding 2½ inches in thickness, the 120	0	7	6	—		
— under 6 feet in length, not above 7 inches in width, and exceeding 2½ inches in thickness, the 120	0	15	0	—		
— <i>Batten Ends imported into Ireland, viz.</i>						
— under 8 feet in length, not above 7 inches in width, and not exceeding 3½ inches in thickness, the 120	4	14	5	—		
— under 8 feet in length, if exceeding 3½ inches in thickness, the 120	9	3	1	—		
— <i>Battens and Batten Ends of all sorts, of the growth and produce of any British possession in America, and imported directly from thence, the 120</i>	0	8	3	—		
— <i>Beech Plank, 2 inches in thickness, or upwards, the load, containing 50 cubic feet</i>	2	8	9	—		
— of all sorts, of the growth and produce of any British possession in America, and imported directly from thence into Ireland, the 120	0	8	4	—		
— <i>Beech Quarters, viz.</i>						
— under 5 inches square, and under 24 feet in length, the 120	4	10	8	—		
— 5 inches square, and under 8 inches square, or if 24 feet in length, or upwards, the 120	12	3	6	—		
— of all sorts under 8 inches square, of the growth and produce of any British possession in America, and imported directly from thence, the 120	0	16	3	—		
— <i>Boards, viz.</i>						
— <i>Beech Boards, viz.</i>						
— under 2 inches in thickness, and under 15 feet in length, the 120	4	9	6	—		
— under 2 inches in thickness, and if 15 feet in length, or upwards, the 120	8	19	0	—		
— <i>Clap Boards, viz.</i>						
— not exceeding 5 feet 3 inches in length, and under 8 inches square, the 120	6	2	0	—		
— of the growth and produce of any British possession in America, and imported directly from thence, the 120	0	12	4	—		

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Wood continued.</i>						
<i>Boards continued.</i>						
— Linn Boards, or White Boards for Shoemakers, viz.						
— under 4 feet in length, and under 6 inches in thickness, the 120	6	16	6	—		
— 4 feet in length, or 6 inches in thickness, or upwards, the 120	13	13	0	—		
— Oak Boards, viz.						
— under 2 inches in thickness, and under 15 feet in length, the 120	18	1	0	—		
— under 2 inches in thickness, and if 15 feet in length, or upwards, the 120	36	2	0	—		
— Outside Slabs, or Paling Boards, hewed on one side, not exceeding 7 feet in length, and not above 1½ inch in thickness, the 120	2	0	0	—		
— Outside Slabs, or Paling Boards, hewed on one side, exceeding 7 feet in length, and not exceeding 12 feet in length, and not above 1½ inch in thickness, the 120	4	0	0	—		
— Outside Slabs, or Paling Boards, hewed on one side, exceeding 12 feet in length, or exceeding 1½ inch in thickness, are subject and liable to the duties payable on Deals.						
— Outside Slabs, or Paling Boards, hewed on one side, of the growth and produce of any British possession in America, and imported directly from thence, viz.						
— not exceeding 7 feet in length, and not above 1½ inch in thickness, the 120	0	5	0	—		
— exceeding 7 feet in length, and not exceeding 12 feet in length, and not above 1½ inch in thickness, the 120	0	10	0	—		
— exceeding 12 feet in length, or exceeding 1½ inch in thickness, are subject and liable to the duties payable on Deals.						
— Pipe Boards, viz.						
— above 5 feet 3 inches in length, and not exceeding 8 feet in length, and under 8 inches square, the 120	9	3	0	—		
— exceeding 8 feet in length, and under 8 inches square, the 120	18	6	0	—		
— of all sorts, exceeding 5 feet 3 inches in length, and under 8 inches square, of the growth and produce of any British possession in America, and imported directly from thence, the 120	0	19	6	—		
— Wainscot Boards, viz.						
— the foot, containing 12 feet in length, and 1 inch in thickness, and so in proportion for any greater or lesser length or thickness	0	4	0	—		
— Boards of all sorts, not otherwise enumerated or described, of the growth and produce of any British possession in America, and imported directly from thence, the 120	0	8	4	—		
— Bowsprits, <i>see</i> Masts.						
— Deals, to be used in Mines, viz.						
— above 7 inches in width, being 8 feet in length, and not above 10 feet in length, and not exceeding 1½ inch in thickness, the 120	8	2	6	—		
— Deals, imported into Great Britain, viz.						
— above 7 inches in width, being 6 feet in length, and not above 16 feet in length, and not exceeding 3¼ inches in thickness, the 120	19	0	0	—		
— above 7 inches in width, above 16 feet in length, and not above 21 feet in length, and not exceeding 3¼ inches in thickness, the 120	22	0	0	—		
— above 7 inches in width, above 21 feet in length, and not above 45 feet in length, and not above 3¼ inches in thickness, the 120	44	0	0	—		
— above 45 feet in length, or above 3¼ inches in thickness (not being timber 8 inches square or upwards), the load containing 50 cubic feet	2	10	0	—		
— and further, the 120	6	0	0	—		

	Duty.			Drawback		
	£.	s.	d.	£.	s.	d.
<i>Wood continued.</i>						
— Deals of the growth and produce of any British possession in America, and imported directly from thence into Great Britain, viz.						
— above 7 inches in width, being 6 feet in length, and not above 16 feet in length, and not exceeding 3½ inches in thickness, the 120	2	0	0	—		
— above 7 inches in width, above 16 feet in length, and not above 21 feet in length, and not exceeding 3½ inches in thickness, the 120	2	10	0	—		
— above 7 inches in width, being 6 feet in length, and not above 21 feet in length, and exceeding 3½ inches in thickness, the 120	4	0	0	—		
— above 7 inches in width, exceeding 21 feet in length, and not exceeding 4 inches in thickness, the 120	5	0	0	—		
— above 7 inches in width, exceeding 21 feet in length, and exceeding 4 inches in thickness (not being timber 8 inches square, or upwards), the 120	10	0	0	—		
— Deals imported into Ireland, viz.						
— above 7 inches in width, and not exceeding 12 inches in width, and not exceeding 3½ inches in thickness, viz.						
— 8 feet in length, and not exceeding 12 feet in length, the 120	12	9	5	—		
— exceeding 12 feet in length, and not exceeding 14 feet in length, the 120	14	11	0	—		
— exceeding 14 feet in length, and not exceeding 16 feet in length, the 120	16	12	6	—		
— exceeding 16 feet in length, and not exceeding 18 feet in length, the 120	18	14	1	—		
— exceeding 18 feet in length, and not exceeding 20 feet in length, the 120	20	15	7	—		
— above 7 inches in width, and not exceeding 12 inches in width, and exceeding 3½ inches in thickness, viz.						
— 8 feet in length, and not exceeding 20 feet in length, the 120	41	11	3	—		
— above 7 inches in width, and not exceeding 12 inches in width, and not exceeding 4 inches in thickness, and exceeding 20 feet in length, the 120	51	9	2	—		
— above 7 inches in width, and not exceeding 12 inches in width, and exceeding 4 inches in thickness, and exceeding 20 feet in length, the 120	100	6	1	—		
— Deal Ends imported into Great Britain, viz.						
— above 7 inches in width, being under 6 feet in length, and not exceeding 3½ inches in thickness, the 120	6	0	0	—		
— above 7 inches in width, being under 6 feet in length, and exceeding 3½ inches in thickness, the 120	12	0	0	—		
— Deal Ends of the growth and produce of any British possession in America, and imported directly from thence into Great Britain, viz.						
— above 7 inches in width, being under 6 feet in length, and not exceeding 3½ inches in thickness, the 120	0	15	0	—		
— above 7 inches in width, being under 6 feet in length, and not exceeding 3½ inches in thickness, the 120	1	10	0	—		
— Deal Ends imported into Ireland, viz.						
— above 7 inches in width, and not exceeding 12 inches in width, and under 8 feet in length, viz.						
— not exceeding 3½ inches in thickness, the 120	7	1	8	—		
— exceeding 3½ inches in thickness, the 120	13	14	8	—		
— Deals and Deal Ends, viz.						
— of all sorts, of the growth and produce of any British possession in America, and imported directly from thence into Ireland, the 120	0	8	3	—		
— and further, on all Deals and Deal Ends imported into Ireland of the aforesaid lengths and thicknesses, but of the following widths, the additional duties following, viz.						
— if exceeding 12 inches in width, and not exceeding 15 inches in width, twenty-five per cent. or one-fourth of the aforesaid rates.						
— if exceeding 15 inches in width, and not exceeding 18 inches in width, fifty per cent. or one-half of the aforesaid rates.						



	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Wood continued.</i>						
<i>Deals and Deal Ends continued.</i>						
— if exceeding 18 inches in width, and not exceeding 21 inches in width, seventy-five per cent. or three-fourths of the aforesaid rates.						
— if exceeding 21 inches in width, one hundred per cent. or an additional duty, equal to the aforesaid rates respectively.						
— Firewood, not fit or proper to be used other than as such, viz.						
— the fathom, 6 feet wide and 6 feet high	0	19	0	—		
— of the growth and produce of any British possession in America, and imported directly from thence, the fathom, 6 feet wide and 6 feet high	0	0	10	—		
— Fir Quarters, viz.						
— under 5 inches square, and under 24 feet in length, the 120	18	2	7	—		
— under 5 inches square, and 24 feet in length, or upwards, the 120	27	0	0	—		
— 5 inches square or upwards are subject and liable to the duties payable on Fir Timber.						
— Fir Quarters of the growth and produce of any British possession in America, and imported directly from thence, viz.						
— under 5 inches square, and under 24 feet in length, the 120	3	5	0	—		
— under 5 inches square, and 24 feet in length or upwards, the 120	4	17	6	—		
— 5 inches square, or upwards, are subject and liable to the duties payable on Fir Timber.						
— Fir Timber, <i>see</i> Timber.						
— Handspikes, viz.						
— under 7 feet in length, the 120	2	0	0	—		
— 7 feet in length or upwards, the 120	4	0	0	—		
— Handspikes of the growth and produce of any British possession in America, and imported directly from thence, viz.						
— under 7 feet in length, the 120	0	2	6	—		
— 7 feet in length or upwards, the 120	0	5	0	—		
— Knees of Oak, viz.						
— under 5 inches square, the 120	0	10	0	—		
— 5 inches square, and under 8 inches square, the 120	4	0	0	—		
— 8 inches square or upwards, the load, containing 50 cubic feet	1	6	0	—		
— Knees of Oak of the growth of any British possession in America, and imported directly from thence, viz.						
— under 5 inches square, the 120	0	2	0	—		
— 5 inches square, and under 8 inches square, the 120	0	15	0	—		
— 8 inches square or upwards, the load containing 50 cubic feet	0	5	0	—		
— Lathwood, viz.						
— in pieces under 5 feet in length, the fathom, 6 feet wide and 6 feet high	4	5	0	—		
— in pieces 5 feet in length and under 8 feet in length, the fathom, 6 feet wide and 6 feet high	6	16	0	—		
— 8 feet in length and under 12 feet in length, the fathom, 6 feet wide and 6 feet high	10	4	0	—		
— 12 feet long or upwards, the fathom, 6 feet wide and 6 feet high	13	12	0	—		
— Lathwood of the growth of any British possession in America, and imported directly from thence, viz.						
— in pieces under 5 feet in length, the fathom, 6 feet wide and 6 feet high	0	15	0	—		
— in pieces 5 feet in length or upwards, the fathom, 6 feet wide and 6 feet high	1	5	0	—		
— Masts, Yards, or Bowsprits, viz.						
— 6 inches in diameter, and under 8 inches, each	0	8	0	—		
— 8 inches in diameter, and under 12 inches, each	1	2	0	—		
— 12 inches in diameter or upwards, the load containing 50 cubic feet	2	15	0	—		
— Masts, Yards, or Bowsprits, of the growth of any British possession in America, and imported directly from thence, viz.						
— 6 inches in diameter, and under 8 inches, each	0	1	6	—		

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Wood continued.</i>						
— <i>Masts, Yards, or Bowsprits, &amp;c. continued.</i>						
— 8 inches in diameter, and under 12 inches, each	0	4	0	—		
— 12 inches in diameter, or upwards, the load, containing 50 cubic feet	0	10	0	—		
— <i>Oak Plank, viz.</i>						
— 2 inches in thickness or upwards, the load, containing 50 cubic feet	4	0	0	—		
— <i>Oak Plank of the growth of any British possession in America, and imported directly from thence, viz.</i>						
— 2 inches in thickness or upwards, the load containing 50 cubic feet	0	15	0	—		
— <i>Oak Timber, see Timber.</i>						
— <i>Oars, the 120</i>	14	19	3	—		
— of the growth of any British possession in America, and imported directly from thence, the 120	0	19	6	—		
— <i>Spars, viz.</i>						
— under 22 feet in length, and under 4 inches in diameter, exclusive of the bark, the 120	2	8	0	—		
— 22 feet in length or upwards, and under 4 inches in diameter, exclusive of the bark, the 120	4	5	0	—		
— 4 inches in diameter, and under 6 inches in diameter, exclusive of the bark, the 120	9	0	0	—		
— of the growth of any British possession in America, and imported directly from thence, viz.						
— under 22 feet in length, and under 4 inches in diameter, exclusive of the bark, the 120	0	9	0	—		
— 22 feet in length or upwards, and under 4 inches in diameter, exclusive of the bark, the 120	0	16	0	—		
— 4 inches in diameter, and under 6 inches in diameter, exclusive of the bark, the 120	1	15	0	—		
— <i>Spokes for Wheels, viz.</i>						
— not exceeding 2 feet in length, the 1000	3	7	4	—		
— exceeding 2 feet in length, the 1000	6	14	8	—		
— of all sorts, of the growth of any British possession in America, and imported directly from thence, the 1000	0	6	4	—		
— <i>Staves, viz.</i>						
— not exceeding 36 inches in length, not above three inches in thickness, and not exceeding 7 inches in breadth, the 120	1	3	0	—		
— above 36 inches in length, and not exceeding 50 inches in length, not above 3 inches in thickness, and not exceeding 7 inches in breadth, the 120	2	6	0	—		
— above 50 inches in length, and not exceeding 60 inches in length, not above 3 inches in thickness, and not exceeding 7 inches in breadth, the 120	3	0	0	—		
— above 60 inches in length, and not exceeding 72 inches in length, not above 3 inches in thickness, and not exceeding 7 inches in breadth, the 120	4	4	0	—		
— above 72 inches in length, not above 3 inches in thickness, and not exceeding 7 inches in breadth, the 120	4	16	0	—		
— above 3 inches in thickness, or above 7 inches in breadth, and not exceeding 63 inches in length, shall be deemed Clap Boards, and be charged with duty accordingly.						
— above 3 inches in thickness, or above 7 inches in breadth, and exceeding 63 inches in length, shall be deemed Pipe Boards, and be charged with duty accordingly.						
— <i>Staves, being the growth of any of the United States of America, or of the growth of East or West Florida, and imported directly from thence respectively, not exceeding 1½ inch in thickness, shall be charged with one-third part only of the duties herein-before imposed on Staves.</i>						
— <i>Staves, being the growth of and imported directly from the Ionian Islands, shall be charged at the same rate of duty as Staves of the growth of the United States of America, when imported directly from thence.</i>						

	Duty.			Drawback..		
	£.	s.	d.	£.	s.	d.
<i>Wood continued.</i>						
— Staves of the growth of any British possession in America, and imported directly from thence, viz.						
— not exceeding 36 inches in length, not above 3½ inches in thickness, and not exceeding 7 inches in breadth, the 120	0	2	0	—		
— above 36 inches in length, and not exceeding 60 inches in length, not above 3½ inches in thickness, and not exceeding 7 inches in breadth, the 120	0	4	0	—		
— above 60 inches in length, and not exceeding 60 inches in length, not above 3½ inches in thickness, and not exceeding 7 inches in breadth, the 120	0	6	0	—		
— above 60 inches in length, and not exceeding 72 inches in length, not above 3½ inches in thickness, and not exceeding 7 inches in breadth, the 120	0	8	0	—		
— above 72 inches in length, not above 3½ inches in thickness, and not exceeding 7 inches in breadth, the 120	0	10	0	—		
— not exceeding 1½ inch in thickness shall be charged with one-third part of the duty herein proposed on such Staves.						
— above 3½ inches in thickness, or above 7 inches in breadth, and not exceeding 63 inches in length, shall be deemed Clap Boards, and be charged with duty accordingly.						
— above 3½ inches in thickness, or above 7 inches in breadth, and exceeding 63 inches in length, shall be deemed Pipe Boards, and be charged with duty accordingly.						
— * Teake Wood, the load, containing 50 cubic feet	1	10	0	—		
— of the growth of any British possession in Africa, the load, containing 50 cubic feet	0	10	0	—		
— Timber, viz.						
— Fir Timber, 8 inches square or upwards,						
— the load, containing 50 cubic feet	2	15	0	—		
— Fir Timber, of the growth of any British possession in America, and imported directly from thence, 8 inches square or upwards, the load, containing 50 cubic feet	0	10	0	—		
— Oak Timber, 8 inches square or upwards, the load, containing 50 cubic feet	2	15	0	—		
— Oak Timber of the growth of any British possession in America, imported directly from thence, 8 inches square or upwards, the load, containing 50 cubic feet	0	10	0	—		
— Timber of all sorts, not particularly enumerated or described, nor otherwise charged with duty, being 8 inches square or upwards, the load, containing 50 cubic feet	1	8	0	—		
— Timber of all sorts, not particularly enumerated or described, nor otherwise charged with duty, being of the growth of any British possession in America, and imported directly from thence, being 8 inches square or upwards, the load, containing 50 cubic feet	0	5	0	—		
— Ufers, viz.						
— under 5 inches square, and under 24 feet in length, the 120	18	2	7	—		
— under 5 inches square, and 24 feet in length or upwards, the 120	27	0	0	—		
— 5 inches square, or upwards, are subject and liable to the duties payable on Fir Timber.						
— Ufers of the growth of any British possession in America, and imported directly from thence, viz.						
— under 5 inches square, and under 24 feet in length, the 120	2	5	0	—		
— under 5 inches square, and 24 feet in length or upwards, the 120	4	17	6	—		
— 5 inches square, or upwards, are subject and liable to the duties payable on Fir Timber.						
— Wainscot Logs, viz.						
— 8 inches square or upwards, the load, containing 50 cubic feet	2	15	0	—		
— Wainscot Logs of the growth of any British possession in America, and imported directly from thence, the load containing 50 cubic feet	0	12	0	—		
— Wood unmanufactured, of the growth of any British possession in America, not particularly enumerated or described, nor otherwise						

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
Wood continued.						
— charged with duty, for every 100 <i>l.</i> of the value	5	0	0	—		
— Wood unmanufactured, not particularly enumerated or described, and on which the duties due on the importation are payable according to the value thereof, being of the growth of the British limits within the province of Yucatan in the bay of Honduras, and imported directly from the said bay, for every 100 <i>l.</i> of the value	5	0	0	—		
— Wood unmanufactured, not particularly enumerated or described, nor otherwise charged with duty, for every 100 <i>l.</i> of the value	20	0	0	—		
— * Teake Wood, or other Wood fit for ship-building, 8 inches square or upwards, the growth of any British possession within the limits of the East India Company's charter, the load, containing 50 cubic feet	Free.			—		
Wool, viz.						
— Beaver Wool, the lb.	0	1	7	—		
— cut and combed, the lb.	0	4	9	—		
— Bison or Buffalo Wool, the produce of and imported directly from any British possession, the lb.	0	0	4	—		
— of any other place, or if otherwise imported, the lb.	0	0	6	—		
— Carmania Wool, the lb.	0	0	1	—		
— Coney Wool, the lb.	0	0	2	—		
— Cotton Wool, or Waste of Cotton Wool, viz.						
— the produce of any British possession in America, and imported directly from thence	Free.			—		
— the produce of any British possession in America, not being imported directly from thence, and Cotton Wool, or Waste of Cotton Wool, the produce of any other country or place, for every 100 <i>l.</i> of the value	6	0	0	—		
— Goat's Wool or Hair, the lb.	0	0	1	—		
— the produce of and imported from any British possession	Free.			—		
— Hare's Wool, the lb.	0	0	2	—		
— Lamb's Wool, <i>see</i> Sheep's Wool.				—		
— Ostrich Wool, the lb.	0	0	6	—		
— Polonia Wool, the lb.	0	0	6	—		
— Red Wool, the lb.	0	0	6	—		
— Sheep or Lamb's Wool, viz.						
— the produce of and imported from any British possession	Free.			—		
— the produce of or imported from any other place, viz.				—		
— not being of the value of 1 <i>s.</i> the lb. thereof, the lb.	0	0	0 <sup>1</sup> / <sub>2</sub>	—		
— being of the value of 1 <i>s.</i> the lb. or upwards, the lb.	0	0	1	—		
Woollens, viz.						
— Manufactures of Wool not being Goat's Wool, or of Wool mixed with Cotton, not particularly enumerated or described, nor otherwise charged with duty, for every 100 <i>l.</i> of the value	15	0	0	—		
Wreck, <i>see</i> Derelict.						
Y.						
Yarn, viz.						
— Cable Yarn, the cwt.	0	10	9	—		
— Camel or Mohair Yarn, the lb.	0	0	3	—		
— Grogan Yarn, the lb.	0	0	6	—		
— Raw Linen Yarn, the cwt.	0	1	0	—		
— Worsted Yarn, being of two or more threads, twisted or thrown, the lb.	0	0	6	—		
Z.						
Zaffre, the lb.	0	0	1	—		
Zedoaria, the lb.	0	1	3	0	0	10
Goods, Wares, and Merchandise, being either in part or wholly manufactured, and not being enumerated or described, nor otherwise charged with duty, and not prohibited to be imported into or used in Great Britain or Ireland, for every 100 <i>l.</i> of the value	20	0	0	—		
Goods, Wares, and Merchandise, not being either in part or wholly manu-						

	Duty.	Drawback.
	£. s. d.	£. s. d.
factured, and not being enumerated or described, nor otherwise charged with duty, and not prohibited to be imported into or used in Great Britain or Ireland, for every 100 <i>l.</i> of the value . . . . .	10 0 0	—

*Note.*—All goods, the produce or manufacture of the island of Mauritius, are subject to the same duties as are imposed in this table on the like goods the produce or manufacture of the British possessions in the West Indies.

All goods, the produce or manufacture of the Cape of Good Hope or the territories or dependencies thereof, are subject to the same duties as are imposed in this table on the like goods the produce or manufacture of the British possessions within the limits of the East India Company's charter, except when any other duty is expressly imposed thereon.

## TABLE OF DUTIES OUTWARDS.

A TABLE of DUTIES of CUSTOMS payable on Goods, Wares, and Merchandize, EXPORTED from the United Kingdom to Foreign Parts.

	Duty.
	£. s. d.
Coals and Cinders usually sold by measure, viz.	
— exported to the Isle of Man, the chaldron, imperial measure . . . . .	0 1 6
— exported to any British possession, the chaldron, imperial measure . . . . .	0 1 6
— exported to any other place, viz.	
— in a British ship, the chaldron, Newcastle measure . . . . .	0 17 0
— in a ship not British, the chaldron, Newcastle measure . . . . .	1 10 3
Coals and Cinders usually sold by weight, viz.	
— exported to the Isle of Man, the ton . . . . .	0 1 0
— exported to any British possession, the ton . . . . .	0 1 0
— exported to any other place, viz.	
— in a British ship, the ton . . . . .	0 5 9
— in a ship not British, the ton . . . . .	0 10 0
Any Coals which shall have been screened though a riddle or screen, the bars of which not being in any part thereof more than three-eighth parts of an inch asunder, shall, on exportation from any part of Great Britain, be subject and liable to such and the like duties, and no other, as are or may be charged and payable on Culm exported from Great Britain to foreign parts.	
Culm, viz.	
— exported to the Isle of Man, the chaldron, imperial measure . . . . .	0 0 6
— exported to any British possession, the chaldron, imperial measure . . . . .	0 0 6
— exported to any other place, viz.	
— in a British ship, the chaldron, Newcastle measure . . . . .	0 4 6
— in a ship not British, the chaldron, Newcastle measure . . . . .	0 8 0
Skins, viz.	
— Coney Skins, the 100 skins . . . . .	0 1 0
— Hare Skins, the 100 skins . . . . .	0 1 0
Wool, viz.	
— of Hares, and of Coneys, the lb. . . . .	0 0 1
— of Sheep or Lambs, viz.	
— not being of the value of 1 <i>s.</i> the lb. thereof, the lb. . . . .	0 0 0½
— being of the value of 1 <i>s.</i> the lb. or upwards, the lb. . . . .	0 0 1
Woollen Manufactures, viz.	
— Woolfels, Mortlings, Shortlings, Yarn, Worsted, Woolflacks, Cruels, Coverlids, Waddings, or other Manufactures, or pretended Manufactures slightly wrought up or put together, so as that the same may be reduced to and made use of as Wool again, Mattresses or Beds stuffed with combed Wool, or Wool fit for combing or carding, the lb. . . . .	0 0 1

Duty.

The following duty is also payable on goods of the growth, produce, or manufacture of the united kingdom exported from thence, whether subject to other export duty or not, viz.

Goods, Wares, and Merchandize, of the growth, produce, or manufacture of the united kingdom (except as hereinafter mentioned), exported to any port or place whatever, for every 100*l.* of the true and real value thereof . . . . . 0 10 0

## EXCEPT

Bullion.

Corn, Grain, Meal, Malt, Flour, Biscuit, Bran, Grits, Pearl Barley, and Scotch Barley.

Cotton Yarn, or other Cotton Manufactures.

Fish.

Linen, or Linen with Cotton mixed.

Melasses.

Military Clothing, Accoutrements, or Appointments, exported under the authority of the commissioners of His Majesty's treasury, and sent to any of His Majesty's forces serving abroad.

Military stores exported to India by the East India Company.

Salt.

Sugar, refined, of all sorts, and Sugar Candy.

Goods, Wares, and Merchandize, exported to the Isle of Man by virtue and under the authority of any licence which the commissioners of His Majesty's Customs are or may be authorized and empowered to grant.

Any sort of Craft, Food, Victuals, Clothing, or Implements or Materials necessary for British fisheries established in the Island of Newfoundland, or in any of His Majesty's Colonies, Islands, or Plantations in North America, on due entry thereof, and exported direct to the said Colonies, Islands, or Plantations.

Wool.

Woollen Goods, or Woollen and Cotton mixed, exported to any port or place within the limits of the East India Company's Charter.

## A TABLE OF DUTIES COASTWISE.

A TABLE of the DUTIES of CUSTOMS payable on Goods, Wares, and Merchandize brought or sent COASTWISE from one Port or Place to any other Port or Place within the United Kingdom, and of the DRAWBACKS to be allowed upon the Exportation thereof.

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
Coals, Culm, and Cinders, except Charcoal made of Wood, viz.						
Coals, except Small Coals otherwise charged with duty, viz.						
— brought coastwise from any port or place in the united kingdom into any port in England or Wales,						
— in case they be such as are most usually sold by weight, the ton	0	4	0	0	3	8
— in case they be such as are most usually sold by measure, the chaldron, imperial measure	0	6	0	0	5	6
— brought coastwise from any port of the united kingdom into any port in Ireland, the ton	0	1	7½			
— and further if brought into the Harbour of Dublin, the ton	0	0	11			
Culm, viz.						
— to be used for burning Lime, sent from any place within the limits of the port of Milford, in the county of Pembroke, to any other place within the counties of Pembroke, Carmarthen, Cardigan, or Merioneth, the chaldron, imperial measure	0	0	6			
— not having been so sent or charged with duty, brought coastwise from any port in the united kingdom into any port in England or Wales, the chaldron, imperial measure	0	0	6	0	0	6

	Duty.			Drawback.		
	£.	s.	d.	£.	s.	d.
<i>Cinders, viz.</i>						
— made of Pit Coal, brought coastwise from any port in the united kingdom into any port in England or Wales, the chaldron, imperial measure	0	6	0			
<i>Coals, Culm, and Cinders, viz.</i>						
— brought by the Grand Junction or Paddington canals nearer to London than the stone or post at or near the north-east point in Grove Park, in the county of Hertford, or brought down the river Thames nearer to London than the city's stone placed on the west side of Staines bridge, in the County of Middlesex, the ton	0	1	0	—		
— and a further duty of 1s. 3d. the ton payable to the proper officer of Customs, in lieu of the duty called Orphan's Duty, and of all other rates, dues, and duties payable to the corporation of London upon coal, culm, and cinders, imported into the port of London, to be paid over to the said corporation at the end of every quarter.						
<i>Coals, viz.</i>						
— shipped to be carried coastwise from the port of Newcastle-upon-Tyne to any other port in the united kingdom, the chaldron, imperial measure	0	0	6	—		
— Small Coals which have been screened through a screen or riddle, the bars of which not being in any part thereof more than three-eighths of an inch asunder, or such coals mixed with ashes, shipped to be sent coastwise from the ports of Newcastle or Sunderland to any port in England or Wales, the chaldron, imperial measure	0	1	0	—		
— not subject to the duty imposed upon coals brought coastwise.						
— Coals and Culm carried from Ellenfoot to Bank End, in the county of Cumberland, or from any other creek or place between Ellenfoot and Bank End aforesaid, provided bond be entered into, with a general condition for the due landing of such coals within the said limits;—coals and culm carried on the Monmouthshire canal, or on any of the railways or tram roads connected therewith, and afterwards carried from any port or place to the eastward of the islands called The Homes, to any other port or place in or upon the river Severn; also to the eastward of The Homes, without passing to the westward of the said islands, except in going to the port of Bridge-water, and without touching at any place to the westward of the said islands;—coals, culm, and cinders, carried from any part of the Lancaster canal, or any of the branches thereof, or from any port or place within the hundred of Lonsdale, in the county of Lancaster, into the Ulverstone canal, across or along the bay or estuary separating the two canals;—coals, culm, cinders, or coked coals, burnt from pit coal on which the proper duties shall have been paid, being again brought coastwise from any port or place in Great Britain to any other port or place in England or Wales; duty free.						
<i>Slates, brought coastwise from one port to another port in Great Britain, viz.</i>						
— delivered by tale, viz.						
— Doubles, not exceeding 13 inches in length, or 7 inches in breadth, the 1000	0	6	0	—		
— Ladies, exceeding 13 inches in length, and 7 inches in breadth, and not exceeding 16 inches in length, and 8 inches in breadth, the 1000	0	13	0	—		
— Countesses, exceeding 16 inches in length and 8 inches in breadth, and not exceeding 20 inches in length and 10 inches in breadth, the 1000	1	2	6	—		
— Duchesses, exceeding 20 inches in length and 10 inches in breadth, and not exceeding 24 inches in length and 12 inches in breadth, the 1000	1	15	6	—		
— delivered by weight, viz.						
— Queen or Size Rag Slates, the ton	0	13	0	—		
— Imperial or Milled Slates, the ton	0	15	6	—		
— Slab Slates, the ton	0	13	0	—		
— Block Slates, the ton	0	14	6	—		
— Westmorland Rag Slates, the ton	0	14	6	—		
— Slate or Slates not otherwise enumerated or described, for every 100l. of the value thereof	25	0	0	—		

By 6 Geo. IV., c. 113, certain *bounties* and allowances of Customs were enacted, and specified in Schedule. (a)

By 7 Geo. IV., c. 48, s. 35, another table of some duties, bounties, and drawbacks was enacted in lieu of certain duties imposed by the foregoing act of 6 Geo. IV., c. 111.

By 7 Geo. IV., c. 53, new duties on silk imported were imposed.

By 7 & 8 Geo. IV., c. 56, s. 21, a different table of certain enumerated duties was enacted, varying them from the former. And

By 9 Geo. IV., c. 76, s. 10, a new table of certain duties was given, varying from the former duties on the same subject.

By 10 Geo. IV., c. 23, new duties were imposed on silk and silk goods, and drawbacks are allowed on the importation thereof.

By 10 Geo. IV., c. 43, s. 14, further new duties and drawbacks were introduced. (b)

The 6 Geo. IV., c. 107, s. 122, defines what shall be deemed an importation and exportation; and also what shall be deemed the arrival and departure of a ship. The enactment is, "That if upon the first levying or repealing of any duty, or upon the first granting or repealing of any drawback or bounty, or upon the first permitting or prohibiting of any importation or exportation, whether inwards, outwards, or coastwise, in the united kingdom, or in the Isle of Man, it shall be necessary to determine the precise *time* at which an importation or exportation of any goods made and completed shall be deemed to have had effect, such time, in respect of importation, shall be deemed to be the time at which the ship importing such goods had actually come within the limits of the port at which such ship shall in due course be reported, and such goods be discharged; and that such time, in respect of exportation, shall be deemed to be the time at which the goods had been shipped on board the ship in which they had been exported; and that if such question shall arise upon the arrival or departure of any ship, in respect of any charge or allowance upon such ship, exclusive of any cargo, the time of such arrival shall be deemed to be the time at which the report of such ship shall have been or ought to have been made; and the time of such departure shall be deemed to be the time of the last clearance of such ship with the collector and comptroller for the voyage upon which she had departed."

What to be deemed an importation and exportation, and what an arrival or departure of a ship.

Many decisions have taken place under the repealed acts upon the legal meaning of the terms importation, exportation, and coastwise, which may still be applicable. (c)

A vessel is generally considered to have *imported* her cargo when she has come within the limits of the port *in order* to lay the goods on land: (d) as when a ship brought a cargo of bay salt to a haven in England, and sold part of her cargo to another vessel, to which the goods were delivered, and afterwards exported; it was held that an importation had taken place, as well as an exportation, and that duties were payable accordingly on the cargo sold; and it was determined that the discharge of the goods from the vessel in which they were imported, on the sale taking place, was equivalent to putting them on the land, as the delivery was made within the body of the county. (e) A legatee under a bequest of wines which arrived in the port of London in a ship before the death of testator—the report of the arrival of the ship being made before, but the entry of

(a) As to bounties, see the decision *Sordre v. Munro*, 2 *Smith's Rep.* 565.

(b) All these enactments are printed at large in 2 *Chitty's Col. Stat. tit. Customs*.

(c) See the decisions arranged, 1 *Chit. Com. L.* 245, 569, 703, 704.

(d) 2 *Chalmer's Op.* 280; *Leake v. Smith*, *Bunb.* 79; *Com. Dig. Trade*, (C. 1. 12. O. 18;) 2 *Price* 385; *Score v. Ld. Admiral Parker*, 273; *Edwards Ad. Rep.* 135.

(e) *Id. ibid.* 1 *Chitty's Com. L.* 569.



CUSTOMS,  
DUTIES OF, &c.

the wines not being made until after the death of testator—is not subject to the payment of the duties, the executor being bound to pay them out of the assets. (a)

The terms *exportation* and *coastwise* have also received judicial construction. Thus when a drawback is payable on exportation, the master is not entitled to it without producing the clearing note, which is the last document that he receives; and on an exportation from London it is not given to the master till after he has delivered all necessary papers at Gravesend, so that an exportation from London is not complete until the ship has cleared at Gravesend. (b) So, unless a vessel has proceeded out of the limits of the port with her cargo, it is not such an exportation of the goods as will protect the cargo from duties subsequently imposed on the exportation of goods of the same nature, although she is not only freighted and afloat, but has gone through all the formalities of clearing, &c. at the Custom House, and has paid the exportation duties. And all such new imposts as are laid on such goods attach while the vessel is waterbound within any part of the port. (c)

The carrying of goods *coastwise* is not deemed an exportation of them in the ordinary use of that term. (d)

Contingencies,  
&c. not provided  
against.

It was said, in a case under the Excise Laws, that it is a principle of legislation in the revenue acts not to provide for contingencies, or provide for losses, but to impose the duty and leave the party to petition. (e) There are, however, provisions giving power to abate duties upon goods damaged during a sea voyage. (f)

Sugar.

The duties on *sugar* are continued annually. (g) The act 6 Geo. IV. c. 9, schedule, imposed duties on sugar imported for the service of the year 1825: and that such duties should be levied, collected, and paid as other duties of Customs, and should be applied in manner directed by that act. The 6 Geo. IV. c. 11, schedule, imposed the duty inwards on sugar. The 7 Geo. IV. c. 48, s. 35, schedule, imposed the duties till 7 July, 1827. Then followed annual acts for continuing the duty on sugar, 7 & 8 Geo. IV. c. 7; 9 Geo. IV. c. 36; 10 Geo. IV. 39. The 9 Geo. IV. c. 93, allows sugar to be delivered out of warehouse to be refined, and was continued to 5 July, 1830, by 10 Geo. IV. c. 49, subject to certain regulations and penalties in case of nonabsence.

The 1 Wm. IV. c. 50, regulates the duties till 5 July, 1831.

Wine.

Wine imported by a foreign ambassador, for his own use, is generally duty free by licence from the Treasury; but if, in retiring from the country, he leave it in the hands of an agent to be sold, and the same were sold, it was held that the wines having passed from the hands of the privileged person became liable to the duties. (h)

## III. Management of the Customs.

[6 Geo. IV., c. 106; 7 Geo. IV., c. 48; 7 & 8 Geo. IV., c. 56; 9 Geo. IV., c. 76; 10 Geo. IV., c. 43.]

Management of  
Customs.

The 6 Geo. IV. c. 106, entitled, "*An act for the management of the Customs,*" after reciting that the former acts were repealed by the 6 Geo.

(a) *Servant v. Denton*, 2 Chitty's 2 Anstr. 558; 7 T. R. 56; 1 Anstr. Rep. 456.

(b) *Williams v. Marshall*, 6 Taunt. (f) 6 Geo. IV., c. 107, s. 28.

Rep. 390; 2 Marsh. 92, S. C. (g) See *History, &c. of this duty*, 1 Chitty's Com. Law, 705. See 1 W. IV., c. 50.

(c) *The Attorney-general v. Pouget*, 2 Price Rep. 38. (h) *Attorney-General v. Thornton*, 1 Marsh. 204; Com. Dig. Trade, (C. 4.) M'Clel. Rep. 600.

(e) *Post*, 6 Geo. IV., c. 107, s. 130;

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IV. c. 105, contains provisions for the management of the Customs, commencing on the 5th Jan. 1826. These enactments are not immediately connected with the office of justice of peace, excepting the 43d section, relating to the forced sale of buildings and land for the purposes of the Customs. The enactments may be arranged under the following heads:

#### 3. Management of the Customs.

- (1.) *The Commissioners in the United Kingdom and abroad.*
- (2.) *The Officers of the Customs, Hours of Attendance, Fees, &c.*
- (3.) *The Receiver-General.*
- (4.) *The administering Oaths.*
- (5.) *The Offence of bribing Officers.*
- (6.) *Seizures.*
- (7.) *Surveyors-General, and the Examination of Witnesses.*
- (8.) *Commissioners in Ireland.*
- (9.) *Of Lands and Buildings for the Customs.*
- (10.) *Of the Signatures of the Lords of the Treasury.*

#### (1.) Of the Commissioners of Customs.

(1.) Of the commissioners.

[6 Geo. IV. c. 106.]

The 4 Geo. IV. c. 23, (a) authorised the king to appoint a board of commissioners of Customs, not exceeding thirteen, for the united kingdom, and assistant commissioners for Scotland and Ireland, and then pointed out the powers and authorities of such commissioners, and subjected the board to the control of the treasury. That act was repealed by the 6 Geo. IV. c. 105, and the present provisions were enacted by the 6 Geo. IV. c. 106.

By 6 Geo. IV. c. 106, s. 2, it is enacted that, "It shall be lawful for H. M. from time to time to appoint, under the great seal of the united kingdom, any number of persons, not exceeding thirteen, to be commissioners of H. M.'s Customs for the collection and for the management of the Customs in and throughout the whole of the united kingdom, and of any of H. M.'s possessions abroad; and also to appoint any number of persons, not exceeding four, to be assistant commissioners of H. M.'s Customs, to sit and act in manner hereinafter mentioned in and for Scotland and Ireland; and that each of such commissioners and assistant commissioners, when so appointed, shall have and hold his office during H. M.'s pleasure."

Board of Customs, thirteen commissioners, and four assistant commissioners for Scotland and Ireland.

Sect. 3. "It shall be lawful for the lord high treasurer of the united kingdom of Great Britain and Ireland, or for the commissioners of H. M.'s treasury of the united kingdom of Great Britain and Ireland, from time to time to order and direct any one or more of such commissioners, together with two such assistant commissioners, to sit and act as commissioners for executing and directing the business of the Customs in Scotland and Ireland respectively, under the control and direction of the commissioners of H. M.'s Customs sitting and acting in England."

Treasury may appoint commissioners and assistant commissioners for Scotland or Ireland.

Sect. 4. "The said commissioners and assistant commissioners so appointed or to be appointed by H. M. shall, in all matters and things relating to the execution of their duties, be subject to the authority, directions, and control of the commissioners of H. M.'s treasury, and shall obey such orders and instructions as shall from time to time be issued to them by the said commissioners of H. M.'s treasury under the hands of three or more of them."

Commissioners and assistant commissioners subject to the control of the treasury.

Sect. 5. "Every order, document, instrument, or writing, not being for

Orders under the hands of commissioners.

(a) See the statute at length, 2 Chit. Col. Stat. tit. Customs.  
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1. *Of the commissioners.*

Signature of two commissioners to be sufficient without seals.

Commissioners and others not liable to serve parochial and other offices.

the payment of money, required by any law at any time in force to be under the hands of the commissioners of H. M.'s Customs, being attested by the signatures of two or more of such commissioners in England, and every such order for the payment of money, being attested by the signatures of three or more of such commissioners in England, and every order, document, instrument, or writing, being attested by the signatures of two or more of such commissioners or assistant commissioners in Scotland and Ireland respectively, shall be deemed to be an order, document, instrument, or writing under the hands of the commissioners of H. M.'s Customs accordingly."

By stat. 7 Geo. IV. c. 48, s. 2. Every order, document, instrument, or writing required by any law at any time in force to be under the hands and seals of the commissioners of H. M.'s Customs, which shall be signed by two (a) or more commissioners or assistant commissioners of the Customs, shall be deemed to be an order, document, instrument, or writing under the hands and seals of the commissioners of H. M.'s Customs within the meaning of such law.

By 9 Geo. IV. c. 76, s. 2. "No commissioner or assistant commissioner of customs shall, during the time of his acting as such commissioner or assistant commissioner, be compelled to serve as a mayor or sheriff, or in any corporate, or parochial, or other public office or employment, or to serve on any jury or inquest, or in the militia."

By 10 Geo. IV. c. 43, s. 2, the jurisdiction of local boards of Customs in Ireland, and of sub-commissioners in certain cases, was repealed, and the penalties for offences against the Customs in Ireland may be recovered in the Exchequer there, or before justices of the peace.

(2.) *Of the officers, &c.*

Appointment of subordinate officers of Customs.

Salaries and allowances and securities.

Persons employed by Customs deemed officers for such service.

Duties of officers performed by persons and at places appointed by commissioners.

(2.) *Of the Officers of the Customs, Hours of Attendance, Fees, &c.*

By 6 Geo. IV. c. 106, s. 7. "It shall be lawful for the said commissioners of H. M.'s treasury, or for the commissioners of H. M.'s Customs under the authority of the said commissioners of H. M.'s treasury, to appoint proper persons to execute the duties of the several offices necessary to the due management and collection of the Customs, and all matters connected therewith, under the control and direction of the commissioners of H. M.'s Customs; granting or allowing to such persons such salaries or other allowances, or permitting such emoluments for the labour and responsibility in executing the duties of their respective offices or employments, and requiring of such persons such securities for their good conduct therein, as the said commissioners of H. M.'s treasury shall deem to be reasonable and necessary; and such persons shall hold their offices during the will and pleasure of the said commissioners of H. M.'s treasury, or the commissioners of H. M.'s Customs sitting and acting in England, in such cases and in such manner as the said commissioners of H. M.'s treasury shall direct."

Sect. 8. "Every person employed on any duty or service relating to the Customs, by the orders or with the concurrence of the commissioners of H. M.'s Customs (whether previously or subsequently expressed), shall be deemed to be the officer of the Customs for that duty or service." (b)

By 7 Geo. IV. c. 48, s. 3. "Every act, matter, or thing required by any law at any time in force to be done or performed by, to, or with any particular officer nominated in such law, for such purpose being done or performed by, to, or with any person appointed by the commissioners of

(a) See *ex parte White v. Gibbs*, 1 Dowd. & R., 161.

(b) And see the smuggling act, 6 Geo. IV. c. 108, s. 105, *post*, 205.

### III. Management of the Customs.

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H. M.'s Customs to act for or in behalf of such particular officer, the same shall be deemed to be done or performed by, to, or with such particular officer. And every act, matter, or thing required by any law at any time in force to be done or performed at any particular place within any port, being done or performed at any place within such port appointed by the commissioners of H. M.'s Customs for such purpose, the same shall be deemed to be done, or performed, at the particular place so required by law."

By 6 Geo. IV. c. 106, s. 9. "If any officer, (a) clerk, or other person, acting in any office or employment in or belonging to the Customs, under the control and direction of the commissioners of the Customs in any part of H. M.'s dominions, shall take or receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any other sort or description whatever, directly or indirectly, from any person (not being a person duly appointed to some office in the Customs), on account of any thing done or to be done by him, in or in any way relating to his said office or employment, except such as he shall receive under any order or permission of the said commissioners of H. M.'s treasury, every such officer so offending shall, on proof thereof to the commissioners of H. M.'s Customs, be dismissed from his office; and if any person (not being a person duly appointed to some office in the Customs) shall give, offer, or promise to give any such fee, perquisite, gratuity, or reward, such person shall, for every such offence, forfeit the sum of 100l."

Sect. 10. "All commissions, deputations, and appointments granted to any officers of the Customs, in force at the time of the commencement of this act, shall continue in force, as if the same had been afterwards granted under and by virtue of the authority of this act; and all bonds which shall have been given by any such officers and their respective sureties for good conduct, or otherwise, shall remain in full force and effect."

Sect. 11. "Every person who shall be appointed to any office or employment in the service of the Customs, under the control and direction of the commissioners of the Customs in any part of H. M.'s dominions, shall, at their respective admissions thereto, take the following oath: (that is to say,)

*I, A. B., do swear to be true and faithful in the execution, to the best of my knowledge and power, of the trust committed to my charge and inspection in the service of His Majesty's Customs; and that I will not require, take, or receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any sort or description whatever, either directly or indirectly, for any service, act, duty, matter, or thing done or performed, or to be done or performed, in the execution or discharge of any of the duties of my office or employment, on any account whatever, other than my salary, and what is or shall be allowed me by law, or by any special order of the commissioners of His Majesty's treasury, or the commissioners of His Majesty's Customs, for the time being.*  
*So help me God."*

Sect. 12. "It shall be lawful for the said commissioners of H. M.'s treasury, by their warrant from time to time, to appoint the hours of general attendance of the commissioners and respective officers of the Customs, and other persons in the service of the Customs, at their proper offices and places of employment, and that it shall be lawful for the commissioners of H. M.'s Customs to appoint the times, during such hours, at which any particular parts of the duties of such officers, and other persons respectively, shall be performed by them."

Sect. 13. "No day shall be kept as a public holiday by the Customs, except Christmas Day and Good Friday in every year, and any days appointed by H. M.'s proclamation for the purpose of a general fast or of a general thanksgiving, and also the anniversaries of the birthday of H. M., and of his successors."

2. *Of the officers, &c.*

Officers taking any fee or reward not allowed, shall be dismissed.

Penalty 100l. for offering fee.

Previous appointments and securities to remain in force.

Oath of office.

Hours of attendance, and division of service in those hours.

Holidays.

(a) See further as to *bribing officers*, the Smuggling Act, 6 Geo. IV. c. 108, 6 Geo. IV. c. 106, s. 29, *post*, 167; and s. 35, *post*, 186.

2. *Of the officers, &c.*

Collector in London to pay duties daily to receiver-general.

In London, debentures and orders to be paid by receiver-general.

Payments at outports by collector.

Commissioners may close accounts of collectors.

Fee for passing entries.

Odd pence.

Fee for despatching warrants.  
Fee for writing cockets.

Salaries not subject to duties.

Officers of Customs not liable to serve parochial and other offices.

Sect. 14. "The collector of the Customs in the port of London shall pay into the hands of the receiver-general of the Customs the whole of the monies which he shall receive on account of the duties of Customs on the day on which he shall receive the same, or as near the whole as may be, save and except such sum or sums of money as shall from time to time, by virtue of the special order of the commissioners of H. M.'s Customs, be directed to be deducted, paid, or allowed therefrom."

Sect. 15. "Every sum of money which shall be due in the port of London, upon any debenture, certificate, or other instrument or document whatever, for the payment of any money out of the duties of Customs, shall be paid by the receiver-general of the Customs out of any money in his hands arising from the duties of Customs, and every such payment shall be allowed by the commissioners for the better examining and auditing the public accounts of this kingdom, in the settling or auditing of the accounts of the receiver-general of the Customs; and when any such payment shall become due at any other port in the united kingdom, the same may be paid by the collector at such port, the comptroller being duly apprised thereof, out of any of the monies in his hands arising from the duties of Customs, and under such directions and instructions for the due execution of their offices as shall from time to time be given to them by the commissioners of the Customs."

Sect. 16. "It shall be lawful for the commissioners of H. M.'s Customs finally to settle and close the accounts of any collectors or receivers of any part of the revenue of the Customs or other duties under their management, notwithstanding any erroneous appropriation of any duties of Customs received by such collectors or receivers; and the said commissioners are hereby empowered to correct such appropriation, in order to prevent the accounts of any such collectors or receivers from being kept open; and all such corrections shall be allowed by the commissioners for auditing the public accounts, in the passing the general accounts of Customs, subsidies, or impositions."

Sect. 17. "It shall be lawful for the officers and clerks in the long room of any custom-house to assist merchants and others, at their desire, in framing and passing entries inwards and outwards, and to receive such fee, freely given, for the same, as the said commissioners of H. M.'s treasury shall permit; and that it shall be lawful for the receiver of any duties of Customs to receive for his own use, if freely given, so much as, added to any fractions payable upon any entry, shall amount to 6d.; and that it shall be lawful for the clerk of the warrants in the port of London to receive from any person, at whose request any warrant for goods inwards may be despatched before the usual time, the fee of 1s.; and for the receiver of the duties on such warrant to receive from such person the fee of 6d.; and that it shall be lawful for any cocket-writer in the port of London to receive from the person who shall select him to write any cocket for goods outwards any fee which shall be agreed on between them, not exceeding 5s. including the parchment, to be provided at the expense of the cocket-writer."

Sect. 18. "All salaries, allowances, or compensations granted or allowed to any officer, clerk, or other person in the service of the Customs, shall be paid without any abatement or deduction on account of any duties imposed by any act of parliament, unless expressly charged thereon."

9 Geo. IV. c. 76, s. 2. "No officer of Customs, or person employed in the collection or management of or accounting for the revenue of Customs, or any part thereof, nor any clerk or other person acting under them, shall, during the time of his acting as such officer, or of his being so employed as aforesaid, or of his acting as such clerk or other person as aforesaid, as the case may be, be compelled to serve as a mayor or sheriff, or in any corporate or parochial or other public office or employment, or to serve on any jury or inquest, or in the militia."

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#### (3.) *Of the Receiver-General.*

#### 3. *Of the receiver-general.*

By 6 Geo. IV. c. 106, sect. 19, reciting that it is expedient "that regulations should be established by law in the office of the receiver-general of the Customs in England, for depositing in the bank of England all the moneys, bills, drafts, and notes received by such receiver-general on account of the revenue under the management of the commissioners of Customs, except as hereinafter mentioned, until the same shall be paid into the exchequer," it is enacted, "that all monies, bills, notes, and drafts received by or coming to the hands of the receiver-general of the Customs in England, on account of the revenue of Customs in Great Britain, shall be paid by him into the hands of the governor and company of the bank of England; (that is to say), such monies and notes, and such of the bills and drafts as shall be already accepted, or shall not require acceptance (having been first duly endorsed), shall be paid as aforesaid on the day on which the same shall have been received; and such of the bills and drafts as shall require acceptance, and not be already accepted when received (the same having been first duly endorsed where necessary), within three days after the same shall have been accepted; for which monies, bills, notes, and drafts, the entry in the book hereinafter mentioned shall be a sufficient discharge; and all such monies, bills, notes, and drafts, so to be paid to the governor and company of the bank of England, shall be placed to an account to be raised in the books of the said governor and company, and to be entitled 'The account of the public monies of the receiver-general of Customs,' inserting the name of such receiver-general for the time being."

All moneys received by receiver-general of Customs in England shall be paid into the bank of England.

Sect. 20. "Provided that it shall be lawful for such receiver-general to retain and keep in his own hands, for the payment of casual and ordinary and daily demands, out of the monies so received by him as such receiver-general, a sum not exceeding one thousand pounds at the close of each day; and also any further sum which he shall be directed to retain by the said commissioners, not exceeding four thousand pounds; and also any further sum, with the permission in writing of any three or more of the said commissioners of H. M.'s treasury."

Money for ordinary payments may be retained.

Sect. 21. "The governor and company of the bank of England, or some person duly authorised in that behalf, shall daily, upon receiving any money, bills, notes, or drafts, from such receiver-general of the Customs, make an entry of the money, bills, notes, and drafts so received, in a book to be provided by the governor and company of the bank of England, which book shall be forthwith re-delivered to the persons making the payments for the Customs, and inspected daily after its return by the comptroller-general of the Customs, or his clerk (such clerk being first duly authorised by him, and for whose conduct he shall be answerable), who shall compare the same with the account of monies, bills, notes, and drafts received by the said receiver-general, for the purpose of ascertaining that the receiver-general constantly pays into the bank all the money, bills, notes, and drafts, which he ought to do under the provisions of this act; and any default which such comptroller-general or his clerk may discover in that behalf shall be immediately reported by him to the said commissioners of H. M.'s Customs, who shall report the same, unless it shall appear to them to have happened by mistake or inadvertence, to the said commissioners of H. M.'s treasury."

Bank to keep an account, to be returned to the Customs for inspection.

Sect. 22. "The monies placed to the account of the receiver-general as aforesaid in the bank of England shall be paid into the exchequer from time to time as by law is directed, in manner following: (that is to say), the receiver-general, or his clerk duly authorised by him for that purpose, and for whose conduct therein he shall be answerable, shall make an order weekly upon the governor and company of the bank of England, which order shall be countersigned by the comptroller-general or his

Money carried to the exchequer to be written off at the bank.

3. Of the receiver-general.

clerk, to write off from his account the sum specified; and the said governor and company, or some person duly authorised on their behalf, shall thereupon write off such sum, and deliver a note drawn and cancelled in such manner as shall be approved by the said commissioners of H. M.'s treasury, for the amount, to the receiver-general or his clerk, who shall pay the same into the exchequer, and the bank-clerks attending there shall receive it as so much cash; and it shall not be lawful for the governor and company of the bank of England to pay or transfer any part of the money so paid in and placed to the account of such receiver-general, from such account, otherwise than into the exchequer in manner aforesaid, and except in the manner hereinafter directed, or to deliver any note or notes, bill or bills of exchange, save and except to the solicitor of the Customs or his clerk, upon his application for the same, together with the receiver-general or his clerk, and the comptroller-general or his clerk, for the sole purpose of taking out an extent for the security of the money for which such bill of exchange or draft shall have been given, or to the said receiver-general or his clerk, any bills, notes, or drafts which may be protested for non-payment, except as hereinafter is mentioned, in which case the commissioners of H. M.'s Customs shall be immediately acquainted therewith, if sitting, by such solicitor, receiver-general, or comptroller-general, or, if not sitting, at the time of their assembling; and such delivery shall be entered by the bank in the book to be kept as is herein directed."

Receiver-general may draw on the bank to pay drawbacks, &c.

Drafts to be countersigned by comptroller-general.

Officers of the exchequer to be furnished with appropriation paper.

• *Sic.*  
On the death or removal of receiver-general, the balance to vest in his successor.

Receiver-general to keep account.

Sect. 23. "In order that the several payments directed by order of the commissioners of H. M.'s customs in England to be made by the said receiver-general to merchants or any other persons on account of drawbacks or bounties, or on any other account whatever, may be made without delay, and for the payment of which the money then in the hands of the said receiver-general shall be insufficient, it shall be lawful for the said receiver-general, or his clerk deputed and authorised by him for that purpose, and for whose conduct therein he shall be answerable, to draw out of the bank of England, as occasion may require, such sum or sums of money as may be sufficient to answer the purpose aforesaid; and that every draft or order on the bank for money for any of the said purposes shall be countersigned by the comptroller-general or his clerk, to be deputed and authorised by him for that purpose, and for whose conduct therein he shall be answerable; and that the said receiver-general shall from time to time account for the monies so to be drawn by him or his clerk out of the bank."

Sect. 24. In order that separate accounts may be kept at the exchequer of the monies paid in on various branches of the Customs pursuant to law, it is enacted, "that the said receiver-general of the Customs shall, on every Monday morning, furnish the proper officers of the exchequer with an appropriation paper, stating the heads under which the receipts of the preceding week is\* to be applied."

Sect. 25. "Upon the death, resignation, or removal of the present and of every other receiver-general of the Customs hereafter to be appointed, the balance of cash for which he shall at that time have credit on his account as such receiver-general with the governor and company of the bank of England shall, as soon as a successor shall be appointed to the said office, actually vest in such successor, and, until such successor shall be appointed, in such person or persons as shall for the time being be duly authorised to execute the duties of the said office, in trust for the service of the public, and be forthwith transferred, carried over, and placed to the account of such successor, or other person or persons as aforesaid, to be applied to the said service in pursuance of the like drafts and orders as aforesaid."

Sect. 26. "The receiver-general of the Customs for the time being shall keep the account with the bank of all monies issued by and paid to the bank on his account for the service of the public; and the said receiver-

### III. Management of the Customs.

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general, observing the rules and regulations hereby prescribed, shall not be answerable for any money, bills, notes, and drafts, which he shall have so paid or caused to be paid into the bank of England; and the governor and company of the bank of England shall be answerable for all the monies, bills, notes, and drafts which shall be actually received by them from and on account of such receiver-general as aforesaid, except such bills as may have been returned in manner aforesaid."

3. *Of the receiver-general.*

Sect. 27. "If any person or persons shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in forging or counterfeiting, the name or handwriting of any receiver-general of the Customs, or of any comptroller-general of the Customs, or of any person acting for them respectively as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money in the hands or custody of the governor and company of the bank of England on account of the receiver-general of the Customs; or shall forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting any draft, instrument, or writing in form of a draft made by such receiver-general or person as aforesaid; or shall utter or publish any such, knowing the same to be forged or counterfeited, with an intention to defraud any person whomsoever; every such person or persons so offending, being thereof lawfully convicted, shall be and is and are hereby declared and adjudged to be guilty of felony, and shall suffer death as in cases of felony without benefit of clergy."

Punishing forgery.

#### (4.) *Of administering Oaths.*

(4.) *Of administering oaths.*

6 Geo. IV., c. 106, s. 28. "In all cases wherein proof on oath shall be required by any law, or shall be necessary for the satisfaction or consideration of the commissioners of H. M.'s Customs, in any matter relating to any business under their management, the same may be made before the collector or comptroller of the Customs, at the port where such proof shall be required to be made, or before the persons acting for them respectively, and who are hereby authorized and empowered to administer the same."

Collectors, &c. authorized to administer oaths.

#### (5.) *Of bribing Officers.*

(5.) *Of bribing officers.*

6 Geo. IV., c. 106, s. 29. "If any person shall give, or offer, or promise to give any bribe, recompense, or reward to any officer of the Customs, or any person employed by or under the direction of the commissioners of H. M.'s Customs, to induce him in any way to neglect his duty, or to do, conceal, or connive at any act whereby any of the provisions of any act of parliament may be evaded, every such person shall, whether the offer be accepted or not, forfeit the sum of 500*l*."

Offer of bribe to officers. (b)

Penalty, 500*l*.

#### (6.) *Of Seizures.*

(6.) *Of seizures.*

6 Geo. IV., c. 106, s. 30. "All goods, and all ships, vessels, and boats which by any act at any time in force shall be declared to be forfeited, may be seized by any officer of the Customs." (a)

Goods and vessels forfeited to be seized by officers of Customs.

(a) As to form of information of seizure, and proceeding to condemnation, see the *Attorney-general v. Jeffery*, *M'Clel. Rep.* 270; and see further, 6 Geo. IV. c. 107, 108; and *post*, 175, 177. (b) See sect. 9, *ante*, 163, and *post*, 186.



7. *Of surveyors-general.*

Surveyors-general, &c. may examine witnesses on oath.

False oath deemed perjury.

[(7.) *Of Surveyors-General, examining Witnesses, &c.*

6 Geo. IV., c. 106, s. 31. "Upon examinations and inquiries made by any surveyor-general of the Customs, or any inspector-general of the Customs, for ascertaining the truth of facts relative to the Customs, or the conduct of officers or persons employed therein, and upon the like examinations and inquiries made by the collector and comptroller of any outport in the united kingdom, or of any port in the Isle of Man, or made by any person or persons in any of the British possessions abroad, appointed by the commissioners of H. M.'s Customs to make such examinations and inquiries, any person examined before him or them as a witness shall deliver his testimony on oath, to be administered by such of the surveyors-general, or such of the inspectors-general, or such collector and comptroller, or such person or persons as shall examine him, and who are hereby authorised to administer such oath; and if such person shall be convicted of making a false oath touching any of the facts so testified on oath, or of giving false evidence on his examination on oath, before any of the surveyors-general or inspectors-general of the Customs, or such collector and comptroller, or such person or persons, in conformity to the directions of this act, every such person so convicted as aforesaid shall be deemed guilty of perjury, and shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury."

(8.) *Of the Commissioners in Ireland.*

Jurisdiction over offences by board of commissioners of Customs within the district of Dublin.

Board of commissioners of Customs in Ireland may appoint sub-commissioners to try offences out of Dublin district.

(8.) *Of the Commissioners in Ireland.*

By 6 Geo. IV., c. 106, s. 32. "The district comprehending the city, suburbs, and liberties of Dublin, and the port of Dublin, and several creeks and members thereof, and all parishes, parts, and places of the city and county of the city of Dublin and county of Dublin, and all and every the baronies, parts, and places of the same, shall be subject to the rule and government of the commissioners and assistant commissioners of Customs in Ireland in all matters relating to the collecting, managing, and levying all revenues of Customs within the same; and that all complaints and informations for the recovery of any fine, penalty, or forfeiture, for any offence against or any breach of any act or acts in force in Ireland, relating to the revenues, matters, and things under the management of the said commissioners and assistant commissioners in Ireland, which shall be committed within the said district, shall (subject to such appeal as is hereinafter mentioned) be heard and determined by the said commissioners and assistant commissioners, or any two of them, who shall give judgment and award execution accordingly."

Sect. 33. "It shall be lawful for the said commissioners and assistant commissioners in Ireland, or any two or more of them, and they are hereby authorized and empowered, from time to time to appoint so many and such subordinate commissioners or sub-commissioners in and for any and every district in Ireland (except in the district of Dublin) as the said commissioners and assistant commissioners, or any two or more of them, shall from time to time find necessary, to be approved of by the lord-lieutenant or other chief governor or governors of Ireland for the time being, for the purpose of hearing and determining all complaints and informations for the recovery of any fine, penalty, or forfeiture imposed by any act or acts in force in Ireland relating to the revenue of Customs for any offence against or any breach of any such act, and to give judgment and award execution accordingly; and such sub-commissioners shall be removable and shall and may be displaced by the said commissioners and assistant commissioners as they shall think fit, and others placed in their room, with the like approbation of the lord-lieutenant or other chief governor or governors of Ireland; and any three or more of such sub-commissioners in their respective districts shall and lawfully may hear and determine any complaint or information for or relating to any offence

### III. *Management of the Customs.*

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against any such act or acts as aforesaid; and any judgment or execution which shall be given or awarded by the majority of such sub-commissioners sitting on the trial of any such complaint or information shall be valid and effectual to all intents and purposes whatsoever."

Sect. 34. "It shall and may be lawful for any persons, whether informer, claimant, or defendant, who shall think himself or herself aggrieved or injured by, or who shall be dissatisfied with, any judgment or sentence of the said commissioners and assistant commissioners, or any of their sub-commissioners, to make his or her appeal to the lord-lieutenant or other chief governor or governors of Ireland, or to commissioners of appeal to be appointed by such lord-lieutenant or other chief governor or governors, pursuant to an act made in the parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the second, for settling of the excise or new impost upon H. M., his heirs and successors. Provided always that such appeal shall be made within the space of two calendar months next after such judgment or sentence shall be given, and that in default thereof no such appeal shall afterwards be received; and that the party who shall make such appeal shall serve the injunction grounded on such appeal within the space of twenty days next after such appeal shall be lodged, or in default thereof such judgment or sentence so appealed from shall be final and conclusive. And when any such appeal shall be brought before any such commissioners of appeal, the commissioners or sub-commissioners by whom such judgment or sentence shall have been had or given shall, within twenty-one days next after service of the injunction to stop their proceedings, transmit under cover, sealed up and directed to the registrar of the said commissioners of appeals, a true copy, attested by one of such commissioners or sub-commissioners, of all the proceedings and proofs in the cause in which such judgment or sentence was given; and in default thereof, such commissioners or sub-commissioners shall respectively forfeit the sum of 10*l.* each, unless the delay be satisfactorily accounted for by affidavit before the commissioners of appeals; and whenever it shall appear on any such appeal that the matter of any case hath not been tried, it shall be lawful for such commissioners of appeals to remand the proceedings to the commissioners or sub-commissioners by and before whom the judgment or sentence appealed against was given."

By 10 Geo. IV., c. 43, the jurisdiction of the local boards of Customs in Ireland, and of sub-commissioners, is in certain cases repealed; and the penalties for offences against the Customs' laws in Ireland may be recovered in the Exchequer there, or before justices of the peace.

8. *Of commissioners in Ireland.*

Commissioners of appeal and their powers.

Limitation of appeals.

#### (9.) *Of Lands and Buildings for the Customs.*

(9.) *Of lands, &c.*

By 6 Geo. IV. c. 106, s. 43. "In case any such bodies or other persons hereby authorized to contract on behalf of themselves or others as aforesaid, or any other person or persons interested in any such lands so marked out, or in any messuages, tenements, hereditaments, or premises required as aforesaid, shall, for the space of fourteen days next after notice in writing subscribed by such person or persons authorized as aforesaid shall have been given to the principal officer or officers of any such body, or to such other persons hereby authorized to contract on behalf of others, or interested themselves as aforesaid, or left at his, her, or their usual place of abode, refuse or decline to treat or agree, or by reason of absence shall be prevented from treating or agreeing with such person or persons authorized as aforesaid, or shall refuse to accept such annual rent or sum as shall be offered for the hire thereof, either for a time certain, or for such period as the public service may require; and in case also it shall not be practicable to procure, by voluntary bargain or sale, any other land situate as aforesaid, or of \* any messuages, tenements, hereditaments,

Persons refusing to sell or to accept the consideration offered, two justices, &c. may put H. M.'s officers into possession, and a jury shall be summoned, who shall find the compensation to be made.

\* *Sic.*

9. Of lands, &c.

or premises required as aforesaid, and suited to the purpose for which such lands, messuages, tenements, hereditaments, or premises are required; then and in such case it shall be lawful for two or more justices, or three or more deputy lieutenants (*one of whom shall be a justice of the peace*), or two or more deputy governors for the county, riding, stewartry, city, or place wherein such lands, tenements, messuages, hereditaments, or premises shall be, to put his majesty's officers in possession of such lands, messuages, tenements, hereditaments, or premises; and for that purpose to issue a warrant, under their hands and seals, requiring possession to be delivered to such of his majesty's officers as shall be named in the said warrant; and it shall also be lawful for such person or persons so authorized as aforesaid, to require the said justices, deputy lieutenants, or deputy governors of such county, riding, stewartry, city, liberty, or place, to issue their warrant to the sheriff or sheriffs of the county, riding, stewartry, city, or place wherein such lands, messuages, tenements, hereditaments, or premises shall be situate, to summon a jury; and every such sheriff or sheriffs is and are hereby authorized and required to summon and return a jury, properly qualified, of the number of twenty-four, and in the manner required by the laws of England, Ireland, and Scotland, respectively, who shall meet at some convenient time and place to be mentioned in such summons, out of whom a jury of twelve shall be drawn, in such manner as juries for the trial of issues joined in his majesty's Courts at Westminster and Dublin are drawn by law in England, or Ireland, respectively, and in such manner as juries are drawn by law for the trial of offences in Scotland; and in case a sufficient number shall not appear, the sheriff or sheriffs shall choose others, of the by-standers, or that can speedily be procured, being qualified as aforesaid, and the said jurymen may be challenged by the parties on either side, but not the array; and the said justices, deputy lieutenants, or deputy governors respectively, on the application of the said persons so authorized, or of any parties concerned, may and shall summon witnesses and adjourn any such meeting, if jurymen or witnesses do not attend; and the jury, on hearing any witnesses and evidence that may be produced, shall on their oaths (which oaths, as also the oaths of such witnesses, the said justices, deputy lieutenants, or deputy governors respectively, are hereby empowered and required to administer), find the compensation to be paid for the possession or use of such lands, as the case may be."

Lands that are  
suitable may be  
taken in lieu of  
such as have been  
marked out.

Sect. 44. "Provided, that if the owner or owners of any lands, messuages, tenements, hereditaments, or premises so required, or any person or persons interested therein, shall at any time, before the summoning of such jury as aforesaid, give notice in writing of any other lands situate as aforesaid, and of any other messuages, tenements, hereditaments, or premises so required as aforesaid, and suited to the purpose for which such lands are required, and which the owner or owners thereof, or persons interested therein, are willing to treat and agree for, then and in such case the jury so to be summoned shall previously find the facts, whether the lands so indicated in such notice are situate within the distance aforesaid, and are suited to the purpose for which such lands, tenements, messuages, hereditaments, or premises may be required, and whether the owner or owners thereof, or persons interested therein, are willing to treat and agree for the same; and if they shall so find, the owner or owners of or persons interested in the lands so surveyed or marked out as aforesaid, or of the messuages, tenements, hereditaments, or premises so required, shall not be compellable by virtue of this act to sell or dispose of the same. Provided always, that where the owner or owners of or persons interested in any lands, messuages, tenements, hereditaments, or premises required by virtue of this act to be given up for the purposes aforesaid, shall prefer to sell the same outright, and shall be able to make a good title to the fee-simple thereof, it shall be lawful for them to insist on so doing; and in such case the jury so summoned as aforesaid shall find the value of the fee-simple of such lands, tenements, messuages,

hereditaments, or premises, and the same shall be paid to the owner or owners thereof, or persons interested therein, in the manner directed by this act."

9. *Of lands, &c.*

Sect. 45. " Provided, that if the said lord high treasurer, or the said commissioners of H. M.'s treasury, or any person interested therein, shall be dissatisfied with the verdict of any such jury, it shall be lawful for them, or their attorneys in England and Ireland, to apply to the Court of Exchequer at Westminster or Dublin respectively in the next term, and in Scotland to apply within fourteen days after the finding any such verdict to the Court of Session in Scotland in time of session, or lord ordinary on the bills in time of vacation, and to suggest to the said Courts, or lord ordinary respectively, that they have reason to be dissatisfied with such verdict, and forthwith to give notice thereof to the said lord high treasurer or commissioners, or party (as the case may be), and thereupon in England and Ireland the proceedings that shall have been had, and the verdict of such jury, shall be returned into the said Courts of Exchequer respectively; and if it shall appear to the said Courts to be proper, a suggestion shall be entered on such proceedings as aforesaid, and a writ shall thereupon, by rule of such Court, or order of any judge of such Court, be directed to the sheriff of such county where the lands shall lie, or the messuages, tenements, hereditaments, or premises shall be, or, if the same shall lie or be in two counties, to the sheriff of either of such counties, to summon either a common or special jury, according to the application that shall have been made on that behalf, and as the Court or such judge shall allow, and who shall respectively be qualified according to law to appear before the said justice of assize or *nisi prius* of that county at the next assizes or sittings of *nisi prius*, if the same shall not happen sooner than twenty-one days after such suggestion, otherwise at the next succeeding assizes or sittings; and the compensation to be paid for the possession or use of such lands, messuages, tenements, hereditaments, or premises, shall at such assizes or sittings be ascertained by such jury, in like manner as any damages may be inquired of upon any inquisition or inquiry of damages by any jury before any judge of assize or *nisi prius*, and the verdict of such jury shall be returned to the said Courts of Exchequer, and shall be final and conclusive: and in Scotland, if it shall appear proper to the said Court of Session or lord ordinary, upon such application, so to do, the said Court or ordinary shall order and direct the sheriff of the county where such lands, messuages, tenements, hereditaments, or premises shall lie and be, or, if the same shall lie or be in two counties, the sheriff of either of such counties, to summon another jury in the manner in which juries are summoned in Scotland, properly qualified according to law, to appear before the lords or lord of justiciary at the next circuit, if the same shall not happen sooner than twenty-one days after such application, otherwise at the next succeeding circuit; and the compensation as aforesaid for the land, messuages, tenements, hereditaments, and premises shall, at such circuit, be ascertained by a jury drawn from the jury summoned as aforesaid, in such manner as juries are drawn in Scotland, under the direction of the said lords or lord of justiciary as aforesaid; and the verdict of such last-mentioned juries shall be final and conclusive, without being subject to review or challenge of any kind, unless the Court that shall have allowed such inquiry shall think fit, on any application made within four days after the commencement of the succeeding term or session, if in Scotland, to order any new trial in relation thereto."

If any person be dissatisfied with verdict, appeal may be made to the Court of Exchequer in England or Ireland, or to the Court of Session, &c. in Scotland.

Sect. 46. " Provided that it shall be lawful for any jury empannelled before any justice of the peace, magistrate, deputy lieutenant, or deputy governor, or before any judge of assize or *nisi prius*, to ascertain the compensation to be paid for any lands under this act, and they are hereby required to ascertain and settle the proportion to be paid out of such compensation to any person or persons having any interest as lessees or

Jury, in ascertaining compensation for premises, to settle proportion to be paid lessees, &c.

9. Of lands, &c.

tenants at will or otherwise, in any such lands, and the proportion to be paid out of such compensation shall be returned on the verdict. Provided also, that where any such inquiry before any judge of assize or *nisi prius*, or lords or lord of judiciary, shall be had on the application of any such lessee or tenant at will, or other person having any inferior interest in any such lands, messuages, tenements, hereditaments, or premises, who may have been dissatisfied with the proportion of compensation settled by the jury to be paid in respect of such interest, it shall not be lawful for the jury in any such case to alter the amount of the entire compensation awarded by any former verdict to be paid for such lands, messuages, tenements, hereditaments, or premises, but only the proportion thereof to be paid to the person or persons having separate interests therein; and it shall not be lawful for any jury, on any inquiry had before any judge of assize or *nisi prius*, or lords or lord of judiciary, as to any compensation on the application of the said lord high treasurer or commissioners of H. M.'s treasury, in any case in which the whole compensation awarded by the former jury is confirmed by the jury on such inquiry, to alter the proportion that shall have been settled by any such former jury, as to any separate interest in any such lands, tenements, messuages, hereditaments, or premises."

Security to be  
given for costs.

Sect. 47. "Provided that it shall be lawful for the Court or judge, or lord ordinary, making any such rule or order, to require that the party, on whose application the same shall be made, shall give such security as shall to such Court, judge, or lord ordinary seem proper, for payment of costs, under such circumstances as shall be specified in any rule or order made for that purpose."

Upon delivering  
up lands to the  
owners, all  
erections for the  
public service to  
be removed,  
making com-  
pensation to the  
owners.

Sect. 48. "In all cases where any lands shall be taken under the provisions of this act, for any term of years, or for such period only as the public service shall require, it shall be lawful for the lord high treasurer or commissioners of H. M.'s treasury, or any other person or persons so authorised as aforesaid, at any time before the possession of any lands which shall have been taken for the purposes aforesaid shall be delivered up to the owner or owners thereof, or other person or persons acting on his, her, or their behalf, to take down and remove all such buildings or other erections which shall or may have been built or erected thereon for the public service, and to carry away the materials thereof; making such compensation to the owner or owners of such lands, or other person or persons acting on his, her, or their behalf, for the damage or injury which may have been done thereto, or to the soil thereof, by the erection of any such buildings, or removing and carrying away the same, or otherwise, in consequence of the same having been occupied for the public service, as the said lord high treasurer, or the commissioners of H. M.'s treasury, or such other person or persons authorised as aforesaid, shall think reasonable, and as shall be agreed upon in that behalf; and if such owner or owners, or other person or persons acting on his, her, or their behalf, shall not be willing to accept the compensation so offered, it shall be lawful for the said lord high treasurer, or the commissioners of H. M.'s treasury, or other person or persons so authorised as aforesaid, to apply to and require *two justices of the peace of the county*, riding, stewartry, city, or place, to settle and ascertain the compensation which ought to be made for such damage or injury as aforesaid; and *such justice* shall settle and ascertain the same accordingly, and shall grant a certificate thereof; and the amount of such compensation, so settled and ascertained and certified, shall forthwith be paid by warrant of the commissioners of H. M.'s treasury, or any three or more of them, to the person or persons entitled thereto. Provided always, that nothing in this act contained shall extend, or be construed to extend, to alter, prejudice, or affect any agreement which hath been or shall or may be entered into, by any such person or persons authorised as aforesaid, with any owner or owners of any such lands, or other person or persons acting

on his, her, or their behalf, in relation to any such buildings or erections, but every such agreement shall remain valid and effectual in like manner as if this act had not passed."

Sect. 49. "In all cases where any money shall have been or shall be agreed, or shall have been or shall be found by the verdict of any jury, to be paid or given for the use or possession of any lands, messuages, tenements, hereditaments, or premises taken by virtue of this act, belonging to any person or persons under any disability or incapacity, or not having the absolute interest therein, the same shall be paid by warrant of the commissioners of H. M.'s treasury, or any three of them, into the hands of the proper officer of H. M.'s Court of Exchequer at Westminster, Edinburgh, or Dublin, respectively, for the time being, for receiving the moneys belonging to the suitors of the said court respectively, for the use and benefit of such person or persons; and such officer is hereby authorised and required to receive or accept and to give a discharge for such money, and upon the acceptance or receipt thereof to sign a certificate to the barons or judges of the said Courts of Exchequer respectively, under his hand, purporting and signifying that such money or other consideration was received or accepted by and paid to him in pursuance of this act, for the use and benefit of such person or persons who shall be named and described in such certificate, and the said certificate shall be filed or deposited in the said Court of Exchequer at Westminster, Edinburgh, or Dublin respectively; and a true copy thereof, signed by such officer of such Court, shall and may be read and allowed as evidence for the purposes hereinafter mentioned; and such officer of such Court is hereby required, upon receipt of any such sum or sums of money as aforesaid, to pay the same into the bank of England, or bank of Scotland, or royal bank of Scotland, or bank of Ireland, as the case may require; and immediately upon the filing or depositing of such certificate, the said lands, messuages, tenements, hereditaments, or premises, shall be vested in or to the use of his majesty, his heirs and successors."

Sect. 50. "The barons or judges of H. M.'s Court of Exchequer at Westminster, and the barons or judges of H. M.'s Court of Exchequer at Edinburgh or Dublin, of the degree of the coif, for the time being respectively, or any two or more of them, shall be and they are hereby authorised and empowered, in a summary way upon motion or by petition for and on behalf of any person or persons interested in or entitled to the benefit of the money so paid to and received by the proper officer of the said Courts respectively, or the interest or produce thereof, and upon reading the certificate directed to be signed by the said officer concerning the same as aforesaid, and receiving such further satisfaction as they shall think necessary, to make and pronounce such orders and directions for paying the said money, or any part of the same, or for placing out such part thereof as shall be principal in the public funds, or upon government or real securities, and for payment of the dividends or interest thereof, or any part thereof, to the respective persons entitled to receive the same, or for laying out the principal, or any part thereof, in the purchase of other lands to be conveyed and settled to, for, and upon the same uses, trusts, intents, and purposes as the said lands so taken stood settled at the time of the payment of such money as aforesaid, as near as the same can be done, or otherwise concerning the disposing of the said money, or any part thereof, and the interest of the same, or any part thereof, for the benefit of the person or persons respectively, or for appointing any person or persons to be trustee or trustees for all or any of such purposes, as the said Courts respectively shall think just and reasonable."

Sect. 51. "Upon the death, removal, or resignation of any such officer of the said Courts of Exchequer, all stocks and securities vested in him by virtue of this act shall vest in the succeeding officer of the Exchequer, for

#### *9. Of lands, &c.*

Purchase-money belonging to incapacitated persons, &c. to be paid to the proper officer of the Exchequer for their use.

Money to be paid into the bank.

Barons of the Exchequer, &c. on petition of parties interested, to order the application of money.

On the death, removal, or resignation of officer of Exchequer, stocks and securities shall vest in successor.

9. Of lands, &c.

Gardens not to be affected.

the purposes herein beforementioned, without any assignment or transfer; and all moneys paid in the said banks respectively in pursuance of this act, or remaining in the hands of any such officer, at his death, resignation, or removal, and not vested in the funds, or placed out on securities as aforesaid, shall be paid over to the succeeding officer for the like purpose for the time being."

Sect. 52. "Provided that nothing in this act contained shall be construed to extend to any garden or pleasure-ground, or to any land immediately contiguous to and used as the curtilage or homestead of any dwelling-house."

(10.) *Of the signature, &c.*

Documents signed by three commissioners of the treasury to be deemed the act of the whole commissioners.

(10.) *Of the Signature of the Lords of the Treasury.*

By 6 Geo. IV. c. 106, s. 53. "Every order, document, instrument, or writing, relating to the Customs or to the law of navigation, required by any law at any time in force to be under the hands of the commissioners of H. M.'s treasury, being signed by three or more of such commissioners, shall be deemed to be an order, document, instrument, or writing under the hands of the commissioners of H. M.'s treasury accordingly."

## IV. Regulation of Customs.

[6 Geo. IV., c. 107; 7 and 8 Geo. IV., c. 56; 9 Geo. IV., c. 76; 10 Geo. IV., c. 43.]

IV. *Regulations of customs.*

The 6 Geo. IV. cap. 107, intituled, "*An act for the general regulation of the Customs*," after reciting the general repeal of the prior acts by the 6 Geo. IV. c. 105, enacts new general regulations to be in force from the 5th Jan. 1826, in the united kingdom and the Isle of Man. The act contains a succinct and perspicuous series of *regulations* respecting the importation and exportation of goods liable to the Customs' duties, so as to secure the due payment thereof.

Regulations of importations.

Thus with respect to the mode of and conditions of *importation*, enactments are contained (a) relative to the ship's manifest, report, and entry, times and places of landing, bill of entry, declaration of value, bill of sight, bill of store, certificate, master's oath, permit, (b) and the forfeitures and penalties incurred by the violation of the several regulations. Then follow what are termed *inwards prohibitions*, for the due encouragement of trade and manufactures, and for the security of the revenue, viz. *prohibitions or restrictions* on the importation of certain goods, stated in a table or alphabetical list, with the forfeitures for violations of the rules.

Of exportations.

Then with respect to *exportation*, there are several enactments (c) that goods shall not be shipped till the vessel and goods have been entered and cockpit granted, nor till cleared; with full regulations as to the ship's entry, entry of the goods, certificate inwards, clearance, cockpit, debenture of goods, and drawbacks of duties on wine allowed for officers in the navy. Then follow what are termed *outwards prohibitions*, viz. tables of prohibitions and restrictions against exportation of certain goods, with the forfeitures incurred by unlawful or irregular exportations.

Of coasting trade.

As to the *coasting trade*, it is declared (d) what trading by sea from one

(a) See 6 Geo. IV. c. 107, s. 2 to 55; and see 7 Geo. IV. c. 48, s. 9.

(b) As to these several documents, see 1 Chitty's Com. Law, 731, &c.

(c) 6 Geo. IV. c. 107, s. 55 to 99.

(d) 6 Geo. IV. c. 107, s. 100 to 114.

part of the united kingdom to another shall be deemed coastwise, and then authorises the treasury to regulate what shall be deemed trading by sea, and points out the several duties of the master of the vessel, and the forfeitures and penalties incurred by non-observance thereof.

The act then declares how certain terms of enactment shall be construed (a), and directs when and how ship-agents shall be licensed. (b)

Then follow several *general regulations*, viz. that all duties shall be paid, &c. according to imperial weights and measures—that bonds shall be taken by collectors—the mode of ascertaining the strength of foreign spirits (c)—samples to be taken by officers—the time of importation and exportation is defined—as well as that of the arrival and departure of ships—return of duty overpaid. Tonnage and burthen of ships declared, and penalty for falsifying documents.

Then are inserted directions as to seizures being made by any officer of Customs, and as to the restoration of seized goods, ships, vessels, or boats, being in the discretion of the commissioners of Customs, and that forfeitures and penalties may be remitted by the commissioners on proof of innocence of owners and masters, and that no action shall lie for the remitted penalty. These latter provisions are in practice so important, that it is deemed expedient here to insert them.

6 Geo. IV., c. 107, s. 128, enacts, That all goods, and all ships, vessels, and boats, which by this act, or any act at any time in force relating to the Customs, shall be declared to be forfeited, shall and may be seized by any officer of the Customs: and such forfeiture of any ship, vessel, or boat, shall be deemed to include the guns, tackle, apparel, and furniture of the same: and such forfeiture of any goods shall be deemed to include the proper package in which the same are contained. Provided always, that all goods, the importation of which is restricted, either on account of the packages, or the place from whence the same shall be brought, or otherwise, shall be deemed and taken to be prohibited goods: and if any such goods shall be imported into the united kingdom, other than to be legally deposited or warehoused for exportation, the same shall be forfeited.

By sect. 129, it is enacted, That in case any goods, ships, vessels, or boats, shall be seized as forfeited, or detained as undervalued, by virtue of any act of parliament relating to the Customs, it shall be lawful for the commissioners of H. M.'s Customs to order the same to be restored, in such manner and on such terms and conditions as they shall think fit to direct; (d) and if the proprietor of the same shall accept the terms and conditions prescribed by the said commissioners, he shall not have or maintain any action for recompense or damage on account of such seizure or detention, and the person making such seizure shall not proceed in any manner for condemnation.

By sect. 130, That if any ship shall have become liable to forfeiture, on account of any goods laden therein or unladen thereof, or if the master of any ship shall have become liable to any penalty, on account of any goods laden in such ship or unladen therefrom, and such goods shall be small in quantity or of trifling value, and it shall be made appear to the satisfaction of the commissioners of H. M.'s Customs, (e) that such goods had been laden or unladen contrary to the intention of the owners of such ship, or without the privity of the master thereof, as the case may be, it shall be lawful for the said commissioners to remit such forfeiture, and also to remit or mitigate such penalty, as they shall see reason to acquit such master

#### 4. Regulation of Customs.

General regulations, &c.

Seizures, commissioners' power of restoring, and remitting forfeitures and penalties.

(a) 6 Geo. IV. c. 107, s. 115, 116.

(b) 6 Geo. IV. c. 107, s. 139 to 143.

(c) Under the 15 Geo. II. c. 25, it was held, that a custom-house officer has no right to regauge. *Bice v. Denton, Loft*, 204.

(d) It is not necessarily essential that any terms or conditions should be imposed by the order. In the matter of the ship *Maria*, 1 *Price*, 4.

(e) *Id. est*, upon affidavit and petition. See forms, *post*.



4. Regulation of Customs.

of all blame in respect of such offences, or more or less to attribute the commission of such offence to neglect of duty on his part as master of such ship; and every forfeiture and every penalty or part thereof so remitted shall be null and void, and no suit or action shall be brought or maintained by any person whatever on account thereof.

The 7 Geo. IV., c. 48, s. 4 to 11; 7 and 8 Geo. IV., c. 56, s. 2 and 3; and 9 Geo. IV., c. 76, s. 3, 4, 5 and 6; 10 Geo. IV., c. 43, s. 4, contain further regulations.

Justices and peace-officers may, under the direction of the acts for the prevention of smuggling, (6 Geo. IV., c. 108,) be required to enforce the forfeitures and penalties imposed by these acts; but as they are so voluminous, it is thought fit only to give the above analysis of the provisions, referring the reader to the statute itself. (a)

V. Prevention and punishment of smuggling, &c.

V. Prevention and Punishment of Smuggling, and particularly Seizures, Rewards, &c.

[6 Geo. IV., c. 108; 10 Geo. IV., c. 43, s. 10.]

The 6 Geo. IV., c. 108, (b) intituled, "An act for the prevention of smuggling," and several subsequent acts, contain the regulations on vessels and boats, licences thereof, with the forfeitures and penalties on violations of the regulations, and upon importing and exporting prohibited goods, and smuggling generally; on the powers of seizure; felonies connected with smuggling; jurisdiction of Courts, commissioners of Customs, justices of the peace, and others; and the course and forms of proceeding. As most of these provisions are intimately connected with the duties and office of justices of peace and other inferior peace-officers, it is proposed to consider them fully under the following heads:

- (1.) *Regulations as to Vessels and Boats.*
- (2.) *Licences to Vessels.*
- (3.) *Forfeitures, Penalties, and Seizures, and by whom to be made.*
- (4.) *Penalties for Smuggling, &c.*
- (5.) *Of Felonies against these Laws.*
- (6.) *Of the Officers, their Protection and Reward.*

(1.) Regulations as to vessels and boats

(1.) Regulations as to Vessels and Boats.

The 6 Geo. IV., c. 108, s. 1, enacts, That from the 5th Jan. 1826, that act and all the provisions therein contained shall have effect, and continue in full force and operation for the prevention of smuggling, and shall extend to any law in force, or thereafter to be made, relating to the revenue or management of the Customs.

Sect. 2. "That if any vessel or boat belonging in the whole or in part to H. M.'s subjects, or whereof one-half of the persons on board, or discovered to have been on board the said vessel or boat, shall be subjects of H. M., shall be found *within four leagues* (c) of the coast of that part of the united kingdom which is between the North Foreland on the coast of

(a) See 2 Chitty's Col. Stat. tit.

(b) See further, 7 & 8 Geo. IV. chap. 114; 10 Geo. IV. c. 43.

(c) Debel's Case, 4 Bar. & Ald. 243; Nash's Case, 4 Bar. & Ald. 295.

Kent, and Beachy Head on the coast of Sussex, or within eight leagues of the coast of any other part of the said united kingdom, or shall be discovered to have been within the said distances, not proceeding on her voyage, wind and weather permitting, having on board or in any manner attached or affixed thereto, or having had on board, or in any manner attached or affixed thereto, or conveying or having conveyed in any manner, any goods whatsoever liable to forfeiture by this or any other act relating to the revenue of customs upon being imported into the said united kingdom, *then not only all such goods, together with their packages, and all goods contained therein, but also the vessel or boat, together with all her guns, furniture, ammunition, tackle, and apparel, shall be forfeited.* (a) Provided always, that such distance of eight leagues may and shall be measured in any direction between the southward and eastward of Beachy Head; and the provisions of this act shall extend to such distance of eight leagues in every direction from Beachy Head, although any part of such limits may exceed the distance of four leagues from any part of the coast of Great Britain to the eastward of Beachy Head aforesaid."

Sect. 3. "If any vessel or boat, not being square-rigged, belonging in the whole or in part to H. M.'s subjects, or whereof one half of the persons on board or discovered to have been on board the said vessel or boat shall be subjects of H. M., shall be found in any part of the British or Irish channels, (b) or elsewhere on the high seas, within one hundred leagues of any part of the coasts of the united kingdom, or shall be discovered to have been within the said limits or distances, having on board or in any manner attached or affixed thereto, or having had on board or in any manner attached or affixed thereto, or conveying or having conveyed in any manner, any brandy or other spirits in any cask or package of less size or content than forty gallons (excepting only for the use of the seamen then belonging to and on board such vessel or boat, not exceeding two gallons for each seaman), or any tea exceeding six pounds' weight in the whole, or any tobacco or snuff in any cask or package whatever, containing less than four hundred and fifty pounds' weight, or packed separately in any manner within any such cask or package (except loose tobacco for the use of the seamen, not exceeding five pounds' weight for each seaman), or any cordage or other article adapted and prepared for slinging small casks, or any casks or other vessels whatsoever capable of containing liquids, of less size or content than forty gallons, of the sort or description used or intended to be used or fit or adapted for the smuggling of spirits, or any materials for the forming, making, or constructing such casks or vessels, or any syphon, tube, hose, or implements whatsoever, for the broaching or drawing any fluid, or any articles or implements or materials adapted for the repacking tobacco or snuff (unless the said cordage or other articles as aforesaid are really necessary for the use of the said vessel or boat, or are a part of the cargo of the said vessel or boat, and included in the regular official documents of the said vessel or boat), then and in such case the said spirits, tea, tobacco, or snuff, together with the casks or packages containing the same, and the cordage or other articles, and also the vessel or boat, with all her guns, furniture, ammunition, tackle, and apparel therein, shall be forfeited."

Sect. 4. "If any foreign vessel or boat (not being square-rigged), in which there shall be one or more subjects of H. M., shall be found within four leagues of that part of the united kingdom which is between the North Foreland on the coast of Kent, and Beachy Head on the coast of Sussex, or within eight leagues of any other part of the coast of the

1. *Regulations as to vessels, and forfeitures thereof.*

Any vessel or boat (not square-rigged) belonging even in part to H. M.'s subjects, and found within 100 leagues of the coast, with spirits or tobacco, or certain other goods on board, forfeited. (b)

Any foreign vessel (not square-rigged) in which even one subject of H. M. found, or having been within certain distances of the coast, having on board spirits, tea, or tobacco, forfeited.

(a) A vessel is forfeited from the time of an act of smuggling, so as to avoid any alienations after that time, though before the condemnation. *Lockyer v. Offey*, 1 T. R. 200.

(b) See construction of this section, *ex parte Pain*, 5 Bur. & Crcs. 251; and *In re Nunn*, 8 Bar. & Crcs. 644; 3 M. & Ry. 75.

**1. Regulations as to vessels, and forfeitures thereof.**

A ny foreign vessel found at anchor or hovering within one league of the coast, having on board forfeitable goods, forfeited.

Vessels throwing overboard goods during chase forfeited.

Vessels (not square-rigged) coming from Brest, &c. having on board for the use of the seamen spirits, &c. exceeding a certain quantity, forfeited.

united kingdom, to be measured as aforesaid, or shall be discovered to have been within the said distances, not proceeding on her voyage, wind and weather permitting, having on board or in any manner attached or affixed thereto, or having had on board or in any manner attached or affixed thereto, or conveying or having conveyed in any manner, any brandy or other spirits, in any cask or package of less size or content than forty gallons (except only for the use of the seamen belonging to and on board such vessel, not exceeding two gallons for each seaman), or any tea exceeding six pounds' weight in the whole, or any tobacco or snuff in any cask or package whatsoever, containing less than four hundred and fifty pounds' weight, or packed separately in any manner within such cask or package (except loose tobacco for the use of the seamen, not exceeding five pounds' weight for each seaman on board such vessel), that then such vessel or boat, with all her guns, furniture, ammunition, tackle, and apparel, shall be forfeited."

Sect. 5. "If any foreign vessel (a) whatsoever shall be found within one league of the coast of the united kingdom, not proceeding on her voyage, wind and weather permitting, having on board or in any manner attached or affixed thereto, or having had on board or in any manner attached or affixed thereto, or conveying or having conveyed in any manner, within such distance, any goods whatsoever liable to forfeiture by this or any other act relating to the revenue of Customs upon being imported into the united kingdom, that then and in such case the said vessel, (a) together with her guns, furniture, ammunition, tackle, and apparel, and all such goods laden therein, shall be forfeited."

Sect. 6. "When any vessel or boat, belonging in the whole or in part to H. M.'s subjects, or whereof one half of the persons on board are subjects of H. M., shall be found within four or eight leagues of the coast of the united kingdom as aforesaid, or shall be found as aforesaid in the British or Irish channels, or elsewhere within one hundred leagues of the coast of this kingdom, and chase shall be given or signal made by any vessel in H. M.'s service, or in the service of the revenue, hoisting the proper pendant and ensign as hereinafter mentioned, in order to bring such vessel or boat to, if any person or persons on board such vessel or boat shall, during the chase, or before such vessel or boat shall bring to, throw overboard the cargo or any part of the same (unless through unavoidable necessity, or for the preservation of such vessel or boat, the said vessel or boat having a legal cargo on board), or shall stave or destroy any part of the cargo to prevent seizure thereof, that then and in such case the said vessel or boat, with all her guns, furniture, ammunition, tackle, and apparel, shall be forfeited."

Sect. 7. "If any vessel (not being square-rigged, nor a galiot of not less than fifty tons burthen), or any boat coming from Brest on the coast of France, or from any place between Brest on the coast of France and Cape Finisterre on the coast of Spain, including all islands on the coast of France and Spain between those places, or coming from any place between the Helder Point on the coast of Holland and North Bergen on the coast of Norway, or from any place as far up the Cattagat as Gottenburgh, including all the islands on the coasts between those places, shall arrive in any of the ports of the united kingdom, or shall be found at anchor or hovering within the limits (b) of any of the ports thereof, and not proceeding on her voyage, wind and weather permitting, having on board, for the use of the seamen then belonging to and on board such vessel or boat, any spirits exceeding one half gallon for each seaman, or having on board any tea, exceeding four pounds' weight in the whole, or having on board any tobacco (excepting loose tobacco, not exceeding two pounds'

(a) "Or foreign boat." See 7 Geo. IV., c. 48, s. 15.

(b) See *Souden's case*, 4 B. & A. 294.

weight for each seaman), then not only all such goods, but also the vessel or boat, with all her materials, shall be forfeited."

SECT. 8. "If any vessel (not being square-rigged, nor a galiot of not less than fifty tons burthen), or any boat coming from any place between Brest on the coast of France and the Helder Point on the coast of Holland, including the Texel Isle, and all places on the Zuyder-Zee, and all islands on the coasts of France, the Netherlands, and Holland, between Brest and the Texel, shall arrive in any of the ports of the U. K., or shall be found at anchor or hovering within the limits of any of the ports thereof, and not proceeding on her voyage, wind and weather permitting, having on board, for the use of the seamen then belonging to and on board such vessel or boat, any spirits exceeding one half gallon for each seaman, or having on board any tea exceeding two pounds' weight in the whole, or having on board any tobacco, except loose tobacco, not exceeding one pound weight for each seaman, then not only all such goods, but also the vessel or boat, with all her materials, shall be forfeited."

SECT. 9. "If any vessel or boat, whether British or foreign, shall be found or discovered to have been within one league of the islands of Guernsey, Jersey, Alderney, Sark, or Man respectively, not proceeding on her voyage, wind and weather permitting, or within any bay, harbour, river, or creek of or belonging to any one of the said islands, having on board or in any manner attached or affixed thereto, or having had on board or in any manner attached or affixed thereto, or conveying or having conveyed in any manner within the said last-mentioned distances or places, any goods which, by this or any other act relating to the revenue of Customs, are liable to forfeiture upon being imported into, exported from, or carried coastwise into the said islands respectively, then and in such case the said vessel or boat, with all her guns, furniture, ammunition, tackle, and apparel, and all such goods as aforesaid with their packages, and any other goods which may be contained therein, shall be forfeited."

SECT. 10. "If any vessel or boat belonging wholly or in part to H. M.'s subjects, or whereof half the persons on board are subjects of H. M., shall sail from Guernsey, Jersey, Alderney, Sark, or Man, navigated by a greater number of persons than is allowed by this act (as herein-after mentioned) in a vessel or boat of like size and description; or if any vessel or boat shall sail from any of the said islands, having on board, or which shall take or have taken on board during the voyage, any small cordage adapted for slinging small casks, or any more anchors, half anchors, or other small casks, or any tin or other cases, or bladders of less content than forty gallons, and capable of containing fluids, of the sort used for smuggling spirits, than shall be necessary for the use of such vessel, or any materials for making any such small casks, cases, boxes, or bladders, or any syphon, tube, hose, or implements for broaching or drawing off any fluid, more than is usual and necessary for the fair and ordinary purposes of the voyage, or any articles, implements, or materials adapted for re-packing tobacco or snuff on board, during the voyage; such ship, vessel, or boat, with her guns, furniture, ammunition, tackle, and apparel, shall be forfeited, together with all such articles as aforesaid."

SECT. 11. "No vessel or boat, belonging wholly or in part to H. M.'s subjects, shall sail from Guernsey, Jersey, Alderney, Sark, or Man, without a clearance, whether in ballast or having a cargo; and if with a cargo the master shall give bond to H. M., in double the value of the vessel or boat and of the cargo, for duly landing the same at the port for which the vessel clears; and every such vessel or boat not having such clearance, or which having a clearance for a cargo shall be found light, or with any part of the cargo discharged before delivery thereof at the port specified in the clearance (unless through necessity or for preservation of the vessel or boat, to be proved to the satisfaction of the commissioners of H. M.'s Customs), shall be forfeited."

1. *Regulations as to vessels, and forfeitures thereof.*

Vessels (not square-rigged) coming from places between Brest and the Helder, having on board for the use of the seamen spirits, &c. exceeding a certain quantity, forfeited.

Vessels within certain distances of Guernsey, &c. having on board goods liable to forfeiture upon being imported, &c. forfeited with such goods and packages.

Vessels sailing from Guernsey, Jersey, Alderney, Sark, or Man, with a greater number of men than allowed, or taking on board small cordage or other articles, forfeited.

Vessels sailing from Guernsey, &c. without a clearance, forfeited.

1. *Regulations as to vessels.*

Vessels departing from Guernsey, &c. having on board spirits, wine, &c. breaking bulk or unloading cargo, &c., forfeited.

Vessels found within the limits of a port with a cargo, and afterwards found light and unaccounted for, to be forfeited.

Vessels liable to seizure not bringing to during chase may be fired at.

Persons not to hoist flags in imitation of those used in H. M.'s navy.

Sect. 12. "If after the departure from Guernsey, Jersey, Alderney, or Sark respectively, of any vessel or boat belonging wholly or in part to H. M.'s subjects, or whereof half the persons on board are H. M.'s subjects, having on board any spirits, tobacco, snuff, tea, or wine, bulk be broken, or any of the cargo unladen or unshipped, or any alteration be made in the form, size, description, or number of the packages shipped, or in the quantity, quality, or mode of package of the goods therein, at any time in the prosecution of the voyage towards the U. K. or any other place for which the vessel or boat shall have cleared out, such vessel or boat, with her tackle and furniture, shall be forfeited; but no forfeiture shall be incurred for breaking bulk or unloading the cargo, or any part of it, through unavoidable necessity and distress, nor for any alteration in the cargo, if occasioned by necessity or accident, or made for the preservation and safety of the vessel or boat, such necessity or accident to be proved to the satisfaction of the commissioners of H. M.'s Customs."

Sect. 13. "If any vessel or boat whatever shall be found within the limits of any port of the U. K. with a cargo on board, and such vessel shall afterwards be found light or in ballast, and the master is unable to give a due account of the port or place within the U. K. where such vessel shall have legally discharged her cargo, such vessel or boat, with her guns, furniture, ammunition, tackle, and apparel, shall be forfeited."

Sect. 14. "In case any vessel or boat, liable to seizure or examination under any act or law for the prevention of smuggling, shall not bring to on being required so to do, on being chased by any vessel in H. M.'s navy, having the proper pendent ensign of H. M.'s ships hoisted, or by any vessel employed for the prevention of smuggling under the authority of the lords commissioners of the admiralty or the commissioners of H. M.'s Customs, *having a pendant and ensign hoisted*, of such description as H. M. by any order in council, or by his royal proclamation under the great seal of the U. K., shall have ordered and directed, or shall from time to time in that behalf order and direct, (a) it shall be lawful for the captain, master, or other person having the charge or command of such vessel in H. M.'s navy, or employed as aforesaid (first causing a gun to be fired as a signal), to fire at or into such vessel or boat; and such captain, master, or other person acting in his aid or assistance, or by his direction, shall be and he is hereby indemnified and discharged from any indictment, penalty, or action for damages for so doing; and in case any person or persons shall be wounded, maimed, or killed by any such firing, and the said captain, master, or other person, and any person acting in his or their aid or assistance, or by his or their direction, shall be sued, molested, or prosecuted, or shall be brought before any of H. M.'s justices of the peace or other justices, or persons having competent authority, for or on account of such firing, wounding, maiming, or killing as aforesaid, all and every such justice or justices, person or persons, is and are hereby authorised and empowered, enjoined and required, to admit every such captain, master, or other person or persons so brought before him or them as aforesaid to bail; any law, usage, or custom to the contrary notwithstanding."

Sect. 15. "If any person or persons shall, from and after the passing of this act, wear, carry, or hoist in or on board any ship, vessel, or boat whatever belonging to any of H. M.'s subjects, whether the same be merchant or otherwise, without particular warrant for so doing from H. M. or his high admiral of Great Britain, or the commissioners for executing the office of high admiral of Great Britain, H. M.'s jack, commonly called the union jack, or any pendent, ensign, or colours usually worn by H. M.'s ships, or any flag, jack, pendant, ensign, or colours resembling those of H. M., or those used on board H. M.'s ships, or any other ensign or colours than the ensign or colours by any proclamation of H. M. now

in force or hereafter to be issued prescribed to be worn, then and in every such case the master or other person having the charge or command thereof, or the owner or owners being on board the same, and every other person so offending, shall forfeit and pay the sum of 50*l.*, which shall and may be recovered with costs of suit either in the High Court of Admiralty of England, or in any of H. M.'s Courts of King's Bench or Exchequer at Westminster or Dublin, or in the Courts of Session or Exchequer in Scotland respectively, or before any two or more justices of the peace; and that it shall be lawful for any officer of H. M.'s navy, Customs, or Excise, to enter on board any such ship, vessel, or boat, and to seize and take away any such prohibited flag, jack, pendant, ensign, or colours, and the same shall thereupon become forfeited to H. M.'s use."

Sect. 16. "All vessels and boats made use of in the removal, carriage, or conveyance of any goods liable to forfeiture under this or any other act relating to the revenue of Customs, shall be forfeited."

Sect. 17. "The owner of every vessel belonging in the whole or in part to any of H. M.'s subjects shall paint or cause to be painted upon the outside of the stern of every boat belonging to such vessel the name of such vessel, and the port or place to which she belongs, and the master's name withinside the transum in white or yellow Roman letters, not less than two inches in length, on a black ground, on pain of the forfeiture of such boat not so marked, wherever the same shall be found."

Sect. 18. "The owner of every boat, not belonging to any vessel, shall paint or cause to be painted upon the stern of such boat in white or yellow Roman letters, of two inches in length, on a black ground, the name of the owner or owners of the boat, and the port or place to which she belongs, on pain of the forfeiture of such boat not so marked, wherever the same shall be found."

Sect. 19. "All vessels and boats belonging in the whole or in part to H. M.'s subjects, having false bulkheads, false bows, double sides or bottoms, or any secret or disguised place whatsoever in the construction of the said vessel or boat, for the purpose of concealing goods, or having any hole, pipe, or other device in or about the vessel or boat adapted for the purpose of running goods, shall be forfeited, with all the guns, furniture, ammunition, tackle, and apparel belonging to such vessel or boat; and all goods liable to the payment of duties, or prohibited to be imported into the U. K., found concealed on board any vessel or boat, or in any of the packages of goods on board, or in or underneath the ballast, or in any other place on board such vessel or boat, shall be forfeited."

By 7 Geo. IV., c. 48, s. 14, "In case any vessel shall, on account of any goods, become liable to forfeiture under the said act for the prevention of smuggling, the goods creating such forfeiture shall also be forfeited."

Sect. 15. Rectifying that by the said act for the prevention of smuggling, "if any foreign vessel shall, in certain cases therein described, be found within one league of the coast of the U. K., such vessel shall be forfeited;" it is enacted, "that the like forfeiture shall, in similar cases, attach equally to any foreign boat, as fully and effectually as if in the said act such forfeiture had been made to attach to any foreign vessel or boat."

Sect. 16. "If any vessel or boat whatever shall arrive or shall be found or discovered to have been within any port, harbour, river, or creek of the U. K., not being driven therein by stress of weather or other unavoidable accident, having on board, or in any manner attached or affixed thereto, or having had on board, or in any manner attached or affixed thereto, or conveying or having conveyed in any manner, within any such port, harbour, river, or creek, any brandy or other spirits, except rum, in any cask or package of less size or content than forty gallons, except only for the use of the seamen then belonging to and on board such vessel or boat, not exceeding two gallons for each seaman, or any tobacco or snuff in any cask or package in which such tobacco or snuff could not be legally imported into the U. K. in such vessel (except loose tobacco for the use of

1. *Regulations as to vessels.*

Penalty, 50*l.*

Vessels used in removal of goods liable to forfeiture to be forfeited.

Boats belonging to vessels to have name of vessel painted upon the outside of stern, and master's name within the transum.

Boats not belonging to vessels to have name of owners painted upon the stern.

Boats having double sides or bottoms, or secret places for concealing goods, to be forfeited.

Goods found concealed on board forfeited.

7 Geo. 4, c. 48.

Foreign boat within one league forfeited as foreign vessel would be.

Vessels arriving with spirits or tobacco in small packages forfeited, and persons on board, knowing thereof, to forfeit 100*l.*

1. *Regulations  
as to vessels.*

Persons escaping  
from foreign ves-  
sels in chase, to  
be deemed British  
subjects.

the seamen, not exceeding five pounds' weight for each seaman), every such vessel or boat, together with such spirits or tobacco, shall be forfeited; and every person found or discovered to have been on board such vessel or boat, at the time of her becoming so liable to forfeiture, and knowing such spirits or tobacco to be or to have been on board or attached to such vessel or boat, shall forfeit the sum of 100*l.*, and shall be liable to detention and prosecution, and to be dealt with in the manner directed by the said act for the prevention of smuggling in cases of persons found or discovered to have been on board vessels liable to forfeiture under that act. Provided always, that if it shall be made appear by proof on oath, to the satisfaction of the commissioners of H. M.'s Customs, that the said spirits or tobacco were on board without the knowledge or privity of the owner or master of such vessel or boat, and without any wilful neglect or want of reasonable care on their or either of their behalfs, that then and in such case the vessel or boat shall not be liable to forfeiture, although the persons concerned in placing the said spirits or tobacco on board, or knowing thereof, shall be liable to detention and prosecution as aforesaid."

By 7 & 8 Geo. IV. c. 56, s. 9. Reciting that "by the act for the prevention of smuggling, foreign vessels laden with spirits in casks of less content than forty gallons, or with certain other goods, in which there shall be a certain proportion of British subjects, are liable to seizure if found within certain distances of the coast; and that it frequently happens that, during chase, and previously to such vessels being taken possession of, certain persons, who are believed to be British subjects, but of which there is no legal proof, quit such vessels, leaving only foreigners on board, by which the law is evaded, and the vessels and cargoes escape confiscation, although the cargoes may be evidently intended to be smuggled into the U. K.;" it is enacted, "that in all such cases where any person shall escape from any such vessel or boat before possession is taken of it, every such person so escaping shall be deemed to be a subject of H. M., within the meaning of the said last-mentioned act, unless it shall be proved to the contrary."

(3.) *Licences.*

Vessels not square-  
rigged forfeited,  
unless licensed. (b)

Vessels to be na-  
vigated with a  
certain number  
of men, and if  
more, forfeited,  
unless licensed.

(2.) *Of Licences. (a)*

By 6 Geo. IV., c. 108, s. 20, "All vessels belonging in the whole or in part to H. M.'s subjects (unless square-rigged), and all vessels whatsoever belonging as aforesaid, the length of which shall be greater than in the proportion of three feet to one foot in breadth, and all vessels belonging as aforesaid armed for resistance (otherwise than is hereinafter provided), and all boats whatsoever belonging as aforesaid, which shall be found within any of the limits or distances as aforesaid, shall be forfeited, unless the owners thereof shall have obtained a licence for navigating the same from the commissioners of His Majesty's Customs, as is hereinafter directed."

Sect. 21. "No vessel or boat belonging in the whole or in part to His Majesty's subjects, or whereof one half of the persons on board shall be subjects of His Majesty (not being a lugger, and at the time fitted and rigged as such), shall be navigated by a greater number of men (officers and boys included) than in the following proportions; that is to say, if of thirty tons or under, and above five tons, four men; if of sixty tons or under, and above thirty tons, five men; if of eighty tons or under, and above sixty tons, six men; if of one hundred tons or under, and above eighty tons, seven men; and above that tonnage, one man for every fifteen tons of such additional tonnage: or if a lugger, in the following proportions; that is to say, if of thirty tons or under, eight men; if of fifty tons or

(a) See further, 10 Geo. IV., c. 43, s. 10.

(b) But see 7 Geo. IV., c. 48, s. 12, *post*, 185.

under, and above thirty tons, nine men; if of sixty tons or under, and above fifty tons, ten men; if of eighty tons or under, and above sixty tons, eleven men; if of one hundred tons or under, and above eighty tons, twelve men; and if above one hundred tons, one man for every ten tons of such additional tonnage: and if any vessel, boat, or lugger, belonging as aforesaid, and navigated with a greater number of men than in the proportions before mentioned, shall be found within any of the distances or places aforesaid, the same shall be forfeited, unless such vessel, boat, or lugger shall be especially licensed for that purpose by the commissioners of His Majesty's Customs."

Sect. 22. "Provided always, and be it further enacted, that nothing in this act shall extend, or be construed to extend, to forfeit any square-rigged vessel of the burthen of two hundred tons or upwards by admeasurement, for being armed for resistance, having on board two carriage-guns of the calibre not exceeding four pounds, and small arms not exceeding two muskets for every ten men, or any vessel, boat, or lugger, belonging to the royal family, or being in the service of the navy, victualling, ordnance, Customs, Excise, or post-office, nor any whale-boat or boat solely employed in the fisheries, or any boat belonging to any square-rigged vessel in the merchant service, nor any life-boat or tow-boat used in towing vessels belonging to licensed pilots, nor to any boat used solely in rivers or inland navigation, on account of such ship, vessel, boat, or lugger, not being licensed as aforesaid."

Sect. 23. "Every licence granted by the commissioners of His Majesty's Customs, for any vessel requiring licence under this act, shall contain the proper description of such vessel, the name or names of the owner or owners, with his or their place or places of abode, and the manner and the limits in which the same is to be employed, and, if armed, the numbers and description of arms, and the quantity of ammunition, together with any other particulars which the said commissioners may require and direct."

Sect. 24. "Before such licence shall be issued or delivered, or shall have effect for the use of any vessel, the owner or owners thereof shall give or cause to be given security by bond of two or more sufficient persons (being housekeepers), in treble the value of such vessel (not exceeding in any case the sum of 3000*l.* for a square-rigged vessel), with condition as follows; that is to say, that the vessel shall not be employed in the importation, landing, or removing of any prohibited or uncustomable goods, contrary to the true intent and meaning of this act, or any other act relating to the revenues of Customs or Excise, nor in the exportation of any goods which are or may be prohibited to be exported, nor in the re-landing of any goods contrary to law, nor shall receive or take on board or be found at sea or in port with any goods subject to forfeiture, nor shall do any act contrary to this act, or any act hereafter to be made relating to the revenues of Customs or Excise, or for the protection of the trade and commerce of the united kingdom, nor shall be employed otherwise than mentioned in the licence, and within the limits therein mentioned; and in case of loss, breaking-up, or disposal of the vessel, that the licence shall be delivered within six months from the date of such loss, breaking-up, or disposal of such vessel, to the collector or principal officer at the port to which such vessel shall belong."

Sect. 25. "Such bond shall be given at the port to which such vessel shall belong, and at no other without the consent of the commissioners of His Majesty's Customs first obtained; and the persons who are to become such security shall be persons, whether owners or not, approved by the collector and comptroller of the port where such bond is given, and residing at or near such port; and the collector and comptroller shall

2. *Of Licences.*

Licence not required for certain vessels.

Contents of licence.

Before licence granted to a ship, owners to give bond. (a)

Licence bond to be given at the port to which the vessel belongs.

(a) But see 7 Geo. IV., c. 48, s. 12, *post*, 185.



**2. Of Licences.**

Licence for boat to contain certain particulars.

Commissioners may restrict licences and require fresh security.

Revoked licence to be delivered up, on penalty of 100*l*.

Forfeiture of vessel without licence.

Licences to be taken to collector at port from which about to sail, to be registered, and to be produced to officers, who may board vessel.

Vessels in course of voyage in order to obtain certificate not to be forfeited.

certify upon such licence before they issue the same, that the security required by law has been given in respect of such licence."

Sect. 26. "Every licence granted by the commissioners of His Majesty's Customs, for any boat requiring licence under this act, shall contain the description of the boat, with the name or names of the owner or owners thereof, and his or their place or places of abode, and the manner and limits in which such boat is to be used, together with any other particulars which the said commissioners may require and direct; and that the owner or owners of the said boat shall give his or their own security by bond, in treble the value thereof, with the like condition as is herein-before required on licences being granted for vessels under this act; and that such bond shall not be liable to any stamp duty."

Sect. 27. "It shall be lawful for the said commissioners of His Majesty's Customs to restrict the granting of a licence for any vessel or boat, in any way that they may deem expedient for the security of the revenue; and in case the said commissioners shall have granted a licence for any vessel, and shall deem it necessary to require fresh security for any vessel which may have been licensed as aforesaid, they are hereby empowered so to do, by an order in writing to that effect under their hands; and a copy of such order shall be left either with the owner or owners of such vessel, or with the person in whose custody the same shall then be; and from and after the delivery of such order as aforesaid, the licence granted for such vessel shall be deemed to be null and void, and the owner or owners is and are required to deliver up the said licence to the collector of the Customs at the port to which such vessel or boat shall belong within three months from the day when such order shall be delivered as aforesaid; and in default of such delivery, the owner or owners shall forfeit the sum of 100*l*.; and if any vessel or boat requiring such licence as aforesaid shall be found without such licence, or shall be found or discovered to have been used or employed in any trade or in any limits other than such as shall be specified in such licence, that then and in such case the said vessel or boat, with all her guns, furniture, ammunition, tackle, and apparel, and all the goods laden on board, shall be forfeited."

Sect. 28. "The owner of every vessel or boat which shall be licensed as aforesaid shall, before such vessel or boat, after obtaining such licence, first proceeds to sea, or departs out of any port of the united kingdom or Isle of Man, bring or cause to be brought such licence to the collector or other proper officer at the port from whence such vessel or boat is about to depart, and the said collector or other proper officer is hereby required duly to register the same; and in default of the owner bringing the same, or causing the same to be brought as aforesaid, the said licence shall be null and void; and the master, commander, or other person having or taking the charge or command of any licensed vessel or boat, is hereby required to produce such licence to any officer of the army, navy, or marines, duly authorised and on full pay, or officer of Customs or Excise, who shall board such vessel or boat within any of the limits or distances aforesaid, and shall demand a sight of the same; and in case of refusal to produce the same, or the same shall not be on board, or if the licence produced for any vessel shall be without an indorsement thereon that the proper security hath been given, that then and in such case the vessel or boat shall be forfeited, with her guns, furniture, ammunition, tackle, and apparel."

Sect. 29. "It shall and may be lawful for the commissioners of His Majesty's Customs, on proof to their satisfaction that the master or owner of any vessel or boat is desirous of removing such vessel or boat to the port to which she belongs, for the purpose of obtaining a licence and giving the necessary security for the same, to grant a certificate to such master or owner of such proof having been made; and in such case, so long as such vessel or boat shall be in due course of her voyage, wind and weather permitting, to the port to which the vessel or boat belongs or is

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intended to belong, such vessel or boat shall not be liable to forfeiture on account of not being licensed."

Sect. 30. "If any person or persons shall counterfeit, erase, alter, or falsify, or cause to be counterfeited, erased, altered, or falsified, any licence so to be granted as aforesaid, or shall knowingly or wilfully make use of any licence so counterfeited, erased, altered, or falsified, such person or persons shall, for every such offence, forfeit the sum of 500*l*."

Sect. 31. "Whenever any licensed vessel or boat shall be lost, broken up, captured, burnt, seized, and condemned, sold, or otherwise disposed of, the licence shall be delivered up to the collector or other proper officer of the Customs at the port to which such vessel or boat belongs within six calendar months from the time thereof; or in case of the licence being lost or taken by the enemy, satisfactory proof thereof, on oath, shall be made within the same period, before the collector or other chief officer of such port; and in default thereof, the owner or owners and the master of such vessel or boat shall forfeit the sum of 100*l*."

By 7 Geo. IV., c. 48, s. 12. "No licence (except a licence for arming) shall be required for any ship or vessel which is of the burthen of two hundred tons or upwards, nor for any square-rigged ship or vessel, or any ship, vessel, or boat propelled by steam, which is not of greater length than in the proportion of three feet six inches to one foot of breadth; and that no greater or other security shall be required on account of any licence to be issued under the said act, than in the sum of 1000*l*., or in the single value of the vessel or boat for which such licence is to be issued, if such value be less than 1000*l*., and by the sole bond of such owner or owners of such vessel or boat. Provided always, that if any such bond shall be taken of the owner of any boat who shall not have attained the age of twenty-one years, such bond shall nevertheless be valid and effectual to all intents and purposes; any thing in any act, or in any law, custom, or usage to the contrary notwithstanding."

Sect. 13. "No bond given on account of the licence of any vessel or boat, under the said act for the prevention of smuggling, shall be cancelled until the space of twelve months after the licence for which such bond had been entered into shall have been delivered up to the proper officer of the Customs; and such bond shall remain in full force and effect for the time of twelve months after the delivering of the licence as aforesaid, unless fresh security shall be given for such vessel or boat."

By 10 Geo. IV., c. 43, s. 10. "Boats used in fishing, in the North and West Highlands of Scotland, need not have licences; and foreign vessels, with false bulkhead, for the purpose of smuggling, are to be forfeited."

## 2. Of Licences.

Persons counterfeiting licences to forfeit 500*l*.

Upon licensed vessel being lost or broken up, &c. licence to be delivered up, or if licence lost, proof to be made within six months, under penalty of 100*l*.

7 Geo. 4, c. 48. Licences, for what vessels required.

Licence bond.

Minors being owners of boats.

Licence bond not to be cancelled for 12 months.

## (3.) Forfeitures, Penalties, and Seizures, and by whom made.

By 6 Geo. IV., c. 108, s. 32. "If any goods liable to the payment of duties shall be unshipped from any vessel or boat (Customs and other duties not being first paid or secured), or if any prohibited goods whatsoever shall be imported into any part of the united kingdom; or if any goods whatsoever, which shall have been imported, warehoused, or otherwise secured in the united kingdom, either for home consumption or exportation, shall be clandestinely or illegally removed from or out of any warehouse or place of security; that then and in such case all such goods as aforesaid shall be *forfeited*, together with all horses and other animals, and all carriages and other things made use of in the removal of such goods."

(3) Forfeitures, penalties, &c.

Prohibited goods, or goods not having paid duty, unshipped or removed illegally, &c. forfeited. (a)

(a) But see 7 & 8 Geo. IV., c. 56, s. 5. 12. & 13, *post*, 189.

3. Forfeitures,  
&c.

Goods prohibited to be exported shipped or brought to the quay forfeited, with goods packed therewith.

Vessels and goods liable to forfeiture may be seized by officers of army, &c. (b)

Officers making collusive seizures, or taking bribes, and persons offering same, to forfeit 500*l*.

Officers may search for prohibited goods; and may search the person upon good reason.

Sect. 33. "If any goods *which are or may be prohibited* (a) to be exported shall be put on board any vessel or boat with intent to be laden or shipped for exportation, or shall be brought to any quay, wharf, or other place in the united kingdom, in order to be put on board any vessel or boat, for the purpose of being exported, or if any goods which are prohibited to be exported shall be found in any package produced to the officers of the Customs as containing goods not so prohibited, that then and in such case not only all such prohibited goods, but also all other goods packed therewith, shall be forfeited."

Sect. 34. "All vessels and boats, and all goods whatsoever liable to forfeiture under this or any other act relating to the revenue of Customs shall and may be seized in any place either upon land or water by any officer or officers of His Majesty's army (b), navy, or marines, *duly authorized and on full pay*, or officers of Customs or Excise, or any person having authority to seize from the commissioners of His Majesty's Customs or Excise; and all vessels, boats, and goods so seized shall, as soon as conveniently may be, be delivered into the care of the proper officer appointed to receive the same." (c)

Sect. 35. "If any officer of the Customs, or any officer of the army, navy, or marines, duly authorised and on full pay, and any other person or persons whatsoever, employed by or under the direction of the commissioners of the Customs, shall make any collusive seizure, or deliver up, or make any agreement to deliver up, or not to seize any vessel or boat or any goods liable to forfeiture, or shall take any bribe, gratuity, recompense, or reward for the neglect or non-performance of his duty, every such officer or other person shall forfeit for every such offence the sum of 500*l*., and be rendered incapable of serving His Majesty in any office whatever, either civil or military; and every person who shall give, or offer, or promise to give any bribe, recompense, or reward, or make any collusive agreement with *any such officer as aforesaid*, (d) to induce him in any way to neglect his duty, or to do, conceal, or connive at any act whereby any of the provisions of any act of parliament may be evaded—every such person shall, whether the offer be accepted or performed or not, forfeit the sum of 500*l*."

Sect. 36. "It shall and may be lawful to and for any officer or officers of the army, navy, or marines, duly authorised *and on full pay*, or for any

(a) It was held that the 8th Anne was prospective, *Attorney-Gen. v. Saggors*, 1 Price Rep. 182.

(b) See s. 106, *post*, 188.

(c) A judicial sale of a vessel found at sea and brought into port as derelict, under an order of the Instance Court of the Admiralty, on the part of the salvors and claimant (without fraud), is available against the crown's right of seizure for a previous forfeiture, incurred by the ship having been guilty of a forfeitable offence against the revenue laws, although the crown was not a party to the proceeding in the Admiralty Court, other than by the King's procurator-general claiming the vessel as an *Admiralty droit*; and although no decision of *droit* or no *droit* was awarded, and the sale took place *pendente lite* under an interlocutory order.

The crown should have claimed before the Court, either as against the

ship in the first instance, or subsequently against the proceeds of the sale, which were paid into the registry to answer claims under the order of sale, or have moved a prohibition.

The warrant for arresting a ship by the Admiralty, and the process of citation, is notice to all the world of the subsequent proceedings.

In pleading such sale in defence to an information, the facts should be put specially on the record, so that the attorney-general might demur to or traverse them. *Attorney-general v. Norstedt* (claiming the ship Triton), 3 Price, 97.

(d) The information for offering a bribe must show that the officer came within the description referred to, and whose duty it was to seize. *The King v. Everett*, 8 Bar. & Cres. 114; 1 M. & R. 623.

officer of Customs, (a) producing his or their warrant or deputation (if required) to go on board any vessel which shall be within the limits of any of the ports of this kingdom, and to rummage and to search the cabin and all other parts of such vessel for prohibited and uncustomed goods, and to remain on board such vessel during the whole time that the same shall continue within the limits of such port; and also to search any person or persons either on board, or who shall have landed from any vessel, provided such officer or officers shall have good reason to suppose that such person or persons hath any uncustomed or prohibited goods secreted about his person; and if any person shall obstruct, oppose, or molest any such officer or officers in going or remaining on board, or in entering or searching such vessel or person, every such person shall forfeit and lose the sum of 100*l.*"

Sect. 37. "Before any person shall be searched by any such officer as aforesaid, it shall be lawful for such person to require such officer to take him or her *before any justice of the peace*, or before the collector, comptroller, or other superior officer of Customs, who shall determine whether there is reasonable grounds to suppose that such person has any uncustomed or prohibited goods about his or her person; and if it shall appear to *such justice*, collector, comptroller, or other superior officer of Customs, that there is reasonable ground to suppose that such person has any uncustomed or prohibited goods about his or her person, that then *such justice*, collector, comptroller, or other superior officer of Customs shall direct such person to be searched in such manner as he shall think fit; but if it shall appear to *such justice*, collector, comptroller, or other superior officer of Customs, that there is not reasonable ground to suppose that such person has any uncustomed or prohibited goods about his or her person, that then *such justice*, collector, comptroller, or other superior officer of Customs, shall forthwith discharge such person, who shall not in such case be liable to be searched; and every such officer as aforesaid is hereby authorised and required to take such person, upon demand, before *any such justice*, collector, comptroller, or other superior officer of Customs, detaining him or her in the meantime. Provided always that no person, being a female, so directed to be searched, shall be searched by any other person than a female, duly authorised for that purpose by the commissioners of His Majesty's Customs."

Sect. 38. "If any such officer shall not take such person with reasonable despatch *before such justice*, collector, comptroller, or other superior officer of Customs, when so required, or shall require any person to be searched by him, not having reasonable ground to suppose that such person has any uncustomed or prohibited goods about his or her person, that such officer shall forfeit and pay the sum of 10*l.*"

Sect. 39. "If any passenger or other person on board any vessel or boat shall, upon being questioned by any officer of His Majesty's Customs, whether he has any foreign goods upon his person, or in his possession, deny the same, and any such goods shall, after such denial, be discovered upon his person, or in his possession, such goods shall be forfeited, and such person shall forfeit treble the value of such goods."

Sect. 40. "It shall and may be lawful for any officer of Customs, or person acting under the direction of the commissioners of His Majesty's Customs, authorised by writ of assistance under the seal of His Majesty's Court of Exchequer, to take a constable, headborough, or other public officer inhabiting near the place, and in the daytime, to enter into any house, shop, cellar, warehouse room, or other place, and in case of resistance to break open doors, chests, trunks, and other packages, there to

3. *Forfeitures, &c.*

Penalty on obstruction, 100*l.*

Officers, before searching persons, to take them before a justice, collector, or comptroller of Customs, if required, who may direct the search, or discharge such persons.

Penalty on officer not taking persons before magistrate in reasonable time, or requiring search without reasonable ground.

Passengers having goods in possession, and denying it, to forfeit treble the value thereof.

Officers, with writs of assistance, may enter houses to search for uncustomed or prohibited goods.

(a) This act seems to extend to all officers of Customs, though they be not within their own limits, which removes the question, in *The Attorney-general v. Jefferys*, *M'Clel. Rep.* 270, *post*.

3. *Forfeitures, &c.*

Writs of assistance to be in force during king's reign, and for six months afterwards.

Police-officers seizing goods to carry them to the custom-house warehouse.

Goods stopped by police-officers may be retained until trial of persons charged with stealing them.

Commissioners of treasury or commissioners of Customs may restore seizures. (a)

Power of act not to extend to officers of army, navy, or marines, unless on full pay, and duly employed for prevention of smuggling.

seize and from thence to bring any uncustomed or prohibited goods, and to put and secure the same in the custom-house warehouse in the port next to the place from whence such goods shall be so taken as aforesaid. Provided always, that for the purposes of this act, any such *constable, headborough, or other public officer* duly sworn as such, may act as well without the limits of any parish, ville, or other place for which he shall be so sworn, as within such limits."

Sect. 41. "All writs of assistance so issued from the Court of Exchequer as aforesaid shall continue and be in force during the whole of the reign in which such writs shall have been granted, and for six months from the conclusion of such reign."

Sect. 42. "If any goods subject or liable to forfeiture under this or any other act relating to the revenue of Customs shall be stopped or taken by any *police-officer*, or other person acting by virtue of any act of parliament, or otherwise duly authorised, such goods shall be carried to the custom-house warehouse next to the place where the goods were stopped or taken, and there delivered to the proper officer appointed to receive the same, within forty-eight hours after the said goods were stopped and taken."

Sect. 43. "If any such goods shall be stopped or taken by such *police-officer* on suspicion that the same have been feloniously stolen, it shall be lawful for the said officer to carry the same to the police-office to which the offender is taken, there to remain until and in order to be produced at the trial of the said offender; and in such case the officer is required to give notice in writing to the commissioners of His Majesty's Customs of his having so detained the said goods, with the particulars of the same, and immediately after the trial all such goods are to be conveyed and deposited in the custom-house warehouse as aforesaid, to be proceeded against according to law; and in case any police-officer making detention of any such goods shall neglect to convey the same to such warehouse, or to give the notice of having stopped the same as before described, such officer shall forfeit the sum of 20*l*."

Sect. 44. "It shall and may be lawful for the commissioners of His Majesty's treasury of the united kingdom of Great Britain and Ireland, or any three or more of them for the time being, or the commissioners of His Majesty's Customs, by any order made for that purpose under their hands, to direct any vessel, boat, goods, or commodities whatever, seized as aforesaid under this or any act relating to the revenue of Customs, to be delivered to the proprietor or proprietors, whether condemnation shall have taken place or not, upon such terms and conditions as they may deem expedient, and which shall be mentioned in the said order; (a) and it shall be also lawful for the said commissioners of His Majesty's treasury, and the said commissioners of His Majesty's Customs, to mitigate or remit any penalty or fine which shall have been incurred, or any part of such penalty or fine incurred under any law or laws relating to His Majesty's Customs, or to the trade and navigation of this kingdom. Provided always, that no person shall be entitled to the benefit of any order for delivery or mitigation, unless the terms and conditions expressed in the said order are fully and effectually complied with."

Sect. 106. "In all cases where any power, authority, or protection is given or granted by this act to any officer or officers of the navy, army, or marines, the same shall not extend or be construed to extend to any such officer or officers, unless such officer or officers shall be on full pay, and employed for the prevention of smuggling under the proper authority to which such officer or officers is or are subjected, or under the authority of the commissioners of the Customs or Excise, and such officer or officers

(a) But see 7 & 8 Geo. IV. c. 56, s. 13, or conditions should be mentioned in the post, 189. See 1 *Price*, 4, by which it order.  
appears not to be essential that any terms

shall be deemed to be duly authorised for the purposes of this act or any other act relating to the revenue of Customs, any thing in this or any other act to the contrary notwithstanding."

By 7 and 8 Geo. IV. c. 56, s. 5. "All spirits or tobacco which shall be found being removed or carried without a legal permit for the same shall be deemed to be spirits or tobacco respectively unshipped without payment of duty, unless the party in whose possession the same shall be found or seized shall prove to the contrary."

Sec. 12. "If any goods which are subject to any duty or restriction in respect of importation shall be found on examination of any package to be concealed in double sides or false bottoms, or in any other secret or disguised place in such package, or among any other things in such package, that then and in such case not only all such goods, but also all other goods found in the said package, shall be forfeited."

Sec. 13. "It shall and may be lawful for the commissioners of H. M.'s treasury, or any three or more of them, by an order made for that purpose under their hands, to direct any vessel, boat, or goods, seized under any act made for the prevention of smuggling, or relating to the revenue of Customs or Excise, or to the trade or navigation of the united kingdom, or of any of H. M.'s possessions abroad, to be delivered to the owner or owners, whether the same shall have been seized in the united kingdom or abroad, and whether condemnation has taken place or not, upon such conditions as they may deem expedient, and which shall be mentioned in the said order, (a) any thing in any law to the contrary notwithstanding."

Sec. 15. "And for the purpose of enabling the mayor and commonalty and citizens of the city of London, and their successors, to ascertain and collect the amount of the dues payable to them upon the several articles hereinafter mentioned, imported coastwise into the port of London; be it enacted, that if all or any of the goods of the description hereinafter mentioned, (that is to say) firkins of butter, tons of cheese, fish, eggs, salt, fruit, roots eatable, and onions, brought coastwise into the port of the said city, and which are liable to the said dues, shall be landed or unshipped at or in the said port before a proper certificate of the payment of the said dues shall have been obtained, such goods shall be forfeited, and may be seized by any officer of H. M.'s Customs empowered to seize any goods landed without due entry thereof; and such forfeiture may be sued for, prosecuted, and recovered by action of debt, bill, plaint, or information, in any of H. M.'s Courts of Record at Westminster, in the name of the chamberlain of the said city, on behalf of the said mayor and commonalty and citizens."

3. *Forfeitures, &c.*

7 & 8 Geo. 4. c. 56. Spirits or tobacco, removing without a permit, to be deemed unshipped without payment of duties. Goods found concealed in double sides or false bottoms.

Treasury may restore seizures.

For obtaining dues payable on certain goods brought coastwise.

(4) *Of Penalties for Smuggling, &c. (b)*

By 6 Geo. IV. c. 108, s. 45. "Every person not arrested and detained as hereinafter mentioned, who shall, either in the united kingdom or the Isle of Man, assist or be otherwise concerned in the unshipping of any goods which are prohibited, or the duties for which have not been paid or secured, or who shall knowingly harbour, keep, or conceal, or shall knowingly permit or suffer to be harboured, kept, or concealed, (c) any goods

(4.) *Penalties for smuggling.*

Penalty on persons unshipping, harbouring, or having custody of any prohibited or uncustomed goods.

(a) See the decision in case of *Maria*, 1 *Price Rep.* 4.

(b) The 9 Geo. IV., c. 44, s. 2, enacts that all penalties, forfeitures, &c. relating to the Excise and Customs, shall be recovered, &c. according to the provisions of 7 & 8 Geo. IV., c. 53. See that act, *post*, *Excise*. Besides the penalties against smuggling contained in this and other acts, the parties guilty

thereof are in general deprived of any right of action relating to the smuggled goods; and see other consequences, 1 *Chitty's Commercial Law*, 784, 3 id. 80, 242, 451, 497, 523—4; and see cases, *Harrison's Digest*, tit. *Smuggling*.

(c) See construction of 11 Geo. I., c. 30, s. 16, in *ex parte Ransley*, 3 *Dowl. & R.* 572.

#### 4. Penalties for smuggling.

Penalty on persons unshipping, having possession, or harbouring drawback or bounty goods.

Persons insuring the delivery of prohibited or uncustomed goods to forfeit 500*l*.

Penalty on persons offering goods for sale under pretence of being run or prohibited.

Persons found or discovered to have been on board vessels liable to forfeiture, for being found within certain limits of the coast, subject to the penalty of 100*l*., and may be detained. (b)

which have been illegally unshipped without payment of duties, or which have been illegally removed without payment of the same, from any warehouse or place of security in which they may have been originally deposited, or shall knowingly harbour, keep, or conceal, or permit or suffer to be harboured, kept, or concealed, any goods prohibited to be imported or to be used or consumed in the united kingdom or in the Isle of Man; and every person, either in the united kingdom or the Isle of Man, to whose hands and possession any such uncustomed or prohibited goods shall knowingly come, shall forfeit either the *treble value* (a) thereof, or the penalty of 100*l*., at the election of the commissioners of H. M.'s Customs."

Sect. 46. "If any goods upon which there is a drawback or bounty shall be shipped to be exported into parts beyond the seas, and shall afterwards be unshipped with intention to be relanded in the united kingdom (unless, in case of distress, to save the goods from perishing), that then and in such case the said goods shall be forfeited, and the master of the vessel from which they shall be unshipped, and every person concerned in the unshipping, and the person or persons to whose hands the same shall knowingly come, or who shall knowingly harbour, keep, or conceal, or suffer to be harboured, kept, or concealed such goods, shall for every such offence forfeit the treble value of the goods, or the penalty of 100*l*., at the election of the commissioners of H. M.'s Customs."

Sect. 47. "Every person who, by way of insurance or otherwise, shall undertake or agree to deliver any goods to be imported from beyond the seas at any port or place in the united kingdom without paying the duties due on such importation, or any prohibited goods, or in pursuance of such insurance, or otherwise, shall deliver or cause to be delivered any uncustomed or prohibited goods, every such person, and every aider or abettor thereof, shall for such offence forfeit the sum of 500*l*. over and above any other penalty to which by law he may be liable; and every person who shall agree to pay any money for the insurance or conveyance of such goods, or shall receive or take such goods into his custody or possession, or suffer the same to be so received or taken, shall also forfeit 500*l*. over and above any penalty to which by law he may be liable on account of such goods."

Sect. 48. "If any person or persons shall offer for sale any goods, under pretence that the same are prohibited, or have been unshipped and run on shore without payment of duties, that then and in such case all such goods (although not liable to any duties or prohibited) shall be forfeited, and the person or persons, and every of them, offering the same for sale, shall forfeit the treble value of such goods, or the penalty of 100*l*., at the election of the commissioners of H. M.'s Customs."

Sect. 49. "Every person being a subject of H. M. who shall be found (c) or discovered to have been on board any vessel or boat liable to forfeiture under this or any other act relating to the revenue of Customs, for being found within four or eight leagues of the coast of the united kingdom as aforesaid, or for being found or discovered to have been within any of the distances or places in this act mentioned, from or in the united kingdom, or from or in the Isle of Man, having on board or in any manner attached or affixed thereto, or having had on board or in any manner attached or affixed thereto, or conveying or having conveyed in any manner such goods or other things as subject such vessel or boat to forfeiture, or who shall be found or discovered to have been on board any vessel or boat from which any part of the cargo shall have been thrown overboard during

(a) See 7 & 8 Geo. IV., c. 56, s. 6, *post*, 192.

(b) See construction of this section, *ex parte Paine*, 5 Bar. & Cres. 251. The authority of the justices to detain must appear on face of the commitment, *Kite and Lane's case*, 1 B. & C. 101; *ex*

*parte Kite and another*, 2 Dowl. & R. 212; a decision on the repealed act, 57 Geo. III., c. 87, s. 5; and see farther *In re Nunn*, 8 Bar. & Cres. 644; 3 M. & Ryl. 75.

(c) Meaning of the word "found," *Att'y.-Gen. v. Delano*, 6 Price, 383.

chase, or staved or destroyed, shall forfeit the sum of 100*l.*; and that every person, not being a subject of H. M., who shall be found or discovered to have been on board any vessel or boat, liable to forfeiture for any of the causes aforesaid, within one league of the coast of the united kingdom or of the Isle of Man, or within any bay, harbour, river, or creek, of the said island, shall forfeit for such offence the sum of 100*l.*; and it shall be lawful for any officer or officers of the army, navy, or marines, being duly authorized, and on full pay, or any officer of Customs or Excise, or other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, and he and they is and are hereby authorized, empowered, and required, to stop, arrest, and detain every such person, and to carry and convey such person *before two or more justices of the peace* in the united kingdom, (a) or a governor, deputy governor, or deemster in the Isle of Man, to be dealt with as hereinafter directed. Provided always, that any such person proving, to the satisfaction of such justices, governor, deputy governor, or deemster, that he was only a passenger in such vessel or boat, and had no interest whatever either in the vessel or boat, or in the cargo on board the same, shall be forthwith discharged by such justices."

Sect. 50. "Every person whatsoever, who shall unship, or be aiding, assisting, or concerned in the unshipping of any spirits or tobacco liable to forfeiture under this or any other act relating to the revenue of Customs or Excise, either in the united kingdom or the Isle of Man, or who shall carry, convey, or conceal, or be aiding, assisting, or concerned in the carrying, conveying, or concealing of any such spirits or tobacco, shall forfeit for such offence the sum of 100*l.* and every such person may be detained by any officer or officers of H. M.'s army, navy or marines, being duly authorized and on full pay, or any officer of Customs or Excise, or other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, and taken *before two justices of the peace* in the united kingdom, or a governor, deputy governor, or deemster, in the Isle of Man, to be dealt with as hereinafter directed."

Sect. 51. "If any person or persons liable to be arrested and detained under the provisions of this or any other act relating to the revenue of Customs shall not be detained at the time of so committing the offence for which he or they is or are so liable, or after detention shall make his or their escape, it shall and may be lawful for any officer of the army, navy, or marines, being duly authorized and on full pay, or any officer of Customs or Excise, or any other person acting in his or their aid or assistance, or duly employed under such officer, to stop, arrest, and detain such person so liable to detention as aforesaid at any time afterwards, and to carry him *before two justices of the peace*, to be dealt with as if detained at the time of committing the said offence."

Sect. 52. "No person shall, after sunset and before sunrise, between the twenty-first day of September and the first day of April, or after the hour of eight in the evening and before the hour of six in the morning at other time in the year, make, aid, or assist in making, or be present for the purpose of aiding or assisting in the making of any light, fire, flash, or blaze, or any signal by smoke, or by any rocket, fireworks, flags, firing of any gun or other fire-arms, or any other contrivance or device, or any other signal in or on board or from any vessel or boat, or on or from any part of the coast or shore of the united kingdom, or within six miles of any part of such coasts or shores, for the purpose of making or giving any signal to any person on board any smuggling vessel or boat, whether any person so on board of such vessel or boat be or be not within distance to see or hear any such light, fire, flash, blaze, or signal; and if any person,

4. Penalties for smuggling.

Persons unshipping or concerned in the carrying away or concealing spirits or tobacco to forfeit 100*l.* and may be detained. (a)

Persons liable to be arrested, and making escape, may afterwards be detained by any officer of the Customs, &c.

Penalty on persons making signals to smuggling vessels at sea. (b)

(a) See 7 & 8 Geo. IV., c. 56, s. 5, *post*, 192.  
(b) See 7 Geo. IV., c. 48, s. 19, *post*, 192.



#### 4. Penalties for smuggling.

contrary to the true intent and meaning of this act, make or cause to be made, or aid or assist in making any such light, fire, flash, blaze, or signal, such person so offending shall be guilty of a misdemeanor; and it shall be lawful for any person to stop, arrest, and detain the person or persons who shall so make, or aid or assist in the making, or who shall be present for the purpose of aiding or assisting in making any such light, fire, flash, blaze, or signal, and to carry and convey such person or persons so offending before any two or more of H. M.'s justices of the peace residing near the place where such offence shall be committed, who, if they see cause, shall commit the offender to the next county gaol, there to remain until the next Court of oyer or terminer, great session or gaol delivery, or until such person or persons shall be delivered by due course of law; and it shall not be necessary to prove, on any indictment or information, that any vessel or boat was actually on the coast; and the offender or offenders being duly convicted thereof, shall, by order of the Court before whom such offender or offenders shall be convicted, either forfeit and pay the penalty or forfeiture of 100*l.*, or, at the discretion of such Court, be sentenced or committed to the common gaol or house of correction, there to be kept to hard labour for any term not exceeding one year."

Proof of a signal not being intended to lie on the defendant.

Sect. 53. "Provided always, that in case any person be charged with or indicted for having made or caused to be made, or been aiding or assisting in making, or being present for the purpose of making or aiding or assisting in making any such fire, light, flash, blaze, or other signal as aforesaid, the burthen of proof that such fire, light, flash, blaze, noise, or other thing, so charged as having been made with intent and for the purpose of giving such signal as aforesaid, was not made with such intent and for such purpose, shall be upon the defendant against whom such charge is made, or such indictment is found."

Any person may put out and extinguish and prevent signals.

Sect. 54. "It shall be lawful for any person whatsoever to put out and extinguish or prevent any such light, fire, flash, or blaze, or any smoke, signal, rocket, firework, noise, or other device or contrivance so made or being made as aforesaid, and to enter and go into and upon any lands for that purpose, without being liable or subject to any indictment, suit, or action for the same."

Persons resisting officers, or rescuing or destroying goods to prevent seizure, to forfeit 200*l.* (a)

Sect. 55. "If any person whatsoever shall hinder, oppose, molest, or obstruct any officer of the army, navy, or marines, being duly authorized and on full pay, or any officer of Customs or Excise, in the execution of his duty, or in the due seizing of any goods liable to forfeiture by this or any other act relating to the revenue of Customs, or any person acting in his aid or assistance, or duly employed for the prevention of smuggling, or shall rescue or cause to be rescued any goods which have been seized, or shall attempt or endeavour to do so, or shall before or at or after any seizure, stave, break, or otherwise destroy any goods, to prevent the seizure thereof, or the securing the same, then and in such case the parties offending shall forfeit for every such offence the sum of 200*l.*"

7 Geo. 4, c. 48. Signals to smuggling-vessels.

By 7 Geo. IV. c. 48, s. 19. "Every intimation to any smuggling vessel or boat, in whatever manner given, shall be deemed to be a signal within the meaning of the said act for the prevention of smuggling, and shall subject the person giving such intimation to be detained and proceeded against as directed by the said act."

7 & 8 Geo. 4, c. 56. Spirits or tobacco, removing without a permit, to be deemed unshipped without payment of duties.

By 7 and 8 Geo. IV. c. 56, s. 5. "All spirits or tobacco which shall be found being removed or carried without a legal permit for the same shall be deemed to be spirits or tobacco respectively unshipped without payment of duty, unless the party in whose possession the same shall be found or seized shall prove to the contrary."

How value of goods for penalties is to be ascertained.

Sect. 6. "In all cases where any penalty, the amount of which is at

(a) Held, that where several were included in one information, each was liable to the penalty imposed by 18 Geo. I., c. 26, *R. v. Clarke, Comp.* 610.

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any time to be determined by the value of any goods, is directed to be sued for under any law now in force or hereafter to be made for the prevention of smuggling, or relating to the revenue of Customs or Excise, such value shall be deemed and taken to be according to the rate and price which goods of the like sort or denomination, and of the best quality, bear at such time in London, and upon which the duties due upon importation have been paid."

Sect. 11. "All penalties and forfeitures which may be recovered before any justices of the peace under any act for the prevention of smuggling, or relating to the revenue of Customs or Excise, on any prosecution by order of the commissioners of Customs, shall be paid to the commissioners of H. M.'s Customs, and on any prosecution by order of the commissioners of Excise shall be paid to the commissioners of H. M.'s Excise, or to the person appointed by them respectively to receive the same; and such penalties and forfeitures shall be applied by the said commissioners respectively in such manner as the law directs."

### 4. Penalties for smuggling.

Penalties recovered before justices, to be paid to commissioners of the Customs or Excise. (a)

### (5.) Of Felonies by Offenders in Smuggling.

By 6 Geo. IV., c. 108, s. 56. "If any persons to the number of three or more, armed with fire-arms or other offensive weapons, shall within the united kingdom, or within the limits of any port, harbour, or creek thereof, be assembled in order to be aiding and assisting in the illegal exportation of any goods prohibited to be exported, or in the carrying of such goods in order to such exportation, or in the illegal landing, running, or carrying away of prohibited or uncustomed goods, or goods liable to pay any duties which have not been paid or secured, or in the illegal carrying of any goods from any warehouse or other place, as shall have been deposited therein, for the security of the home consumption duties thereon, or for preventing the use or consumption thereof in the united kingdom, or in the illegal relanding of any goods which shall have been exported upon debenture or certificate, or in rescuing or taking away any such goods as aforesaid, after seizure, from the officer of the Customs or other officer authorised to seize the same, or any person or persons employed by them or assisting them, or from the place where the same shall have been lodged by them, or in rescuing any person who shall have been apprehended for any of the offences made felony by this or any act relating to the revenue of Customs, or in the preventing the apprehension of any person who shall have been guilty of such offence; or in case any persons to the number of three or more, so armed as aforesaid, shall, within this kingdom, or within the limits of any port, harbour, or creek thereof, be so aiding or assisting; every person so offending, and every person aiding, abetting, or assisting therein, shall, being thereof convicted, be adjudged guilty of felony, and suffer death as a felon without benefit of clergy."

Sect. 57. "If any person shall maliciously shoot at or upon any vessel or boat belonging to His Majesty's navy, or in the service of the revenue in any part of the British or Irish channels, or elsewhere on the high seas, within one hundred leagues of any part of the coast of the united kingdom, or shall maliciously shoot at, maim, or dangerously wound any officer of the army, navy, or marines, being duly authorised and on full pay, or any officer of Customs or Excise, or any person acting in his aid or assistance, or duly employed for the prevention of smuggling, in the due execution of his office or duty, every person so offending, and every person aiding,

(5.) Of felonies by offenders in smuggling.

Three or more persons armed with fire-arms assembled to assist in the illegal exportation or landing of prohibited or uncustomed goods, or in the relanding goods shipped for exportation, or in the rescuing any such goods, to be deemed guilty of felony.

Persons shooting at any boat belonging to navy or in the service of the revenue, or shooting at or wounding officers of the army, navy, or marines, deemed guilty of felony.

(a) See 9 Geo. IV., c. 44, s. 2, and 7 & 8 Geo. IV., c. 53, *post*.

## 5. Of Felonies, &amp;c.

Any person in company with four others, found with goods liable to forfeiture, or in company with one other person carrying arms or disguised, to be deemed guilty of felony.

abetting, or assisting therein, shall, being lawfully convicted, be adjudged guilty of felony, and suffer death as a felon, without benefit of clergy." (a)

Sect. 58. "If any person, being in company with more than four other persons, be found with any goods liable to forfeiture under this or any other act relating to the revenue of Customs or Excise, or in company with one other person within five miles of any navigable river, carrying offensive arms or weapons, or disguised in any way, every such person shall be adjudged guilty of felony, and shall on conviction of such offence be transported as a felon for the space of seven years; and if such offender shall return into the united kingdom before the expiration of the said seven years, he shall suffer as a felon, and have execution awarded against him as a person attainted of felony, without benefit of clergy."

(a.) Of officers, their protection and reward.

Persons assaulting officer by force or violence may be transported, &c.

## (6.) Of Officers, their Protection and Reward. (b)

By 6 Geo. IV., c. 108, s. 59. "If any person shall by force or violence assault, resist, oppose, molest, hinder, or obstruct any officer of the army, navy, or marines, being duly authorised and on full pay, or any officer of Customs or Excise, or other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, in the due execution of his or their office or duty, such person being thereof convicted shall be adjudged a felon, and shall be transported for seven years, or sentenced to be imprisoned in any house of correction or common gaol, and kept to hard labour for any term not exceeding three years, at the discretion of the Court before whom the offender shall be tried and convicted as aforesaid."

Commanding officers of vessels in the service may haul their vessels on shore, without being liable to any action for so doing.

Sect. 60. "It shall and may be lawful to and for the commanding officer for the time being of any vessel or boat employed for the prevention of smuggling to haul any such vessel or boat upon any part of the coasts of the united kingdom, or the shores, banks, or beaches of any river, creek, or inlet of the same (not being a garden or pleasure-ground, or place ordinarily used for any bathing-machine or bathing-machines), which shall be deemed most convenient for that purpose, and to moor any such vessel or boat on such part of the aforesaid coasts, shores, banks, and beaches below high-water mark, and over which the tide flows on ordinary occasions, and to continue such vessel or boat so moored as aforesaid, for such time as the said commanding officer shall deem necessary and proper; and such commanding officer, or person or persons acting under his direction, shall not be liable to any indictment, action, or suit for so doing; any law, statute, custom, or usage to the contrary notwithstanding."

Officer, if wounded in the service of the Customs, to be provided for, &c.

Sect. 61. "In all cases where any officer or seaman employed in the service of the Customs or Excise shall be killed, maimed, wounded, or in any way injured in the due execution of his office, or if any person acting in his aid shall be so killed, maimed, wounded, or in any way injured while so aiding such officer or seaman, it shall and may be lawful for the commissioners of His Majesty's Customs and Excise respectively to make such provision for the officer or person so maimed, wounded, or injured as

(a) In *R. v. Reynolds, cor. Holroyd, J., at Newcastle Sum. Ass. 1821, and before the judges M. T. following. Russell & Ryan, Crown Cases, 465*; An indictment on 52 Geo. III., c. 143 (now repealed, but which contained a similar clause to the above), for shooting at a vessel of the Customs, and also at an officer of the same, on the

high seas: Held, that to constitute the offence under this statute, the shooting must be malicious; and that if a custom-house vessel chase a smuggler and fire into her without hoisting such a pendant and ensign as the 56 Geo. III., st. 2. c. 103, s. 8, required, the returning the fire will not be malicious.

(b) See other provisions, *post*, 202, 203.

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aforesaid, or for the widows and families of such as shall be killed, as they shall be authorised and empowered to do by warrant from the lord high treasurer or commissioners of His Majesty's treasury for the time being."

Sect. 62. "All vessels and boats, and all goods whatsoever, which shall have been seized and condemned for breach of any law relating to the revenue of Customs, shall be disposed of as soon as conveniently may be after the condemnation thereof, in the following manner; (that is to say,) all goods of a description admissible to duty shall be sold by public auction to the best bidder, at a price not less than the duty upon the importation of the like sort of goods: and in case such goods will not fetch the duty, shall be put up to sale for exportation; and in case they do not sell for exportation, then the said goods shall be destroyed: and all prohibited goods shall be put up for sale for exportation to the best bidder; and in case they do not sell, then shall be destroyed: all vessels or boats calculated for the fair and mercantile trade of this kingdom shall be put up for sale to the best bidder; and all vessels or boats calculated for smuggling shall be broken up and destroyed, and the materials shall be put up to sale to the best bidder. Provided always, that if the commissioners of His Majesty's Customs shall deem any of the vessels or boats necessary or required for the public service, it shall be lawful for them to cause the same to be used for the said purpose."

Sect. 63. "It shall and may be lawful for the commissioners of His Majesty's Customs, and they are hereby authorised and empowered to award to any officer or other person detaining any person liable to detention under this or any other act relating to the revenue of Customs, to be paid upon the conviction of such person, any reward they may think fit to direct, not exceeding the sum of 20*l.* for each person."

Sect. 64. "It shall and may be lawful for the commissioners of His Majesty's Customs, and they are hereby authorised and empowered to pay the following reward to any officer or officers, or persons as aforesaid, by whose means any pecuniary penalty or composition is recovered; (that is to say,) one-third of the penalty or sum recovered."

Sect. 65. "There shall be paid and allowed for and in respect of any seizure made by any officer or officers of the army, navy, or marines, duly authorised and on full pay, or any officer or officers of the Customs or Excise, or other person or persons deputed or employed by the commissioners of His Majesty's Customs or Excise, under this or any other act relating to the revenue of Customs, the following rewards; (that is to say,)

In the case of Seizures of Spirits and Tobacco:

If all the parties are detained and carried *before two justices of the peace*, the whole:

If two or more, not being the whole, are detained and convicted, seven-eighths:

If one, being a seafaring man, and convicted, three-fourths:

If one is detained with the vessel or means of conveyance, three-fourths:

If one person is detained and convicted, not a seafaring man, five-eighths:

If vessel or carriage with its lading be seized, without any person being detained, one-third:

If goods found sunk and concealed, and the smuggler afterwards convicted in consequence thereof, and by the exertions of the individuals so finding them, one-half:

If goods found, and no person subsequently convicted, one-eighth:

If goods seized and parties subsequently convicted in consequence of such seizure, and by the exertion of the seizers, one-half:

If goods seized only, one-eighth, or such other part as the commissioners of the Customs shall think proper, not exceeding one-fourth:

6. Of officers, &c.

Condemned vessels and goods how to be disposed of.

Reward to officers for detaining smugglers.

Rewards to officers where pecuniary penalties are recovered.

Rewards for seizures.

6. *Of officers,  
&c.*

In the case of Seizures of Goods prohibited to be imported:

If vessel after importation or other means of conveyance seized, or any person prosecuted to conviction on account of same, two-thirds:  
If goods only, one-half.

In the case of Seizures of Goods not before enumerated:

If vessel, or other means of conveyance, seized, or any person prosecuted to conviction on account of same, one-half:  
If goods only, one-fourth:

In the case of Goods destroyed:

If vessel, or other means of conveyance, seized, or any person prosecuted to conviction on account of the same, a moiety of the appraised value or amount of duty:  
If goods only, one-fourth of appraised value or amount of duty.

In the case of Seizures of Vessels and Boats:

If sold, a moiety of the produce:  
If taken into the public service or broken up, a moiety of appraised value.

In the case of Seizures of Cattle and Carriages:

In all cases, three-fourths of the produce of the sale."

Sect. 66. "Provided always, that the aforesaid rewards shall be paid, subject to a deduction of 10*l. per centum* on account of law-charges and other expenses."

Sect. 67. "Every such reward, or part or share of any such seizure, or of the value thereof, as shall be payable to any officer or officers, non-commissioned officers, petty officers, seamen, or privates of H. M.'s army, navy, or marines, or acting under the orders of the lord high admiral or commissioners of the admiralty, shall be divided and distributed in such proportions, and according to such rules, regulations, and orders, as H. M. shall by his order or orders in council, or by his royal proclamation in that behalf, be pleased to direct and appoint."

Sect. 68. "Reciting that it frequently happens that officers of the Customs and Excise, who from their stations on the coast, and other circumstances, are instrumental in causing the seizure of spirits and other goods, but who, from their not being actually present at and assisting in the making such seizure, have hitherto not been considered as entitled to participate in the officers' share of the same; and that it is expedient, in order to provide for such cases, that the commissioners of H. M.'s Customs and Excise respectively should be authorised to direct distribution of the shares of all seizures made by officers or persons acting under their authority or direction, or of any penalties recovered or rewards paid for the apprehension of smugglers, in such manner as may appear to them to be most conducive to the protection of the revenue;" it is enacted, "that it shall be lawful for the commissioners of H. M.'s Customs or Excise respectively, and they are hereby authorised, in case of any seizure of vessels, boats, or goods, or the apprehension of any parties under this or any other act relating to the revenue of Customs, to direct the distribution of the seizer's share of such vessels, boats, or goods, or of any penalties or rewards, so as to enable any officer or officers, or other person or persons acting under the authority of the said commissioners respectively, or through whose information or means such seizure shall have been made, or penalty recovered, or party apprehended, who shall not have been actually present at the making of the same, to participate in such proportions as the said commissioners shall respectively deem expedient."

All rewards and seizures payable to officers of army, navy, or marines, to be regulated by H. M.'s orders in council, &c.

Commissioners may distribute officers' shares of seizures in certain cases, so as to reward persons not actually present.

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Sect. 69. "Upon proof being made to the satisfaction of the commissioners of H. M.'s Customs or Excise, that any officer or officers, or person or persons as aforesaid, shall have acted collusively or negligently in the making of any seizure, it shall be lawful for the said commissioners to direct that the whole or any part of the proportion of such seizure be applied to the use of H. M."

Sect. 70. "Reciting that it hath frequently happened that spirits have been imported and brought into the ports of this kingdom in small casks, and that the persons importing and bringing the same have alleged that the same had been found floating upon or sunk in the sea; and there is reason to believe that great frauds have been practised with regard to such spirits, by the persons so importing and bringing in the same, and so alleging as aforesaid; and it is therefore expedient, in order to prevent the like frauds in future, that persons not lawfully authorised to make seizure of such spirits should be restrained from intermeddling with or taking up any such spirits, being in casks of less content than forty gallons, which may be found floating upon or sunk in the sea;" it is enacted, "that no person or persons whatsoever, being a subject or subjects of H. M., his heirs and successors, other than an officer or officers of the navy, Customs, or Excise, or some person or persons authorised in that behalf, shall intermeddle with or take up any spirits, being in casks of less content than forty gallons, which may be found floating upon or sunk in the sea; and that if any spirits shall be taken up, and shall be found or discovered on board any vessel or boat belonging as aforesaid, within the limits of any port of the U. K. or Isle of Man, or within the distances in this act before mentioned, the vessel or boat on which the same shall be found or discovered, together with such spirits, shall be forfeited, and the person or persons in whose custody or possession the same shall be found shall forfeit the penalty of treble the value of such spirits, or the sum of 50*l*., at the election of the commissioners of H. M.'s Customs."

Sect. 71. "Provided always, that if any person or persons shall discover any spirits, being in casks of less content than forty gallons, which may be found floating upon or sunk in the sea, and shall give information to any officer of the Customs, or other person or persons duly authorised to make seizure of such spirits, so that seizure shall be made of the same, the person or persons giving such information shall be entitled to and shall receive such reward as the commissioners of H. M.'s Customs may deem it expedient to direct."

### 6. Of officers, &c.

Where officers act negligently or collusively, commissioners may direct the whole or any part of seizure to be applied to H. M.'s use. Spirits floating on the sea not to be taken up but by officers.

Penalty, forfeiture of spirits, &c.

Reward to persons giving information of goods floating or sunk in the sea.

## VI. Of Proceedings before Justices, &c. (a)

By 6 Geo. IV. c. 108, s. 73. "All penalties and forfeitures incurred or imposed by this or any other act relating to the revenue of Customs shall and may be sued for, prosecuted, and recovered by action of debt, bill, plaint, or information in any of H. M.'s Courts of Record at Westminster, or in the Courts of Exchequer in Scotland, or in Dublin, or in the royal Courts of the islands of Guernsey, Jersey, Alderney, Sark or Man, in the name of H. M.'s attorney-general, or in the name or names of some officer or officers of H. M.'s Customs, or by information before any two (b) or more of H. M.'s justices of the peace in the united kingdom, or before any governor, deputy-governor, or deemster, in the Isle of Man. Provided always, that all the powers vested in any justices of the peace by virtue of this act shall be and the same are hereby vested in the commissioners or

### VI. Of proceedings before justices, &c.

Penalties and forfeitures to be proceeded for in name of attorney-general or officer of Customs, or before two justices of peace, &c.

(a) See the whole course of proceedings stated, *post*. Neither coverture nor infancy is a bar to a proceeding for a penalty. 4 *Bla. C.* 308; 2 *B. & P.* 530; 8 *T. R.* 545; *Hawk. c.* 1, s. 13; 2 *Stra.* 1120.  
(b) Or before one justice. See 7 & 8 Geo. IV., c. 56, s. 7, *post*, 206.

**6. Proceedings before justices, &c.**

Proviso as to Ireland.

Offences at sea deemed to have been committed at place to which the offender is taken, brought, or carried. (a)

assistant commissioners of H. M.'s Customs in and for Ireland, or any two of them, and the sub-commissioners lawfully appointed in Ireland to hear and determine complaints and informations for the recovery of any fine, penalty, or forfeiture imposed by this or any other act relating to the revenue of Customs, or any three or more of such sub-commissioners, so far as regards any offences committed in Ireland against this or any other act relating to revenue of the Customs."

But by 10 G. IV. c. 43, s. 2 & 3. The jurisdiction of local boards of Customs in Ireland, and of sub-commissions, was in certain cases repeated, and penalties may be recovered in the Exchequer there or before justices of the peace in Ireland.

6 Geo. IV. c. 108, s. 74. "In case any offence shall be committed upon the high seas, against this or any other act relating to the revenue of Customs, or any penalty or forfeiture shall be incurred upon the high seas for any breach of such act, such offence shall, for the purpose of prosecution, be deemed and taken to have been committed, and such penalties and forfeitures to have been incurred, at the place on land in the united kingdom, or the Isle of Man, into which the person committing such offence, or incurring such penalty or forfeiture, shall be taken, brought, or carried; and in case such place on land is situated within any city, borough, liberty, division, franchise, or town corporate, as well any justice of the peace for such city, borough, liberty, division, franchise, or town corporate, as any justice of the peace of the county within which such city, borough, liberty, division, franchise, or town corporate is situated, shall have jurisdiction to hear and determine all cases of offences against such act so committed upon the high seas; any charter or act of parliament to the contrary notwithstanding. Provided always, that all offences against this or any other act relating to the revenue of Customs committed in any city, borough, liberty, division, franchise, or town corporate, shall be deemed and taken to have been committed in the county within which such city, borough, liberty, division, franchise, or town corporate is situated; and as well any justices of the said city, borough, liberty, division, franchise, or town corporate, as any justices of any county in which such city, borough, liberty, division, franchise, or town corporate is situated, shall have jurisdiction to hear and determine the same." (b)

(a) And see 7 & 8 Geo. IV. c. 56, s. 10, *post*, 206.

(b) *Kite & Lane's case*, 1 B. & C. 101. See Sections 3 & 49, *ante*; and see decision on the 57 Geo. III. c. 87, s. 1, in 2 Dowl. & R. 212, in which it appeared that *A.* and *B.* were found and arrested on board a boat laden with smuggled goods within the harbour of *F.*, which was within a local exclusive jurisdiction, were afterwards taken, with the boat, &c. to the port of *D.* and convicted before two justices of the town and port of *D.*, pursuant to stats. 45 Geo. III. c. 121, s. 7; 57 Geo. III. c. 87, s. 5; and 3 Geo. IV. c. 110; and it was held, that the conviction, which only stated that they had been found and taken on board a boat in the harbour of *F.*, was bad, for not showing that the justices of *D.* had jurisdiction over the offence.

Semble, that in this case only the justices of the local jurisdiction of *F.* had authority to convict; and that the 45 Geo. III. c. 121, s. 7, gives jurisdiction to those justices only who reside near to the first port or place into which

any ship, &c. shall be carried, or where any person shall be arrested by virtue of that clause.

But see a decision on 6 Geo. IV. c. 108, in *re Nunn*, 8 B. & C. 644. A vessel liable to forfeiture under this act was seized in a part of the river Orwell, where the justices of Ipswich had jurisdiction; and a person found on board the vessel was taken to Harwich, and prosecuted before two justices of that place, who convicted him in a penalty of 100*l.* for having been found on the high seas on board a vessel liable to forfeiture. Held that the justices of Harwich, being justices at the first place on land to which the party was carried, had jurisdiction to try the offence.

When the vessel was first boarded, she was just entering the harbour of Harwich. Held that, in the absence of all other evidence, a person then found on board might properly be found to have been on board on the high seas. In *re Jas. Nunn*, 8 Bar. & Cress. 644; 3 M. & Ry. 76.

Sect. 75. "In cases where any information shall be exhibited before two (a) or more justices of the peace, or governor, deputy-governor, or deemster of the Isle of Man, for the recovery of any penalty under this or any other act relating to the revenue of Customs (except as is hereinafter otherwise provided for), it shall and may be lawful for the said justices, or governor, deputy-governor, or deemster of the Isle of Man, and he or they is or are hereby authorised and required to (b) summon the party accused, and upon his, her, or their appearance or default, to proceed to the examination of the matter, and upon due proof thereof, either upon the voluntary confession of such party, or upon the oath of one or more credible witness or witnesses (which oath the said justices, or governor, deputy-governor, or deemster of the Isle of Man, is and are hereby empowered to administer), to convict the offender or offenders in the said penalty or penalties; and in case of the non-payment thereof, the said justices, or governor, deputy-governor, or deemster of the Isle of Man, is and are hereby authorised and required to cause the same, by warrant of distress and sale under their hands and seals, to be levied upon the goods and chattels of the said offender or offenders; (c) (or in case it shall appear to such justices, or governor, deputy-governor, or deemster of the Isle of Man, either upon the confession of such offender or offenders, or otherwise, that such offender or offenders has or have not sufficient goods and chattels whereon to levy the said penalty or penalties, it shall be lawful for such justices, or governor, deputy-governor, or deemster of the Isle of Man, in default of sufficient distress), to commit such offender or offenders to any of H. M.'s gaols in the county where the offence shall have arisen, or wherein the offender or offenders shall have been found, there to remain until the penalty or penalties shall be paid. Provided always, that when any person or persons shall have been committed by any justices, or governor, deputy-governor, or deemster of the Isle of Man, to any prison for the non-payment of such penalty, or in default of distress, it shall be lawful for the gaoler or keeper of such prison, and he is hereby required to discharge such person at the end of six calendar months from the date of such warrant by which the said person is committed to his custody, and he or they shall be wholly discharged from the payment of such penalty or penalties."

Sect. 76. "Where any party shall or may be convicted before any two or more of H. M.'s justices of the peace, or governor, deputy-governor, or deemster as aforesaid, in any penalty or penalties incurred as aforesaid (except as is hereinafter provided), it shall and may be lawful for the said justices, or governor, deputy-governor, or deemster of the Isle of Man, in cases where upon consideration of the circumstances he or they shall deem it expedient so to do, to mitigate the payment of the said penalty or penalties, so as the sum to be paid by such party be not less than one-fourth of the amount of the penalty in which such party shall have been convicted."

Sect. 77. "All suits, indictments, or informations exhibited for any offence against this or any other act relating to the revenue of Customs, in any of H. M.'s Courts of Record at Westminster, or in the Courts of Exchequer in Scotland, or in Dublin, or in the royal Courts of Guernsey, Jersey, Alderney, Sark, or Man, shall and may be had, brought, sued, or exhibited, within three years next after the date of the offence committed; and shall and may be exhibited before any two or more justices of the peace, or governor, deputy-governor, or deemster in the Isle of Man, within six months next after the date of the offence committed."

#### 6. Proceedings before justices, &c.

Justices, &c., in Isle of Man, to summon the accused, and in default of appearance to proceed to hearing and conviction. [See 7 Geo. 4, c. 48, s. 18, *post*, and the general regulations to summonings, &c. in 7 & 8 Geo. 4, c. 56, *post*.]

Justices empowered to mitigate in certain cases.

Suits in Court of Record to be commenced within three years.

(a) Or one justice, 7 & 8 Geo. IV. c. 56, s. 7, *post*, 206.

(b) As to service of summonings, see 7 & 8 Geo. IV. c. 56, s. 8, *post*, 206.

(c) As to payment of penalties, see *ibid.* s. 11, *post*, 206.



**6. Proceedings before justices, &c.**

Indictments for offences against this act may be inquired into in any county of England.

Mode of proceeding before justices for condemnation of seized goods.

Persons detained for certain offences to pay 100*l.*; or, if seafaring men, to be sent into the naval service. (a)

Sect. 78. "Any indictment or information which shall be found or prosecuted for any offence against this or any other act relating to the revenue of Customs shall and may be inquired of, examined, tried, and determined in any county of England; and any such indictment or information which shall be found, commenced, or prosecuted in Scotland, may be inquired of, examined, tried, and determined in any county in Scotland; and any such indictment or information which shall be found or commenced in Ireland may be inquired of, examined, tried, and determined in any county in Ireland, in such manner and form as if the offence had been committed in the said county where the said indictment or information shall be tried."

Sect. 79. "In all cases of information exhibited before any two or more justices of the peace, or any governor, deputy-governor, or deemster as aforesaid, for the forfeiture of any goods whatsoever, seized under any act or acts relating to the revenue of Customs, or for the prevention of smuggling, and where the party to whom such goods belonged, or from whom they were seized, is known, it shall be lawful for the said justices, or governor, deputy-governor, or deemster, and he and they is and are hereby authorised and required to summon the said party, and upon his, her, or their appearance or default, to proceed to the examination of the matter of fact, and, upon due proof that the said goods are liable to forfeiture under this or any act relating to the revenue of Customs, to condemn the said goods; and in case the party from whom the said goods have been seized is not known, it shall and may be lawful for the said justices, or governor, deputy-governor, or deemster, and he or they is and are hereby required, to cause public notice to be stuck up in the Royal Exchange if the seizure is made in London, at the market-cross if in Edinburgh, and at the Royal Exchange if in Dublin; and if the seizure is made at any other place, then a notice shall be publicly read by the public crier at the next market-place, stating that the goods have been so seized, and that the hearing relative to the same will take place on a certain day, not being less than eight days from the date of the said notice; and in default of any person's attendance in consequence of the said notice, the said justices, or governor, deputy-governor, or deemster, are to proceed to the hearing and condemnation of the said goods as aforesaid."

Sect. 80. "It shall and may be lawful for any two or more justices of the peace, or governor, deputy-governor, or deemster as aforesaid, before whom any person liable to be arrested and detained, and who shall have been arrested and detained, for being found or discovered to have been on board any vessel or boat liable to forfeiture under this or any other act relating to the revenue of Customs, or for unshipping, carrying, conveying, or concealing, or aiding, assisting, or being concerned in unshipping, carrying, conveying, or concealing any spirits or tobacco liable to forfeiture under this or any such act, shall be carried, on the confession of such person of such offence, or on proof thereof upon the oaths (b) of one or more credible witness or witnesses, to convict such person of any such offence; and every such person so convicted as aforesaid shall immediately, upon such conviction, pay into the hands of such justices, or governor, deputy-governor, or deemster, for the use of H. M., the penalty of 100*l.*, without any mitigation whatever, for any such offence of which he shall be so convicted as aforesaid; or in default thereof the said justices, or governor, deputy-governor, or deemster, shall, and he and they is and are hereby respectively authorised and required, by warrant under his or their hand and seal or hands and seals, to commit such person so convicted as aforesaid, and making such default as aforesaid, to any gaol or prison, there to remain until such penalty shall be paid. Provided, that if

(a) See 7 & 8 Geo. IV. c. 56; s. 4, *post*, 206.

(b) *Aldridge's case*, 2 B. & C. 600; 4 D. & Ry. 83.

the person convicted of any such offence or offences shall be a seaman or seafaring man, and fit and able to serve H. M. in his naval service, and shall not prove that he is not a subject of H. M., it shall and may be lawful for any such justices, or governor, deputy-governor, or deemster, and he and they is and are hereby required, in lieu of such penalty, by warrant under his or their hand and seal or hands and seals, to order any officer of the army, navy, or marines, being duly authorised and on full pay, or officer of Customs or Excise, to carry or convey, or cause to be carried or conveyed, such person on board of any of H. M.'s ships, in order to his serving H. M. in his naval service for the term of five years: (a) and if such person shall, at any time within that period, by any means escape or desert from such custody or service respectively, he shall be liable at any time or times afterwards to be again arrested and detained by any officer of the Customs, or any other person, and delivered over as aforesaid to complete his service of five years. Provided also, that if it shall be made to appear to any such justices, or governor, deputy-governor, or deemster, that convenient arrangement cannot be made, at the time of the conviction of the said party, for immediately carrying or conveying such seaman or seafaring man, so convicted as aforesaid, on board any of H. M.'s ships in order to serve H. M., it shall and may be lawful for any such justices, or governor, deputy-governor, or deemster, to commit any such seaman or seafaring man so convicted as aforesaid to any prison or gaol, there to remain in safe custody for any period not exceeding one month, in order that time may be given to make arrangements for so conveying such seaman or seafaring man on board any of H. M.'s ships as aforesaid. Provided also, that the commissioners of H. M.'s treasury, or any three or more of them, shall have full power and authority to remit, or mitigate any such penalty, punishment, or service as aforesaid, whether the parties shall be seafaring men or otherwise."

Sect. 81. "If any person so convicted as a seaman or a seafaring man, and carried on board any of H. M.'s ships of war, shall, on examination by any surgeon or surgeons of H. M.'s navy, within one week after being so carried on board, be deemed to be unfit, and shall be refused on that account to be received into H. M.'s service, such person shall, as soon as convenient, be conveyed before any two or more justices of the peace, or any governor, deputy-governor, or deemster as aforesaid; and upon proof that he has been refused to be received on board any of H. M.'s ships as fit for H. M.'s service, such justices, governor, deputy-governor, or deemster shall, and he and they is and are hereby authorised and required to call upon the said person to pay the penalty of 100*l.*, without hearing any evidence other than such proof as last aforesaid; and in default of immediate payment of the same into the hands of the said justices, governor, deputy-governor, or deemster, for the use of H. M., to commit the said person to any gaol or prison, there to remain until such penalty shall be paid. Provided always, that no person so convicted as aforesaid, and ordered to serve on board any of H. M.'s ships, shall be sent away from the U. K. on board of any such ship in a less time than one month from the date of such conviction."

Sect. 82. "All informations before justices of the peace, governors, deputy-governors, or deemsters, for any offences committed against this or any other act relating to the revenue of Customs, and all convictions for such offences, and warrants of justices of the peace, governors, deputy-governors, or deemsters, founded upon such convictions, shall be drawn

6. *Proceedings before justices, &c.*

If on examination of persons convicted and sent on board H. M.'s ships, they shall be found unfit, to be again conveyed before magistrates and convicted in penalty of 100*l.*, and in default of payment to be sent to gaol. (b)

Informations, &c. to be in the form prescribed in schedule, post, 207.

(a) The 11 Geo. IV. c. 10, contains provisions for applying half the wages to the relief of wife and children chargeable on the parish.

(b) See 7 and 8 Geo. IV., c. 56, s. 4, post, 206.

**6. Proceedings before justices, &c.**

Persons arrested for certain offences may be detained by order.

If suit on account of seizure, and judge certify that there was probable cause, plaintiff to have 2d. damages only, and defendant fined not more than one shilling.

Limitation of action against officers making seizures. Notice.

Fee.

No evidence to be adduced beyond the notice.

Proof of notice.

respectively in the form or to the effect in the schedules to this act annexed."

Sect. 83. Reciting that "it is expedient that time should be allowed to prepare informations, convictions, and warrants of commitment;" it is enacted, "that where any person or persons shall have been arrested and detained by any officer or officers of the army, navy, or marines, being duly authorised and on full pay, or any officer of Customs or Excise, or any person or persons acting in his or their aid or assistance, or duly employed for the prevention of smuggling, for any offence under this or any other act relating to the revenue of Customs, and shall have been taken and carried before any (a) two justices of the peace, to be dealt with according to law, if it shall appear to such justices that there is reasonable cause to detain such person or persons, such justices may and they are hereby authorised to order such person or persons to be detained a reasonable time, as well before as after any information has been exhibited against such party; and at the expiration of such time, such justices (a) may proceed finally to hear and determine the matter."

Sect. 92. And be it further enacted, "that in case any information or suit shall be commenced or brought to trial on account of the seizure of any vessel, boat or goods, merchandizes or commodities whatsoever, or any horses or other animals, or any carriage seized as forfeited by this or any act relating to the revenue of the Customs, wherein a verdict shall be found for the claimant thereof, and it shall appear to the judge or Court before whom the same shall have been tried that there was a probable cause of seizure, such judge or Court shall certify on the record that there was such probable cause; and in such case the claimant shall not be entitled to any costs of suit whatsoever, nor shall the person who made such seizure be liable to any action, indictment, or other suit or prosecution on account of such seizure; and that in case any action, indictment, or other suit or prosecution shall be commenced and brought to trial against any person or persons whatsoever, on account of any such seizure as aforesaid, wherein a verdict shall be given against the defendant or defendants, if the Court or judge before whom such action, indictment, or prosecution shall be tried, shall have certified on the said record that there was a probable cause for such seizure, then the plaintiff, besides the things seized, or the value thereof, shall not be entitled to above two-pence damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined above one shilling."

Sect. 93. And be it further enacted, "that no writ shall be sued out against, nor a copy of any process served upon, any officer of the army, navy, marines, Customs or Excise, or against any person acting under the direction of the commissioners of H. M.'s Customs, for any thing done in the execution of or by reason of his office, until one calendar month next after notice in writing shall have been delivered to him, or left at his usual place of abode, by the attorney or agent for the party who intends to sue out such writ or process as aforesaid, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent; and that a fee of twenty shillings shall be paid for the preparing or serving of every such notice, and no more."

Sect. 94. Provided always, and be it further enacted, "that no plaintiff in any case where an action shall be grounded on any act done by the defendant shall be permitted to produce any evidence of the cause of such action, except such as shall be contained in the notice to be given as aforesaid, or shall receive any verdict against such officer or person, unless he shall prove, on the trial of such action, that such notice was given; and in default of such proof, the defendant in such action shall receive a verdict and costs as aforesaid."

(a) Or one justice. 7 & 8 Geo. IV., c. 56, s. 7, post, 206.

Sect. 95. And be it further enacted, "that it shall and may be lawful to and for any such officer or other person to whom such notice shall have been given as aforesaid, at any time within one calendar month after such notice shall have been given, to tender amends to the party complaining, or to his, her, or their agent or attorney, and in case the same is not accepted to plead such tender in bar to any action to be brought against him grounded on such writ or process, together with the plea of not guilty, and other plea with leave of the Court; and if upon issue joined thereon, the jury shall find the amends so tendered to have been sufficient, that then they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become nonsuited or discontinue his, her, or their action, or in case judgment shall be given for such defendant upon demurrer, then such defendant shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only; but if, upon issue joined, the jury shall find that no amends were tendered, or that the same were not sufficient, or shall find against the defendant in such other plea or pleas, then they shall give a verdict for the plaintiff, and such damages as they shall think proper, together with his, her, or their costs of suit."

Sect. 96. And be it further enacted, "that in case such officer or other person as aforesaid shall neglect to tender any amends, or shall have tendered insufficient amends before the action brought, it shall and may be lawful for him, by leave of the Court where such action shall be brought, at any time before issue joined, to pay into Court such sum of money as he shall see fit, whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such Court, as in other actions where the defendant is allowed to pay money into Court."

Sect. 97. And be it further enacted, "that if any action or suit shall be brought or commenced as aforesaid, such action or suit shall be brought or commenced within six months next after the cause of action shall have arisen, and not afterwards, and shall be laid and tried in the county or place where the facts were committed, and not in any other county or place, and the defendant or defendants shall and may plead the general issue, and give the special matter in evidence at any trial had thereupon; and if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her, or their action or suit, or if, upon a verdict or demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall or may receive treble costs, and have such remedy for the same as any defendant or defendants can or may have in other cases where costs are given by law."

Sect. 98. "Whenever any person shall be charged with any offence against this or any act relating to the revenue of Customs, or for which he or she may be prosecuted by indictment or information in H. M.'s Court of King's Bench, and the same shall be made appear to any judge of the same Court, by affidavit, or by certificate of an information or indictment being filed against such person in the said Court for such offence, it shall and may be lawful for such judge to issue his warrant under his hand and seal, and thereby to cause such person to be apprehended and brought before him, or some other judge of the same Court, or before some one of H. M.'s justices of the peace, in order to his or her being bound to the king's majesty, with two sufficient sureties, in such sum as in the said warrant shall be expressed, with condition to appear in the said Court at the time mentioned in such warrant, and to answer to all and singular indictments or informations for any such offence; and in case any such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice respectively, to commit such person to the common gaol of the county, city, or place where the offence shall have been committed, or where he or she shall have been apprehended, there to remain until he or she shall become bound as aforesaid, or shall be discharged by order of the Court in term-time, or of one of the

#### 6. Proceedings before justices, &c.

Officer may tender amends.

In what case costs as if general issue only pleaded.

Officer neglecting to tender amends may pay money into Court.

Limitation of such action.

General issue.

Judges of the Court of K. B. may issue warrant for the apprehension of offenders, &c.

6. *Proceedings before justices, &c.*

judges of the said court in vacation; and the recognizance to be thereupon taken shall be returned and filed in the said Court, and shall continue in force until such person shall have been acquitted of such offence, or, in case of conviction, shall have received judgment for the same, unless sooner ordered by the Court to be discharged; and that where any person, either by virtue of such warrant of commitment aforesaid, or by virtue of any writ of *capias ad respondendum*, issued out of the said Court, is now detained or shall hereafter be committed to and detained in any gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to such person, or to the gaoler, keeper, or turnkey of the gaol wherein such person is or shall be so detained, with a notice thereon indorsed, that unless such person shall, within eight days from the time of such delivery of a copy of the indictment or information as aforesaid, cause an appearance, and also a plea or demurrer to be entered in the said Court to such indictment or information, an appearance and the plea of not guilty will be entered thereto in the name of such person; and in case he or she shall thereupon, for the space of eight days after the delivery of a copy of such indictment or information as aforesaid, neglect to cause an appearance, and also a plea or demurrer to be entered in the said Court to such indictment or information, it shall be lawful for the prosecutor of such indictment or information, upon affidavit being made and filed in the Court of the delivery of copy of such indictment or information, with such notice indorsed thereon as aforesaid, to such person, or to such gaoler, keeper, or turnkey, as the case may be, which affidavit may be made before any judge or commissioner of the said Court, authorised to take affidavits in the said Court, to cause an appearance and the plea of not guilty to be entered in the said Court to such indictment or information for such person; and such proceedings shall be had thereupon as if the defendant in such indictment or information appeared and pleaded not guilty, according to the usual course of the said Court; and that if, upon trial of such indictment or information, any defendant so committed and detained as aforesaid shall be acquitted of all the offences therein charged upon him or her, it shall be lawful for the judge before whom such trial shall be had, although he may not be one of the judges of the said Court of King's Bench, to order that such defendant shall be forthwith discharged out of custody as to his or her commitment as aforesaid, and such defendant shall be thereupon discharged accordingly."

Indictments and suits to be commenced in the name of attorney-general, or an officer of Customs, under direction of commissioners of Customs.

The attorney-general may enter a *noli prosequi* on informations exhibited for penalties.

Onus probandi to lie on the claimer.

Sect. 100. "No indictment shall be preferred or suit commenced for the recovery of any penalty or forfeiture under this or any other act relating to the revenue of Customs or Excise (except in the cases of persons detained and carried *before two or more justices* in pursuance of this act), unless such suit shall be commenced in the name of H. M.'s attorney-general, or unless such indictment shall be preferred under the direction of the commissioners of H. M.'s Customs or Excise, or unless such suit shall be commenced in the name of some officer of Customs or Excise, under the direction of the said commissioners respectively."

Sect. 101. "If any prosecution whatever shall be commenced for the recovery of any fine, penalty, or forfeiture incurred under this or any other act relating to the revenue of Customs and Excise, it shall be lawful for H. M.'s attorney-general, if he is satisfied that such fine, penalty, or forfeiture was incurred without any intention of fraud, or that it is inexpedient to proceed in the said prosecution, to stop all further proceedings, by entering a *noli prosequi*, or otherwise, on such information, as well with respect to the share of such fine, penalty, or forfeiture to which any officer or officers may be entitled, as to the king's share thereof."

Sect. 102. "If any goods shall be seized for non-payment of duties or any other cause of forfeiture, and any dispute shall arise whether the Customs, Excise, or inland duties have been paid for the same, or the same have been lawfully imported, or concerning the place from whence such

goods were brought, then and in such case the proof thereof shall lie on the owner or claimer of such goods, and not on the officer who shall seize and stop the same."

Sect. 103. "No justice of the peace, who is a collector or comptroller, or otherwise connected with the collection of the Customs or Excise, shall take cognizance of any matter relating to the summary convictions of persons offending against this act."

Sect. 104. "In case of any information or proceedings had under this or any other act relating to the revenue of Customs, the averment that the commissioners of H. M.'s Customs or Excise have directed or elected such information or proceedings to be instituted, or that any vessel is foreign or British, or that any person detained is or is not a subject of H. M., or that any person detained is or is not a seaman or seafaring man, or fit and able to serve H. M. in his naval service, or that any person is an officer of the Customs, shall be sufficient, without proof as to such fact or facts, unless the defendant in such case shall prove to the contrary."

Sect. 105. "If upon any trial a question shall arise whether any person is an officer of the army, navy, or marines, being duly authorized and on full pay, or officer of Customs or Excise, evidence of his having acted as such shall be deemed sufficient, and such person shall not be required to produce his commission or deputation unless sufficient proof shall be given to the contrary; and every such officer, and any person acting in his aid or assistance, shall be deemed a competent witness upon the trial of any suit or information, on account of any seizure or penalty as aforesaid, notwithstanding such officer or other person may be entitled to the whole or any part of such seizure or penalty."

Sect. 72. "For the necessary subsistence of any poor person confined in the united kingdom, or in the Isle of Man, under or by virtue of any exchequer or other process for the recovery of any duties or penalties, either upon bond or otherwise, under this or any other act relating to the revenue of Customs or Excise, sued for under or by virtue of any order of the commissioners of H. M.'s Customs or excise, it shall and may be lawful to and for the commissioners of Customs or Excise to cause an allowance, not exceeding the sum of 7½d., and not less than 4½d. per day, to be made to any such poor person, out of any money in their hands arising from the duties of Customs or Excise, as the case may require."

By 7 Geo. IV. c. 48, s. 17. "No writ of *certiorari* shall issue from H. M.'s Court of King's Bench to remove any proceedings before any justice or justices of the peace under any act for the prevention of smuggling, or relating to the revenue of the Customs; nor shall any writ of *habeas corpus* issue to bring up the body of any person who shall have been convicted before any justice or justices of the peace under any such act, unless the party against whom such proceeding shall have been directed, or who shall have been so convicted, or his attorney or agent, shall state in an affidavit in writing, to be duly sworn, the grounds of objection to such proceedings or conviction; and that upon the return to such writ of *certiorari* or *habeas corpus*, no objection shall be taken or considered other than such as shall have been stated in such affidavit, and that it shall be lawful for any justice or justices of the peace, and they are hereby required, to amend any information, conviction, or warrant of commitment for any offence under any such act."

Sect. 18. "It shall not be lawful for the gaoler or keeper of any prison, in virtue of any authority to him given by the said act for the prevention of smuggling, to discharge any person who shall have been committed to such prison for non-payment of any penalty or penalties, if such penalty or penalties shall amount to or exceed the sum of 100*l.*; any thing in the said act to the contrary notwithstanding."

Sect. 20. "Upon the trial of any issue, or upon any judicial hearing or investigation touching any penalty or forfeiture under any law or laws re-

6. Proceedings before justices, &c.

No justice who is a collector, &c. of Customs, to take cognizance of convictions under this act.

Averment of certain matters to be sufficient until the contrary is proved.

Viva voce evidence may be given that a party is an officer.

Share of penalty not to disqualify officers as witnesses.

Allowance to poor persons confined for offences against laws of Customs and Excise.

Writ of *certiorari* and of *habeas corpus* not to be granted unless objections to proceedings be stated.

Gaolers not to discharge persons confined for 100*l.*

Proof on trial of treasury order.

**6. Proceedings before justices, &c.**

Smugglers prosecuted as seamen, and proving not fit for naval service, information to be amended.

One justice may issue process for the appearance of the party before two justices.

One justice may enforce conviction.

Summons left at the abode of the party to be deemed sufficient.

Magistrate in adjoining county to have jurisdiction.

Penalties recovered before justices to be paid to commissioners of the Customs or Excise.

lating to the revenue of the Customs or Excise, or to the law of navigation, where it may be necessary to give proof of any order issued by the commissioners of H. M.'s treasury, or by the commissioners of H. M.'s Customs or Excise respectively, the letter or instructions which shall have been officially received by the officer of Customs or Excise, at the place or district where such penalty or forfeiture shall have been incurred, or shall be alleged to have been incurred, for his government, and in which such order is mentioned or referred to, and under which said instructions he shall have acted as such officer, shall be admitted and taken as sufficient evidence and proof of such order, to all intents and purposes whatsoever."

By 7 and 8 Geo. IV. c. 56, s. 4. "If any person shall be proceeded against under any act now in force or hereafter to be made for the prevention of smuggling, or relating to the revenue of Customs or Excise, and the information exhibited against such person shall charge him as being a seaman, and fit and able to serve H. M. in his naval service, and it shall appear to the justices before whom such person is brought that he is guilty of the offence with which he is charged, but that he is not fit for H. M.'s naval service, that then and in such case it shall be lawful for such justices, and they are hereby required to amend such information accordingly, and to convict such person in the penalty of 100*l.*, as if proceeded against as not being a seaman or fit for H. M.'s naval service."

Sect. 7. "In all cases where any information is exhibited for any offence against any act now in force or hereafter to be made for the prevention of smuggling, or relating to the revenue of Customs or Excise, such information may be received by one justice of the peace, and such justice may issue a summons for the appearance of the party against whom such information is exhibited before any two justices of the peace; and after the hearing and conviction before any two justices of the peace, any one of the said justices, or any other justice of the peace, may issue his warrant to enforce the conviction, and such warrant shall and may be executed in any county in England; and where, in default of payment of the penalty sought for, the imprisonment of the party takes place for the space of six months, such time of imprisonment shall be reckoned from the time of the commencement of such imprisonment."

Sect. 8. "Where any information shall be exhibited before a justice or justices of the peace, for any fine, penalty, or forfeiture under any act now in force or hereafter to be made for the prevention of smuggling, or relating to the revenue of Customs or Excise, and it is necessary to summon the party against whom such information is exhibited, it shall be deemed a good and sufficient service of such summons if the same be left at the house or usual place of residence of the said party, and directed to such party."

Sect. 10. Reciting that, "in proceedings under the said act for the prevention of smuggling, difficulties frequently arise in procuring the attendance of two magistrates who have jurisdiction in the county where the offence has been committed, and delay is thereby occasioned; it is enacted, that where the attendance of two magistrates having jurisdiction in the county where the offence is committed cannot be conveniently obtained, it shall be lawful for a magistrate of any adjoining county, with one magistrate of the county in which the offence was committed, to hear and determine any information exhibited before them, and to have the same powers and authorities in all respects as to any proceeding had under the said last-mentioned or any other act for the prevention of smuggling, or relating to the revenue of Customs or Excise, as if they were both magistrates for the county in which the offence was committed."

Sect. 11. "All penalties and forfeitures which may be recovered before any justices of the peace under any act for the prevention of smuggling, or relating to the revenue of Customs or Excise, on any prosecution by order of the commissioners of Customs, shall be paid to the commissioners of

## VI. Of Proceedings before Justices, &c.

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H. M.'s Customs, and on any prosecution by order of the commissioners of Excise shall be paid to the commissioners of H. M.'s Excise, or to the person appointed by them respectively to receive the same; and such penalties and forfeitures shall be applied by the said commissioners respectively in such manner as the law directs."

The 9 Geo. IV. c. 25, "authorises the appointment of a person to be solicitor or attorney on behalf of H. M., under the orders and directions of any commissioners of the treasury, Customs, Excise, or stamps, or any branch of revenue, although he be not an admitted solicitor or attorney." (a)

By 9 Geo. IV. c. 76, s. 7. Reciting, "that by the said act for the prevention of smuggling it is enacted, that two justices of the peace may order any person or persons who shall have been arrested and detained for any offence against any act for the prevention of smuggling to be detained a reasonable time, as well before as after any information shall have been exhibited against such party; and that great difficulty had arisen in procuring the attendance of the same two justices who ordered the party to be detained, to hear and determine the case; and it is expedient that one or more justices should have the power to direct such person or persons to be detained a reasonable time, as well before as after any information shall have been exhibited against such party: it is enacted, that in all cases where any person or persons shall be detained for any offence against the laws now in force or hereafter to be made for the prevention of smuggling, or relating to the revenue of Customs or Excise, and shall be taken before one or more justices of the peace, to be dealt with according to law, if it shall appear to such justice or justices that there is reasonable cause to detain such person or persons, such justice or justices may, and he and they is and are hereby authorised to order such person or persons to be detained a reasonable time, as well before as after any information has been exhibited against such party, and at the expiration of such time any two or more justices may proceed finally to hear and determine the matter; any law, custom, or usage to the contrary notwithstanding."

By 10 Geo. IV. c. 10, persons adjudged to serve in the navy, under the smuggling-laws, are not to receive more than half-pay and wages, and half the pay is by the certificate of two magistrates to be applied for support of wife and children.

6. *Proceedings before justices, &c.*

Persons detained under the smuggling laws, one justice may commit before hearing the case.

## VII. The Prescribed Forms of Proceeding.

Schedule to which the act 6 Geo. IV. c. 108, refers. (a)

A. Form of information before justices of the peace, where the party charged is a subject of His Majesty, and a pecuniary penalty is inflicted.

County of } Be it remembered, that on the                      day of                      , in the year  
                    of our Lord                      , A. B., officer of Customs, who is directed by  
to wit. } the commissioners of His Majesty's Customs to prefer this information,  
                    gives us,                      , esquires, two of His Majesty's justices of the peace, to under-  
stand and be informed that C. D., being a subject of His Majesty, on the  
day of                      , in the year of our Lord                      [here state the offence,] contrary  
to the form of the statute in that case made and provided, whereby the said C. D.  
hath forfeited the sum of                      pounds.

VII. *Prescribed forms of proceeding.*

1. Information against a subject of His Majesty.

(a) See 6 Geo. IV. c. 108, s. 82, *ante*, ante, 205; and 7 & 8 Geo. IV. c. 56, s. 201; and see the powers to amend these proceedings, 7 Geo. IV. c. 48, s. 17, 4, *ante*, 206.

(b) See decision on this act, *West v. Taunton*, 6 Bingham, 404.



**B. Form of a conviction to be used for an offence against this act, in cases where a pecuniary penalty is inflicted upon the offender being a subject of His Majesty.**

County of } Be it remembered, that on the                      day of                      , in the year of  
to wit. } our Lord                      , an information was exhibited by A. B. officer of  
of the peace, against C. D.; which said information charged, that the said C. D.,  
on the                      day of                      , in the year of our Lord                      [here state the  
offence as in the information], contrary to the form of the statute, which offence has  
been duly proved before us the said justices. We do therefore adjudge, that the said  
C. D. hath forfeited for his said offence the sum of                      pounds. Given under  
our hands and seals, the                      day of                      . [In cases where the magistrates  
exercise the power of mitigation, add these words, which said sum of                      we the  
said justices do hereby mitigate to the sum of                      .]

County of } To A. B., officer of Customs, and to E. F., the gaoler or keeper of the  
to wit. } , at , in the .

Whereas C. D. has been duly convicted before us, , esquires, two of His Majesty's justices of the peace, of having [state the offence as in the information]: and whereas we, the said justices, did adjudge that the said C. D. had forfeited for his said offence the sum of pounds (which sum of pounds we the said justices did mitigate to the sum of ) (and whereas it appears to us, the said justices, that the said C. D. has not sufficient goods or chattels whereon to levy the said sum of , and) which the said sum of pounds has not been paid: these are therefore to require you, the said A. B., forthwith to take, carry, and convey the said C. D. to the at , in the , and to deliver him into the custody of the gaoler, or keeper of the said and we, the said justices, do hereby authorize and require you the said E. F., the gaoler or keeper of the said , to receive and take the said C. D. into your custody, and him safely to keep until he shall duly pay the said sum of . Given under our hands and seals at , in the of , this day of , in the year of our Lord 183—.

County of } To A. B.  
to wit.  
Whereas C. D. has been duly convicted before us , esquires, two of His Majesty's justices of the peace, of the offence of having [here state the offence as in the information;] and whereas the said C. D. has forfeited, for his said offence, the sum of pounds, which said sum of pounds has not been paid: these are therefore to command you, the said A. B., to levy the said sum of by distress and sale of the goods and chattels of the said C. D. And we the said justices do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of within days after such distraint, unless the said sum of for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid. And you the said A. B. are hereby commanded to certify to us, the said justices, on the day of next ensuing, what you shall do by virtue of this warrant. Given under our hands and seals at , in the , this day of , in the year of our Lord 18—.

County of } Be it remembered, that on the                      day of                      , in the year of  
our Lord                      , A. B., officer of Customs, who is directed by the  
to wit. } commissioners of His Majesty's Customs to prefer this information,

## VII. Prescribed Forms of Proceeding.

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gives us, , esquires, two of His Majesty's justices of the peace, to understand and be informed that C. D., being a subject of His Majesty, and a seaman and seafaring man, and fit and able to serve His Majesty in his naval service, on the day of , in the year of our Lord [here state the offence], contrary to the form of the statute in that case made and provided, whereby the said C. D. hath become liable to serve His Majesty in his naval service for the term of five years.

7. Prescribed Forms, &c.

F. Form of a conviction where the party convicted is a seaman or seafaring man, and fit and able to serve His Majesty in his naval service.

County of } Be it remembered, that on the day of , in the year  
of our Lord , an information was exhibited before us, 6. Conviction in same case.  
to wit. } esquires, two of His Majesty's justices of the peace, against C. D. by  
A. B. officer of Customs, which said information charged, that the said C. D. being a subject of His Majesty, and a seafaring man, and fit and able to serve His Majesty in his naval service, on the day of , in the year of our Lord  
[here state the offence as in the information], contrary to the form of the statute, which offence has been duly proved before us the said justices; and it appearing to us, the said justices, that the said C. D. is a seafaring man, and fit and able to serve His Majesty in his naval service, we the said justices do therefore adjudge the said C. D. to serve in His Majesty's naval service for the term of five years. Given under our hands and seals, this day of , in the year of our Lord

G. Form of a warrant of commitment to serve in the navy.

County of } To A. B., officer of , and to the commander of one of  
to wit. } His Majesty's ships of war.  
Whereas C. D. has been duly convicted before us, esquires, two of His Majesty's justices of the peace, upon the information of , officer of Customs, of having [here state the offence, as charged in the information]; and whereas the said C. D. has not proved that he is not a subject of His Majesty, and being a seafaring man, and fit and able to serve His Majesty in his naval service, we the said justices did adjudge the said C. D. to serve His said Majesty in his naval service for the space of five years, pursuant to the statute in that case made and provided: these are therefore to require you the said A. B. to carry and convey the said C. D. on board of one of His Majesty's ships, in order to his serving His Majesty in his naval service; and we, the said justices, do hereby require the commander of His Majesty's ship to whom this warrant is delivered to receive and take the said C. D. on board His said Majesty's ship, in order to his serving in his naval service for the period of five years as aforesaid. Given under our hands and seals, at the of , this day of , in the year of our Lord 18—.

7. Commitment to serve in navy.

H. Form of information before justices of the peace, where the party charged is not a subject of His Majesty.

County of } Be it remembered, that on the day of , in the year  
of our Lord , A. B., officer of Customs, who is directed by  
to wit. } the commissioners of His Majesty's Customs to prefer this information,  
gives us, esquires, two of His Majesty's justices of the peace, to understand and be informed that C. D., not being a subject of His Majesty, on the day of , in the year of our Lord [here state the offence, setting forth that the same took place within one league of the coast of this kingdom], contrary to the form of the statute in that case made and provided, whereby the said A. B. hath forfeited the sum of .

8. Information where offender not a subject.

## 7. Prescribed Forms, &amp;c.

9. Conviction thereupon.

## I. Form of conviction to be used for an offence against this act, in the case of the person charged not being a subject of His Majesty.

County of } Be it remembered, that on the                      day of                      , in the year  
                     } of our Lord                      , an information was exhibited by A. B., an  
                     } officer of the Customs, before us,                      esquires, two of His Ma-  
 jesty's justices of the peace, against C. D., which said information charged, that  
 the said C. D. on the                      day of                      , in the year of our Lord  
 [here state the offence as in the information, setting forth that the same took place  
 within one league of the coast of this kingdom], contrary to the form of the statute,  
 which offence has been duly proved before us the said justices. We do therefore ad-  
 judge, that the said C. D. hath forfeited for his said offence the sum of                      .  
 Given under our hands and seals, this                      day of                      , in the year of our  
 Lord                      .

## K. Form of a warrant of commitment to gaol of a person not being a subject of His Majesty.

10. Commitment thereupon.

County of } To A. B. officer of Customs, and to E. F. the gaoler or keeper of the  
                     } at                      , in the                      .  
                     } to wit. }  
 Whereas C. D., not being a subject of His Majesty, has been duly convicted before  
 us,                      esquires, two of His Majesty's justices of the peace, of having [here  
 state the offence as in the information, setting forth that the same took place within  
 one league of the coast of this kingdom]; and whereas we the said justices did ad-  
 judge that the said C. D. had forfeited for his said offence the sum of                      ,  
 which said sum of                      has not been paid: these are therefore to require you  
 the said A. B. forthwith to take, carry, and convey the said C. D. to the  
 at                      , in the                      , and to deliver him into the custody of the gaoler or  
 keeper of the said                      ; and we the said justices do hereby authorize and require  
 you the said E. F., the gaoler or keeper of the said                      , to receive and take the  
 said C. D. into your custody, and him safely to keep until he shall duly pay the said  
 sum of                      . Given under our hands and seals, at                      , in the  
 of                      , this                      day of                      , in the year of our Lord 18—.

## L. Form of an information against an officer of Customs.

11. Information against an officer of Customs.

County of } Be it remembered, that on the                      day of                      , in the year  
                     } of our Lord                      , A. B., officer of the Customs, who is directed  
                     } to wit. } by the commissioners of His Majesty's Customs to prefer this informa-  
                     }                      esquires, two of His Majesty's justices of the peace, to under-  
 stand and be informed that C. D., officer of the Customs, on, &c. [here state the  
 offence], contrary, &c. whereby the said C. D. has forfeited the sum of                      .

[The forms of conviction and commitment, (B) and (C), may be applied to this case.]

VIII. The Practice and Proceedings before Magistrates, &amp;c.

## VIII. The Practice or Course of Proceedings before Magistrates and others for Penalties or Forfeitures, &amp;c.

## (1.) Within what time Prosecutions to be commenced.

(1.) Limitation of time of prosecuting for offences, and venue.

The 6 Geo. IV. c. 108, s. 77, directs that all suits, indictments, or informations in Courts of Record shall be within three years after the date of the offence against the Customs, and the indictment or information may be tried in any county, ante, 199.

If the prosecution be by *information before justices*, the same must be exhibited within six months. The months are lunar, calculated exclusive of the day of the offence. (a) If the information be within the time, that suffices, though the conviction be afterwards. (b)

8. *Practice, &c. before Magistrates, &c.*

(2.) *By whom the Information, &c. is to be instituted.*

By 6 Geo. IV. c. 108, s. 73, all penalties and forfeitures incurred or imposed by the Customs' laws shall be sued for, prosecuted, and recovered in the name of the Attorney-General, or of an officer or officers of Customs, except in cases of persons detained and carried before two or more justices, in pursuance of this act (sect. 100), unless such indictment shall be preferred under the direction of the commissioners of Customs or Excise (sect. 100). Sect. 101 authorizes the Attorney-General to enter a *nolle prosequi* in certain cases.

(2.) Who to be the prosecutor.

If an officer of the Customs be guilty of collusion, he forfeits 500*l.*, and is to be dismissed the service (sec. 35) *ante*, 186.

The form of information prescribed in the act 6 Geo. IV. c. 108, s. 82, and given in the schedule, includes these words: "A. B., officer of Customs, who is directed by the commissioners of His Majesty's Customs to prefer this information, gives," &c. Therefore no common informer can of his own accord proceed for a penalty, &c. *ante*, 207.

(3.) *Against whom an Information, &c. may be laid.*

Neither infancy nor coverture is any bar to a prosecution for a penalty under the Custom laws. (c)

Neither a son or servant is excusable for committing an offence by the command or coercion of his father or master. (d)

And in general a master is responsible for the acts of his servants, though done without his privity or knowledge. (e)

This liability is qualified by some of the modern acts. (f)

And other acts provide for the punishment of such servants. (g)

Partners also are respectively liable for the misconduct of each other in their joint trade, and may be proceeded against jointly or separately. (h)

(4.) *Before whom the Information, &c. is to be laid.*

Penalties and forfeitures for offences against the Customs are to be recovered by *action of debt*, &c. in the *superior Courts*, or by information before any two or more justices in the united kingdom.—6 Geo. IV. c. 108, s. 73. (*ante*, 197) or the information may be before one justice, under 7 and 8 Geo. IV., c. 56, s. 7, *ante*, 206.

(4.) Before whom.

And offences against these acts, committed on the high seas, are to be deemed to have been committed where offender was "taken, brought, or carried," and local and county justices have a concurrent jurisdiction (sect. 74, 75, *ante*, 198).

(a) *R. v. Buss*, 5 *Term R.* 251.

(b) *R. v. Barrett*, *Salk.* 383.

(c) *R. v. Crofts*, 2 *Nira* 1120; 4 *Black. Com.* 308; 2 *B. & P.* 93, 530; 8 *T. R.* 545.

(d) *Hawk. P. C.* book 1, s. 14.

(e) *Parker's Rep.* 237; *The King v. Dixon*, 3 *M. & S.* 11.

(f) 7 Geo. IV., c. 48, s. 6; 6 Geo. IV., c. 107, s. 130.

(g) See the malt act, 11 Geo. IV., c. 17, *post*.

(h) *Bunb.* 223; *Com. Rep.* 616; 5 *T. R.* 649.

## Excise and Customs. I. Customs.

8. *Practice, &c. before Magistrates, &c.*

And where the attendance of two magistrates of the county in which the offence was committed cannot be conveniently had, a magistrate of the adjoining county may act with a magistrate of the proper county. (a)  
Justices are bound to hear an information duly lodged, and either to dismiss it or determine it, and may be compelled to do so. (b)

## (5.) Of the Information and Requisites.

(b.) The information.

If the proceeding is by information before justices of the peace, the 6 Geo. IV., c. 108. s. 82, *ante*, 201, and the schedule require that it shall be before *two* justices, and in a prescribed form. It should seem, therefore, that the information must be in *writing*, though that form is not in general necessary. And as the form of the conviction (c) directs that the same shall describe the offence *as in the information*, such information itself must very accurately and correctly state the offence. (d) It was held that where an information of seizure lays the number of things seized under a *videlicet*, the allegation is material, and that the proofs, verdict, and judgment, are limited to the number so laid, or a number within it; and such an information requires an averment of the quantity of things seized, and would be bad without it. (e)

The information must state the offence with certainty, and not in the alternative; and therefore an information, stating that defendant imported, or caused to be imported, foreign silks, was held bad. (f)

It should seem that though usual, it is not necessary to conclude against the form of the statute, where the offence is minutely described, so as to bring the case within the terms of the act; at least, that this is so in the case of a revenue information in the Court of Exchequer. (g)

The 7 & 8 Geo. IV., c. 56, s. 7, and 9 Geo. IV. c. 76, s. 7, provide, that *one* justice may receive the information, and issue a summons for the appearance of the party before any two justices. (h)

The 7 & 8 Geo. IV., c. 56, s. 4, provides that, if smugglers are prosecuted as seamen fit for service, and it appears to the justices that they are not, they are to amend the information accordingly, *ante*, 206; and the 7 Geo. IV., c. 48, s. 17, directs any justice or justices of the peace to *amend* any information, conviction, or warrant of commitment, for any offence under any act for the prevention of smuggling, *ante*, 205.

## (6.) Of the Process upon the Information, &amp;c.

(b.) The process, summons, &c.

When the proceeding is in the *superior* Court, the 6 Geo. IV., c. 108, s. 84, 85, 86, 87, and 88, directs that a *capias* shall issue as the first process, specifying the amount of the penalty, and bail is to be given by the defendant for his appearance, and upon appearance bail is to be given for payment of the penalties: and if defendant be taken to prison, service of a copy of the information on the gaoler is sufficient; and if he

(a) 7 & 8 Geo. IV., c. 56, s. 10, *ante*, 206.

(b) *R. v. Todd*, 1 *Str.* 530.

(c) *Ante*, 208, 209.

(d) See the cases, *post*, 217, under the head of Conviction, and 3 *D. & R.* 461; 8 *Bar. & Cress.* 114.

(e) *The Attorney-general v. Jeffery*, *M'Clel. Rep.* 270.

(f) *R. v. Morley*, 1 *Young & Jer.* 221; and see *ex parte Pain*, 5 *Bar. & Cress.* 251; 7 *D. & R.* 678.

(g) *Attorney-General v. Rattenbury*, 9 *Price*, 397.

(h) *Ante*, 206.

neglect to appear for one term, judgment by default is to be entered; and execution upon a judgment after verdict is to lie against person, as well as real and personal estate. If the defendant is not worth *5l.*, he may defend *in forma pauperis*. The sheriff is to grant a warrant on writ of *capias*, indorsed by one of the solicitors for the Customs, and be indemnified from escapes in cases where a warrant has been granted at request of solicitor for Customs.

If the proceedings be before justices, they should issue their *summons* to the party accused, and which should be directed to the party, and should contain the substance of the charge, and fix a day and place for the appearance, allowing a sufficient time for the appearance of the party and his witnesses, and should be signed by the justices. There was no general provision in the act relating to Customs respecting the form of the summons, and therefore it was governed by the general law on the subject (*a*) until the passing of the 7 & 8 Geo. IV., c. 56, s. 7 & 8. *ante*, 206. But the 6 Geo. IV., c. 108, s. 75, regulated the summons where the offender was in the Isle of Man. (*b*) The 3 Geo. IV., c. 23, in general authorizes one justice to receive an information and issue the summons, though two or more must afterwards concur in the adjudication. But it should seem that, in proceedings for penalties against the Customs, they must have been before two justices. (*c*) But at length the 7 & 8 Geo. IV., c. 56, s. 7, enacted that one justice may receive the information, and issue the summons to appear before any two justices. (*d*)

The 7 & 8 Geo. IV., c. 56, s. 8, provides that it shall be deemed a good service of the summons if the same be left at the house or usual place of residence of the party, and directed to such party. (*e*)

But notwithstanding this provision, the summons should, in all cases, if possible, be personally served a reasonable time before the time appointed for hearing the information; (*f*) and unless the defendant appear, the summoning officer must swear to the due service of the summons before the two justices can proceed, and though appearance may cure the defect in summons, yet if the defendant show that he was too recently summoned, he may pray, and ought to have granted, a postponement of the time of hearing.

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&c. before  
Magistrates,  
&c.

Summons.

Service of the  
summons.

#### (7.) Of the Apprehension, Appearance or Default.

If the proceeding be in the superior Courts, we have seen that the party may be *arrested*, and imprisoned in default of bail. But no express power is given to justices to arrest or apprehend a party before conviction, on an information for penalties, but only to summon him, and, in default of his appearance, to proceed to the examination of the matter, and, upon due proof of the offence, to give judgment *ex-parte*.

The 9 Geo. IV., c. 76, s. 7, (*g*) however, authorizes one justice, either before or after information, to commit, for a reasonable time, and until the hearing, any person arrested and detained for any offence against any act for the prevention of smuggling. But a magistrate is liable in trespass if he commit a party, even *charged* with felony, for re-examination for an unreasonable time. (*h*)

7. Of the apprehension,  
appearance, or default,  
&c.

(a) See general rules as to form of a summons, *ante*, 199, and see *ante*, Vol. 1. of summonses in general, see *R. v. Hall*, 6 D. & R. 84.

(b) *Ante*, 199.

(c) 6 Geo. IV., c. 108, s. 73, *ante*, 197. (f) *R. v. Hall*, 6 Dowl. & R. 84.

(d) *Ante*, 206. (g) *Ante*, 207; and see 6 Geo. IV., c. 108, s. 83, *ante*, 202.

(e) *Ante*, 206. (h) *Davis v. Capper*, 10 Bar. & C.

(f) *Ante*, 206; and as to the service 28.

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&c. before  
Magistrates,  
&c.

### (8.) Proceedings on hearing Informations, &c.

(a.) Proceedings  
on hearing, &c.

Non-appearance.

Appearance, con-  
fession, &c.

If the defendant *does not appear*, the due service of the summons must be proved on oath; and though the party does not attend, still the justices are bound to observe the same formalities in inquiring into and deciding upon the merits of the case, as if he actually appeared and made defence. (a)

Appearance, as we have seen, cures all irregularities in the mode of summoning. The defendant has at least a right to have his attorney present before the justices, if not a right to have his defence conducted by such attorney; and if the magistrates direct the attorney to be removed from the justice-room, an action of trespass against him may be supported. (b)

Upon appearance of the party, he must first plead to the information. If the defendant confesses the charge, the justices have nothing more to do than pass judgment and impose the penalty, or take such other course as the statutes point out. Care, however, should be taken that the party clearly understands the charge with reference to which his confession is to be taken. The confession of the defendant will not supply the want of any due formalities in the information.

If the defendant denies the charge, and requires time to make his defence, he should be allowed a reasonable interval for that purpose.

The defendant, it seems, may appear, and defend by counsel or attorney, or by both. (c)

Evidence against  
the offender.

After appearance, and no time is prayed, the next step is to substantiate the information by testimony produced on the part of the prosecutor. (d)

It is a general rule, that if the facts which constitute the offence are all of a positive nature, they must be established affirmatively by the prosecutor. But, where they are of a negative nature, and afford ground of defence and exemption from penalty, they must come by way of defence in the proofs on the part of the defendant. (e)

Certain averments  
in information not  
to be proved in  
evidence.

But by 6 Geo. IV. c. 108, s. 104, 105, some important provisions were made with respect to the proof of certain affirmative averments which had before been considered as requiring strict proof on the part of the prosecution. (f)

Proofs.

By s. 104 it is enacted that, in case of any information or proceeding had under this or any other act relating to the revenue of Customs, the averments—

That the commissioners of the Customs or Excise have directed or elected such informations or proceedings to be instituted; or,

That any vessel is foreign or *British*; or,

That any person detained is or is not a subject of His Majesty; or,

That any person detained is or is not a seaman or seafaring man, or fit and able to serve in the navy; or,

That any person is an officer of Customs,—

Shall be sufficient, without proof as to such fact or facts, unless the defendant in such case shall prove to the contrary.

Proof of acting  
as an officer suf-  
ficient without  
producing com-  
mission.

And, by s. 105, it is enacted that, if upon any trial a question shall arise, whether any person is an officer of the Customs or Excise, &c.

(a) 10 Mod. 381; *R. v. Warnford*, 5 Dowl. & R. 489; *Paley on Convictions*, 26, 2d ed. solicitor of Customs, see *West v. Taunton*, 6 Bing. 404.

(b) *Daubney v. Cooper*, 10 Bar. & Cres. 237.

(d) *Paley on Convictions*, 2nd ed. 410, 411.

(e) *Ibid.*

(c) See *Daubney v. Cooper*, 10 Bar. & Cres. 237. And as to defence by the

(f) Sect. 104, 105, *ante*, 205.

evidence of his having acted as such shall be deemed sufficient; and such person shall not be required to produce his commission or deputation, unless sufficient proof shall be given to the contrary. (a)

Falling under this rule, is the provision made in s. 53, imposing penalties against persons making signals to smuggling vessels, which makes it an offence, whether the smuggling vessel be or be not within distance for the persons on board to see the signal made, *ante*, 192.

Thus, although the information must aver that it was preferred by the direction of the commissioners of Customs, that averment, as well as the allegation that any vessel is foreign or British, or that the defendant is or is not a subject of His Majesty, or a seaman or not, or fit for service, or that any person is an officer of Customs, is sufficient, without proof of such fact or facts, unless the defendant prove the contrary. (b) So the fact that a person is an officer in the army, navy, or marines, duly authorized, and on full pay, or officer of Customs or Excise, will be sufficiently proved by showing that he had acted as such. (c) So an order issued by the commissioners of Treasury, or Customs, or Excise, will be sufficiently proved by the official letter of instructions received by the officer of Customs or Excise. (d)

And if there is a provision that, in case any person be charged with or indicted for having made, or caused to be made, any fire or signal, for the purpose of giving information to a smuggling vessel, the burden of proof that such fire was not made with an unlawful intent shall lie upon the defendant. (e)

Every officer is a competent witness, although interested in the penalty. (f) The acts relating to the Customs do not (like the Excise act, 7 and 8 Geo. IV., c. 53) contain any provision as to the evidence of quakers, or to the summoning witnesses to give evidence, and therefore the law on those subjects is the same as in other proceedings before magistrates. Under the Excise laws it was held, that proof of a printed summons to witnesses, distributed and issued in blank by order of the commissioners to their agents, and afterwards filled up by one of them, without any special directions from the board, was sufficient, although not signed by any of the commissioners, nor issued in their individual names, such having been the constant usage in that respect since the introduction of the Excise. (g)

The evidence must be given and the witnesses sworn and examined in the presence of the defendant, in order that he may have the opportunity of cross-examination; and if the witnesses have been irregularly examined in his absence, they should be re-sworn in the defendant's presence. (h)

If the prosecutor have made out a *prima facie* case, the defendant is by evidence to disprove the charge, or bring himself within some proviso or exception which excuses or qualifies the fact charged, so as to exempt him from the penalty or forfeiture.

We have seen the cases in which the *onus probandi* is cast upon the defendant. (i)

With respect to goods seized by officers for non-payment of duties, or any other cause of forfeiture, it is provided that, in case any dispute shall arise whether the Customs, Excise, or Inland duties, have been paid for the same, or the same have been lawfully imported, or concerning the place from whence such goods were brought, the proof thereof shall lie on

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Signals.

What need not be proved by prosecutor.

Who are witnesses.

Mode of taking the evidence.

The defence evidence for defendant.

(a) See *ante*, 205.

(b) 6 Geo. IV., c. 108, s. 104.

(c) *Id.* s. 105.

(d) 7 Geo. IV., c. 48, s. 20, *ante*, 205.

(e) 6 Geo. IV., c. 108, s. 53, *ante*, 192.

(f) 6 Geo. IV., c. 108, s. 105, 106, *ante*, 205.

(g) *R. v. Steventon*, 2 East, 362.

(h) See Vol. I., title *Constitution*.

(i) *Ante*, 214.



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the owner or claimer of such goods, and not on the officer who shall seize or stop the same. (a)

It was held that a defendant in an information for the breach of the navigation laws was not entitled to a commission to examine witnesses abroad, on motion made to the Court of Exchequer under the 13 & 14 Car. II., pending the progress of the proceedings under the information. Nor would the Court grant an order to restore a vessel seized on such charges, where a question of identity might be raised on the trial of the cause, although the defendant offered security for re-delivering her if a verdict should be recovered against him: and that those different objects could not be blended in one motion. *Attorney-General v. Laragoity*, 2 *Price's Rep.* 166. But where a vessel had been seized by the officers of the Customs on charges of offences against other acts of Parliament than that usually called the navigation act, if, on the trial of the information filed thereon, the question be likely to turn on the fact of the ship belonging to a foreign subject, the Court will, on motion (a bill having been filed against the Attorney-General for that purpose), grant the defendant a commission to examine persons residing abroad, and make it part of the order that their depositions shall be received in evidence on the trial. The affidavit of the solicitor for the defendant will be received in support of such a motion; and it will be sufficient if he swear, that he is informed of and believes the statements in the bill, if he also add that his belief is founded on documents in his possession, and that, from the nature of the defence involving the question of what country the ship belongs to, he considers the commission necessary. *Laragoity v. Attorney-General*, 2 *Price's Rep.* 172.

The Court will not make an order that the witnesses of a defendant claiming goods seized by the Customs may be allowed to inspect them before the trial of the usual information in rem, on an affidavit of the party, that he believes he shall be able to prove by such witnesses that the goods are not contraband, but were made in this country, and, for the most part, by the witnesses who were required to be allowed to see them. (b)

The rules respecting the adjudication are, for the most part, the same as in ordinary cases. If several be concerned in obstructing a custom-house officer, each separately incurs the penalty. (c) The justices are empowered to mitigate the penalties, except in cases otherwise expressly provided for, so as the sum to be paid by the offender be not less than one-fourth of the amount of the penalty in which the party shall have been convicted. (d)

Persons detained for certain offences are to pay 100*l.*, or, if seafaring men, are to be sent into the naval service, if fit; and if not, to be imprisoned; (e) and if in service are to have only half-pay, and the rest to be applied for relief of their wives and families. (f)

Of the judgment,  
and mitigating  
the penalty.

(a) 6 Geo. IV., c. 108, s. 182.

(b) *Attorney-General v. Harding and others*, 4 *Price*, 381.

(c) *R. v. Clarke*, *Comp.* 610.

(d) 6 Geo. IV., c. 108, s. 76, *ante*, 199.

(e) 6 Geo. IV., c. 108, s. 80, 81, *ante*, 200, 201.

(f) 10 Geo. IV. c. 10, *ante*, 207.

## (9.) Of the Form and Requisites of the Conviction.

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&c.(9.) Form and  
requisites of  
conviction.

In the case of summary proceedings under the 6 Geo. IV. c. 108, against *smugglers*, a set of forms is prescribed in the schedule to that act. It becomes the duty of the justices, not only in these, but in all other cases in which a summary jurisdiction is given to them, to record their proceedings in a formal manner, agreeably to the directions of the forms contained in the schedule, where they are respectively applicable to the particular case. (a)

In practice, it is usual for the justices convicting a party under these acts to give the defendant a copy of the conviction, in order that if any objection arises upon the face of it, he may have the benefit of a *certiorari* to remove the proceedings into the King's Bench, and there take advantage of the objection.

The offences against the Customs' laws which most usually come under the cognizance of justices of the peace are those which are provided for by 6 Geo. IV. c. 108, "An act for the prevention of smuggling."

In order to simplify the task of drawing up convictions on this act, compendious forms are given in the schedules thereto, and

By sect. 82 it is enacted, that all informations before justices, &c. for any offences committed against this or any other act relating to the revenue of Customs, and all convictions for such offences, and warrants of justices, &c., founded upon such convictions, shall be drawn *respectively* in the form or to the effect in the schedules to this act annexed. (b)

This enactment being only directory, does not dispense with a strict observance of the general qualities of convictions, as pointed out in a previous part of this work. (c)

Among the most prominent of these qualities is *certainty*, and that the offence be not charged in the alternative. (d)

An instance in illustration of the necessity of observing this quality occurred in a late case, arising upon this very act, (e) and in which it was held that an alternative charge in a conviction is bad. A conviction on 6 Geo. IV. c. 108, s. 49, for being on board a boat liable to forfeiture by sect. 3 for having casks attached thereto "of the description used or intended to be used for the smuggling of spirits," was quashed for uncertainty, and *per Abbott, C. J.*:—"I know of no authority which says that a conviction must not have as much certainty as an indictment. Now this act of parliament mentions three sorts or descriptions of casks, which, if found on board or attached to a vessel, will render it liable to forfeiture. One is a sort which *is* used; the second is that *intended* to be used; and the third that which *is fit or adapted for the purpose*. Having mentioned these three as distinct descriptions of casks, I think the conviction should have set forth under which of the three the casks in question fell.

Another essential requisite in drawing up these convictions is to take care to describe the offence as it is defined in the statute, and expressly to allege all the facts necessary to support the proceeding, leaving nothing to be gathered by inference or intendment. Also if the offence be such only *sub modo*, the offender must appear to be within the penal conditions specified; and consequently all those modifying or exempting circumstances which are enacted in the same clause with the offence itself, and the absence of which is a constituent part of the crime, must be expressly noticed. Thus a conviction on 45 Geo. III. c. 121, s. 7, for carrying and conveying foreign brandy in half-ankers, alleged to be "*then and there*

(a) See *ante*, 207 to 210, and *ante*, Vol. I., *tit. Conviction*. (d) *R. v. Morley*, 1 Young & Jer. 221; *R. v. Pain*, *ante*, 190, 7 D. & R.

(b) See *ante*, 201, and the forms *ante*, 678.

207 to 211.

(c) See *ante*, Vol. I., *tit. Conviction*. (e) *Ex parte Pain*, 5 B. & C. 251; 7 D. & R. 678, S. C.

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liable to forfeiture, the said offence being committed against the provisions of the acts for the prevention of smuggling," is insufficient in not showing the particular grounds of forfeiture. (a) And in *Debrell's case* (b) the defendant was impressed and sent on board a king's ship for an offence against the 59 Geo. III. c. 121, s. 1, (c) which had provided, that if any foreign smuggling vessel or boat, in which there shall be one or more subjects of His Majesty, whether mariners or persons pretending to be passengers, shall be found or discovered to have been within four leagues of that part of the coast of Great Britain which is between the North Foreland on the coast of Kent, and Beachy Head on the coast of Sussex, or within eight leagues of any other part of the coast of Great Britain or Ireland, having on board any foreign brandy, &c., such vessel shall be forfeited; and every such subject of His Majesty who shall be found on board such vessel shall be liable to all the pains and penalties, &c. in like manner as persons, being subjects of His Majesty, found on board vessels liable to forfeiture, belonging wholly or in part to His Majesty's subjects, are by the previous laws liable. The return to a *habeas corpus*, by which the defendant was brought up, stated that he was found on board a vessel "discovered to have been and to be within eight leagues of that part of the coast of Great Britain called Suffolk, that is to say, within eight leagues of Orfordness, in the county of Suffolk." After argument it was held, that this was not a sufficient, certain averment that the vessel was not within four leagues of the coast of Great Britain, between the North Foreland in Kent, and Beachy Head in Sussex; and the prisoner was ordered to be discharged.

Statutory forms of conviction being provided by the 6 Geo. IV. c. 108, s. 82, in those cases which most frequently come before justices of the peace for adjudication, little room is left for, nor indeed can much assistance be expected from, this part of the work, in the way of instruction as to the mode of drawing up convictions on that statute.

In the forms thus given there is one remarkable feature: whilst it facilitates the province of the justices in drawing up a record of their proceedings, it deprives the party accused of the advantage which might reasonably be supposed to result from a different provision, namely, that there is no necessity for the convicting justices to set out the evidence on which their proceedings are founded. (d) The forms therein given are, indeed, as compendious as can well be imagined for the record of proceedings upon a code of laws confessedly severe; and by which, in some instances, the justices are expressly deprived of the power of mitigating penalties, or of limiting the duration of imprisonment. Great latitude is left to the presumption, not only that justices will in all cases act with scrupulous conscientiousness in the discharge of their duty, but that their judgments will be governed by discriminating intelligence and judicial accuracy.

The only difficulty in this part of the justices' duty seems to consist in the accurate statement of the charge of which the offender is convicted; for if that be aptly described, the task of drawing up the remainder of the record is reduced to the greatest simplicity.

In drawing up a conviction on this model, the following rules need only be observed:—

1. That the name of the county, city, &c. in which the conviction is made should be stated in the body of the conviction; for the mention of it in the margin is not sufficient. (e)

2. That the day and year of exhibiting the information must be specified,

(a) *Ex parte John Smith*, 3 Dowling & Ryland, 461; and see *The King v. Everett*, 8 Bar. & C. 114; 2 M. & R. 35.

(b) *Debrell's case*, 4 B. & A. 243.

(c) See similar enactment in 6 Geo. IV. c. 108, s. 2; *ante*, 176, 7.

(d) Which is in general necessary since 3 Geo. IV, ch. 23. In matter of *Rix*, 4 D. & R. 352.

(e) *R. v. Austin*, 8 Mod. 309.

as well that it may appear to be subsequent to the offence, and prior to all the subsequent proceedings, as in order to ascertain that the prosecution is within the time limited by the statute.

3. That the names and styles of the magistrates before whom the complaint is lodged be set forth, from which it must appear that they are magistrates of the county or place where the offence is afterwards stated to have happened, or in which the offender was taken, brought, or carried, (when under the 6 Geo. IV. c. 108, s. 74, (a)) in order that their jurisdiction may be shown on the face of the proceedings.

4. That the name of the officer giving the information should be stated; but this rather to show that the justices have acted upon due information, than from any disability in the officer to give evidence; for although he may be entitled to a share of the penalty on conviction, he is not on that account disqualified as a witness. (b)

5. That the information is made on oath is not necessary to appear on the face of the conviction, although the conviction can only take place on the oath of one or more credible witnesses. (c) Where the act does not authorize the succinct form of conviction, it must appear that the offence was proved on the oath of one or more credible witnesses. *Aldridge's case*. (c)

6. That the charge be accurately stated, as in the information, which must have all the certainty of an indictment as it respects the body or substance of the offence, with all its legal qualities, though it is not necessary to state the name of the defendant's wife when he is prosecuted for her offence. (d) In this is included, 1st. The name of the offender; 2nd. The time of the offence; 3rd. The place where committed; and 4th. The charge itself as defined by the statute, taking care to observe perspicuity and certainty.

Upon this latter point, it is an inflexible rule that no intendment can be admitted to help out a description defective in the want of an essential component. (e) The principal points to be attended to are the negation of exceptions, (f) and the avoiding of repugnancy and duplicity. (g) It is a rule, however, that nothing which may be rejected as surplusage shall vitiate. (h)

7. That the offence must be expressly alleged to be against the statute; but the contrary was decided in the case of a revenue information in the Exchequer for smuggling, on motion in arrest of judgment. (i)

8. That it be stated to have been duly proved, without setting out the evidence. Though this only applies where the particular act gives a concise form. In general the evidence must be stated. (k)

(a) *Kite's and Lime's case*, 1 B. & C. 101; 2 D. & R. 212; 1 D. & R. M. C. 222; *R. v. Edwards*, 1 East, 278.

(b) 6 Geo. IV., c. 108, s. 105.

(c) *R. v. Kiddy*, 4 D. & R. 734; 2 D. & R. M. C. 364; and *ex parte Aldridge*, 4 D. & R. 83; 2 B. & C. 600.

(d) *Attorney-General v. Saggors and others*, 1 Price, 182.

(e) *Vide R. v. Jukes*, 8 T. R. 542.

(f) See *Bluel v. Needs*, Com. 522; *R. v. Pratten*, 6 P. R. 559; *R. v. Sparling*, 1 Stra. 497; *Spicers v. Parker*, 1 T. R. 141; *Attorney-General v. Sherriff Forest*, 43; *R. v. Theed*, 1 Stra. 608; 2 Hale, P. C. 170; *R. v. Ford*, 1 Stra. 555; *R. v. Bryan*, 9 Stra. 1101; *R. v. Pemberton*, 2 Burr. 1036; *R. v. Hall*, 1 T. R. 320; *R. v. Stevens*, 5 East, 244.

(g) See 2 Hawk. c. 25, s. 58; *id.* c. 64, s. 37; *R. v. Stocher*, 1 Salk. 371; *Wingfield v. Jeffreys*, 1 Ld. Raym. 284; *R. v. Evered*, Cald. 26; *Cra. Jac.* 623; *Creswick v. Rooksby*, 2 Buls. 174; *R. v. Marsack*, 6 T. R. 771; *Ellis Exch.* 49; 2 Hawk. c. 25, s. 62, 71, 87; *Wyatt v. Aland*, 1 Salk. 324; *R. v. Sadler*, 2 Chit. 519; *R. v. North*, 6 D. & R. 143; *R. v. Pain*, 7 D. & R. 678.

(h) *Wilson v. Lane*, 1 Ld. Raym. 20; *R. v. Hall*, 1 T. R. 320; *King v. Pippel*, *id.* 235; *R. v. Jeffries*, 4 T. R. 767; *R. v. Horne*, Comp. 672.

(i) *Attorney-General v. Rattenbury*, 9 Price, 397, *ante*, 212.

(k) 3 Geo. IV., c. 23; 4 D. & R. 352.

(g) See 2 Hawk. c. 25, s. 58; *id.* c. 64, s. 37; *R. v. Stocher*, 1 Salk. 371; *Wingfield v. Jeffreys*, 1 Ld. Raym. 284; *R. v. Evered*, Cald. 26; *Cra. Jac.* 623; *Creswick v. Rooksby*, 2 Buls. 174; *R. v. Marsack*, 6 T. R. 771; *Ellis Exch.* 49; 2 Hawk. c. 25, s. 62, 71, 87; *Wyatt v. Aland*, 1 Salk. 324; *R. v. Sadler*, 2 Chit. 519; *R. v. North*, 6 D. & R. 143; *R. v. Pain*, 7 D. & R. 678.

(h) *Wilson v. Lane*, 1 Ld. Raym. 20; *R. v. Hall*, 1 T. R. 320; *King v. Pippel*, *id.* 235; *R. v. Jeffries*, 4 T. R. 767; *R. v. Horne*, Comp. 672.

(i) *Attorney-General v. Rattenbury*, 9 Price, 397, *ante*, 212.

(k) 3 Geo. IV., c. 23; 4 D. & R. 352.

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9. That it do adjudge the penalty in the manner prescribed by the statute in the form given in the precedent; and,

10. That it appear to be under the hands and seals of the justices.

The conviction need not be drawn up immediately on giving judgment; and it may be postponed even until after the penalty is levied, or commitment made out. (a) But it may often be of the greatest importance that it should be drawn up immediately, especially in those cases where persons are liable to be sent to sea for five years for smuggling. It is true that the legislature has provided, by sect. 81, (b) that in such case the party shall not be sent away from the united kingdom in less time than one month from the date of the conviction. The object of this provision, no doubt, was to give the party an opportunity of examining into the regularity of the proceedings; but if the conviction be not immediately drawn up, such a provision might, in many cases, be of no avail whatever to the party.

In concluding this subject, it is only necessary to observe, that if the justices have, by mistake, convicted a person improperly, it is right that they should stop immediately. If the conviction be only informal, it may be amended. (c) If a mandamus were to issue, directing them to levy the penalty, or enforce the proceeding, they might return that the conviction being invalid, they had therefore not enforced it; but where they have once fairly convicted a party, they ought to proceed to enforce that conviction; and though, if it be altogether a nullity, they are not bound to proceed in order to subject themselves to damages, it may be otherwise if the conviction is merely informal. (d) When, however, cases of this kind occur, the more general course is to represent the matter to the attorney-general, or to the commissioners of Customs, by whom care would be taken to prevent injustice arising from the mistake of the magistrate.

#### (10.) Of staying Proceedings by Nolle Prosequi.

(10.) Nolle prosequi.

If any prosecution whatever shall be commenced for the recovery of any fine, penalty, or forfeiture incurred under this or any other act relating to the revenue of Customs and Excise, it shall be lawful for H. M.'s attorney-general, if he is satisfied that such fine, penalty, or forfeiture was incurred without any intention of fraud, or that it is inexpedient to proceed in the said prosecution, to stop all further proceedings, by entering a *nolle prosequi* or otherwise on such information, as well with respect to the share of such fine, penalty, or forfeiture to which any officer or officers may be entitled, as to the king's share thereof. (e) The application to the attorney-general should be made as early as possible after intimation of the prosecution, and should be made by petition, and founded on an affidavit of the facts, showing the innocence of the party, or circumstances upon which the expectation of relief is founded. (f)

#### (11.) Of the Proceedings in Execution.

(11.) The execution.

Execution under these laws is, in general, in the first instance against the goods, and afterwards, in case there is no sufficient distress, against the body of the defendant.

(a) *Rex v. Barker*, 1 East, 186,  
(b) 6 Geo. IV., c. 108, s. 81, *ante*, 201.  
(c) 7 Geo. IV., c. 48, s. 17, *ante*, 212.  
(d) *R. v. Robinson*, 2 Smith, 274.

(e) See 6 Geo. IV., c. 108, s. 101, *ante*, 204.

(f) The forms of petition and affidavit will be nearly the same as under the Excise laws, *post*.

The remedies in the case of summary conviction before two justices are by warrants of distress or commitment, as the case may be, under the hands and seals of the convicting justices. But the imprisonment in case of nonpayment of the penalties, or in default of distress, shall not exceed six calendar months from the date of the warrant. (a) By 7 Geo. IV. c. 48, s. 18, this provision, however, is restrained in cases where the person is in confinement for penalties under 100*l.* Forms for these warrants in these cases respectively are given in the schedules to 6 Geo. IV. c. 108. (b)

The warrants may be directed either to any officer of Customs, or to any constable acting within the jurisdiction of the justices. See 5 Geo. IV. c. 18, s. 6.

Power is given to the justices to mitigate the penalties to a sum not less than one-fourth of the penalty in which the party is convicted. 6 Geo. IV. c. 108, s. 76, *ante*, 199.

By s. 72, provision is made for making allowances for the necessary subsistence of poor persons confined for offences against the laws of Customs and Excise. (c)

For the disposition of condemned vessels and boats, and all goods whatever, seized for any breach of the Customs' laws, provision is made by s. 62. (d)

For the disposition of seizures and penalties amongst officers acting under these laws, a scale of allowances by way of reward is made by s. 64. (e)

All penalties and forfeitures recovered before justices are to be paid to commissioners of Customs if they ordered the proceeding; and if ordered by commissioners of Excise, then to them. (f)

8. *Practice, &c. before Magistrates, &c.*

#### (12.) *Of Appeals, Affidavit, and Petition.*

The only cases in which the right of *appealing* is recognized in terms by the Customs' laws is from the decisions of commissioners, sub-commissioners, and justices in Ireland, which right is regulated by 6 Geo. IV. c. 106, s. 34. (g) In other cases no appeal is given, though it is otherwise under the Excise laws. (h)

(12.) *Of appeals, petition, &c.*

Where cases of hardship occur, the commissioners of Customs, or the lords of the treasury, have power by their general superintending jurisdiction to mitigate penalties or afford relief to the parties aggrieved. (i) In these cases the proper mode of application is by *petition* or memorial, verifying by *affidavit* the facts and circumstances under which the party seeks redress.

In the case of ships seized under certain circumstances, express power is given to the commissioners by 6 Geo. IV. c. 107, s. 128, &c. to remit the forfeiture or penalties incurred. (k)

A like provision is made by 7 Geo. IV. c. 48, s. 16, with respect to vessels liable to forfeiture for having smuggled spirits, tobacco, &c. on board. (l)

In cases of summary convictions by two justices for offences against these acts, the only remedy to the party, in case of any defect of legal form, is by *habeas corpus* and *certiorari*, which we will proceed to consider.

(a) 6 Geo. IV. c. 108, s. 76; *ante*, 199.

(b) See *ante*, 208.

(c) See *ante*, 205.

(d) *Ante*, 195.

(e) *Ante*, 195.

(f) 7 & 8 Geo. IV., c. 56, s. 11, *ante*, 206.

(g) *Ante*, 169.

(h) See 7 & 8 Geo. IV., c. 53, s. 81, &c. *post*.

(i) See 6 Geo. IV., c. 108, s. 80, *ante*, 201.

(k) *Ante*, 175; and see *In the matter of Maria*, 1 Price, 4.

(l) *Ante*, 181, 182.

8. Practice,  
&c. before  
Magistrates,  
&c.

(12.) Habeas  
corpus and cer-  
tiorari.

(13.) Of the removal by Habeas Corpus and Certiorari.

Where a party has been convicted under these acts, and there is any defect apparent on the face of the proceedings of the justices, the remedy open to him, if in execution and confinement, is to move the Court of King's Bench for a *habeas corpus* to bring up the body, and for a writ of *certiorari* to return the conviction into Court. (a)

Before these writs are granted, the Court must be satisfied, in the first instance, that there is some reasonable ground of objection to the proceedings. Upon this subject, however, an express regulation has been enacted by 7 Geo. IV. c. 48, s. 17. (b)

In practice the Court is in the habit of granting a rule *nisi* for the party to be discharged on *habeas corpus*, at his own election, in order to save him the expense of being brought up. If the writ be granted absolutely, and on the return thereto the grounds of objection are apparent, the Court will discharge the party on motion, or make the rule absolute, if the return has been made to the rule *nisi*. But the mode of discussing the objection is generally made matter of arrangement between the prisoner's counsel and the counsel for the crown; who, if the objections are substantiated, give the proper directions for the liberation of the party, or the remission of the penalty, without first bringing him into Court.

If a *certiorari* be granted in these cases, it seems that the effect of it is only to remove the conviction, and not the depositions of the witnesses. (c)

Should the objection arise on the warrant of commitment, however defective that instrument may be, still, if it shows that there has been a conviction, the Court will not take notice of the objection until the conviction has been returned; for if there be a good conviction the objection is cured. (d)

The Court for the same reason will not take notice of any objection unless it appears on the face of the conviction itself. (e) An objection to the information will be of no avail, if it does not appear in the conviction.

In the case of *R. v. Rogers*, where in the return to a writ of *habeas corpus*, two causes were assigned for the prisoner's detention—first, a conviction for smuggling, and secondly, desertion from the navy—it was held, that the latter cause could not be impeached on affidavit for the purpose of showing either that the prisoner never had been in the navy, or that he had been illegally impressed, the Court saying they were bound by the return: that if it was false, the remedy was by action. (f) But in a subsequent case it was held, that a person in custody of an officer of Customs on a charge of smuggling, and brought up by *habeas corpus* at common law, may controvert the truth of the return to the writ by affidavit, by virtue of 56 Geo. III., c. 100, s. 4. (g)

Where prisoners taken into custody after an engagement at sea between a revenue cutter and a vessel suspected to be a smuggler, of which the

(a) See titles *Certiorari*, Vol. I. and *Habeas Corpus*, Vol. III.

(b) See *ante*, 205.

(c) *Anon. Loft*, s. 348. The authority of this case, however, may be questioned. The principle which it lays down, if applied to convictions on the Customs' laws, by which the justices are not bound to set out the evidence on the record, might in many cases prevent relief to the party, by the writ of *certiorari*, however erroneously or unjustly he might have been condemned.

(d) *R. v. Hawkins*, *Fort*. 272; *R. v. Taylor*, 7 D. & R., 622. See *R. v. Shells*, 3 M. & S. 331; and *ante*, Vol. I. tit. *Commitment*.

(e) *R. v. Liston*, 5 T. R. 338; *R. v. J. Cashibury*, 1 D. & R. M. C. 485.

(f) *The King v. Rogers*, 3 Dowd. & R. 607; 1 D. & R. M. C. 59.

(g) *Ex parte Beeching*, 6 D. & R. 209; 4 B. & C. 136. See now 7 Geo. IV. c. 48, s. 17, *ante*, 205.

prisoners were the crew, were delivered on board a king's ship, and detained for fourteen days without any warrant, and were afterwards brought up by *habeas corpus* to be discharged, and it appearing from the return that there was cause to suspect them of a felony, the Court refused a discharge, and directed them to be committed to the custody of the marshal of the marshalsea, in order that they might be taken before a competent tribunal, to be dealt with according to law. (a)

8. *Practice, &c. before Magistrates, &c.*

(14.) *Of the Liability and Indemnity of Magistrates and Officers.*

Besides the protection afforded to magistrates and officers acting under them by the general law, (b) there are several special provisions in their favour when they act under the law of Customs.

(14.) Liability and indemnity of magistrates, &c.

The 6 Geo. IV., c. 108, s. 59, enacts that persons assaulting officers by force or violence may be transported, &c. (c) It indemnifies commanding officers of vessels in the service in hauling vessels on shore, without being liable to an action. (d) If an officer be wounded, he is to be provided for (e) and rewarded. (f) If a suit be brought on account of any seizure, and the judge shall certify that there was probable cause, the plaintiff is to have two-pence damages only, besides the things seized, or the value thereof, and the defendant fined not more than one shilling. (g) Process is not to be sued out against officers making seizures until a calendar month after notice, to be left at his usual place of abode; and a fee of twenty shillings to be paid for preparing or serving such notice. No evidence is to be adduced of any causes of action not stated in the notice. Proof of notice must be given, and the officer may tender amends, or pay the same into Court. The limitation of actions is six months. The general issue may be pleaded; and on verdict against plaintiff, defendant is to have treble costs. (h)

Under the former act, 28 Geo. III., c. 37, s. 24, it was held, that although the judge certified that there was probable cause for the seizure, yet he was liable to damages found by the jury for the deterioration of the goods seized whilst in his possession. (i)

Another protection afforded to officers acting under the laws for the prevention of smuggling is provided by s. 14, which requires justices of the peace to admit to bail persons charged with wounding or killing smugglers under the circumstances therein mentioned. 6 Geo. IV. c. 108, *ante*, 180.

But by sect. 106 it is enacted, that in all cases where any power, authority, or protection is given or granted by this act to any officer or officers of the navy, army, or marines, the same shall not extend, or be construed to extend, to any such officer or officers, unless such officer or officers shall be on full pay, and employed for the prevention of smuggling, under the proper authority to which such officer or officers is or are subjected, or under the authority of the commissioners of the Customs or Excise; and such officer or officers shall be deemed to be duly authorised for the purposes of the Customs' laws. *Ante*, 188, 186, 187.

In *R. v. Akers* (k), which was an information against a person for obstructing a custom-house officer in the execution of his duty, it was discussed whether the defendant had a right to go into the question whether the

(a) *Ex parte Marinel Kears and others*, 2 Dowling & Ryland, 411; 1 D. & R. M. C. 272.

(b) See *tit. Justices*, Vol. III.

(c) *Ante*, 194.

(d) *Id.* s. 60, *ante*, 194.

(e) *Id.* s. 61, *ante*, 194.

(f) *Id.* s. 62, 63, *ante*, 195.

(g) *Id.* s. 92, *ante*, 202.

(h) *Id.* s. 93 to 97, *ante*, 202, 203.

(i) *Laugher v. Brehm*, 5 B. & A. 762; 1 D. & R. 417.

(k) 6 *Esp. Rep.* 125, n.; and see *ante*, 186, 187, in notes.



8. *Practice, &c. before Magistrates, &c.*

Removal of action into the Exchequer.

goods were smuggled or not; and *Ld. Kenyon* held, that where the officers have an information of smuggled goods, which affords a probable ground to warrant the search, persons obstructing them in their search, or in the discharge of their duty, are liable to an information for the obstruction, whether smuggled goods are found or not; but the officers search at their peril.

It seems that if any matter properly cognizable on the revenue side of the Court of Exchequer is drawn into question elsewhere, or if the matter of the suit touches the profit of the King, it is a good ground of removing the action into the Exchequer; and an action against the commissioners of Excise, and officers executing a warrant of distress, on a conviction of the plaintiff, made by the commissioners of Excise, was accordingly removed into the office of pleas, upon the general grounds of this being a proceeding in the execution of their office. (a) So where an action of trespass was brought in C. P. against a revenue officer, for an assault and false imprisonment, it was in like manner, upon an affidavit that the cause of action arose wholly in the execution of the defendant's duty in seizing the plaintiff's ship on suspicion of smuggling, removed into the office of pleas of the Court of Exchequer. (b)

## II. Of the Excise (c.)

Introductory observations.

The duties of Excise, we have seen, are *inland* imposts, in contradistinction to the Customs, which are for the most part levied on articles the subject of *foreign* trade. (d) It is a tax laid, in the first instance, upon the manufacturer or vender of various commodities, though ultimately, in the increased price, falling upon the consumer. It is called *Excise* from the Dutch word *accise*, which signifies an assessment upon any commodity. Others derive it from the word *excisum*, as a part of the profit cut off from the whole. (e) The origin of these duties is traced to the reign of Charles the first. (f) They were afterwards adopted in the time of the Protectorate; and soon after the restoration two statutes were passed by which they were confirmed to the crown;—the statute, 12 Car. II. c. 23, which granted an *Excise* on certain commodities for the *King's life*; and the other statute (c. 24.) of the same reign, which, in lieu of the military tenures, granted to the king, his heirs and successors, an *hereditary Excise* (still so called, see 1 W. IV. c. 51) on certain other commodities. (g) This act contains many regulations still

(a) *Cawthorne v. Campbell*, 1 Anstr. 205.

(b) *Siddon v. East*, 1 *Crompt. & Jer.* 12.

(c) As to the Excise duties in general, see *Sinclair on Revenue*, *Highmore on Excise*, *Chitty's Commercial Law*, vol. I. 816 to 850.

(d) *Ante*, 107.

(e) *Gibb. Excheq.* 252.

(f) This was begun on the 11th of September, 1643, by the long parliament; and eight commissioners of Excise were appointed, and they were to choose their own officers, viz. their register, collectors, clerks, and other subordinate officers. The parliament's ordinance for the Excise bears date July 22, 1643. It was laid upon liquors, grocery-wares,

silks, linens, cloths, furs, and almost all other sorts of commodities, imported. That the reader may have a notion of it, it will be proper to mention some of the particulars. Every pound of tobacco not of the English plantation was to pay, over and above all Customs, 4s., and that of English plantation, 2s.; every tun of wine retailed, 6l., and for private use, 3l.; Malaga raisins, one farthing per pound; currants, 1d.; loaf-sugar, 4d. per pound; cloth of gold and silver, 8s., and tissue, 10s. a yard. Damask table-linen 1s. a yard, &c. It is somewhat strange, that *Rushworth* has not inserted this curious ordinance in his *Collections*. 2 *Rapin's Hist.* 497, note 3.—*Observations in former editions*.

(g) *Wood v. Chesel*, 2 *Bla. R.* 1255.

in force, and is the basis of all the subsequent enactments relating to the Excise.

*Introductory observations.*

The duties under the *superintendence or management* of the commissioners of Excise (43 Geo. III. c. 69, schedule A) are by way of distinction denominated the duties of *Excise*, and other duties under the *management* of the commissioners of Excise. The former are such imposts as have from their *first* establishment been within the receipt of the commissioners of *Excise*; the latter are such duties as were *originally* under the management of other commissioners appointed for that purpose, but which have since been *transferred*, by different acts of parliament, to the commissioners of the *Excise*, as in the instance of cocoa-nuts, coffee, snuff, tea, and tobacco, which were formerly under the management of the *Customs*, but were transferred to the Excise by 59 Geo. III. c. 52, table A.

Duties under the management of the commissioners.

Some of the duties in the receipt of the commissioners of Excise are also contra-distinguished from the duties of Excise by being called *inland duties*. Such are the duties imposed on chocolate, coffee, tea, and others, payable by the dealer or maker, over and above all Customs and other duties chargeable upon the goods on their *importation*.

Inland duties.

The duties of Excise, *properly so called*, are those imposed on ale, beer, cider, perry, mum, mead, and spirituous and other liquors; and also on malt, salt, hops, &c. being particularly so denominated by the laws of Excise, or so accounted by them.

What are duties of Excise properly so called.

But according to *R. v. Justices of Surrey*, (a) the distinction generally understood between Excise duties and inland duties, under the management of the commissioners of Excise, is this,—that the law of Excise is understood to relate only to *liquors*; and that the inland duties, under the management of the commissioners of Excise, are understood to apply to malt, dry goods, and other articles, which had of late been put under their management. (a)

Distinction between Excise and inland duties.

A *consolidation of the Excise duties* was effected by the 43 Geo. III. c. 69, which provided that after the 5th July, 1803, all the duties, allowances, bounties, and drawbacks of Excise and other duties under the management of the commissioners of England and Scotland respectively, granted by any act of parliament then in force, should cease; and the *duties* to be afterwards paid in respect of the goods mentioned in the act were set forth in tables, together with the *allowances, bounties, and drawbacks*; the special allowances directed by acts of parliament in force on 5th July, 1803, being also continued, except so far as they were expressly altered or repealed by the act 43 Geo. III. c. 69, s. 2; but this statute did not repeal the duties upon malt, mum, cider, and perry, granted by the 43 Geo. III. c. 3, nor the duties on malt, tobacco, and snuff, continued by 43 Geo. III. c. 4, except with respect to the duties imposed by that act on tobacco of the growth, production, and manufacture of the plantations or dominions of Spain and Portugal delivered for exportation; nor did the 43 Geo. III. c. 69, repeal or alter the countervailing duties of Excise upon the importation of goods into Great Britain from Ireland, granted by 39 Geo. III. c. 67, or the drawbacks payable on goods exported from Great Britain to Ireland, except the countervailing duties and drawbacks for beer, ale, and mum, bricks and tiles, cider, perry, hops, mead or metheglin, spirits, vellum and parchment, gilt and silver wire, and gold and silver thread, lace, or fringe. (b) Since the passing of the statute 43 Geo. III. c. 69, the Excise duties have been *increased* by different acts of parliament. (c) The collection of the duties on tobacco, snuff, coffee and cocoa-nuts, tea and pepper, is now wholly *transferred* to the Excise. (d)

Consolidation of duties in general.

(a) 2 T. R. 504.

(b) 43 Geo. III. c. 69, s. 1.

(c) *Vide* 56 Geo. III. c. 30, until 5th

April, 1819; and see *infra* as to particular articles.

(d) Customs' cns. act, 59 Geo. III., c. 52, table A.

*Introductory observations.*

The statute 59 Geo. III. c. 53, was passed to impose additional duties of Excise on tea, coffee and cocoa-nuts, tobacco and snuff, pepper, malt and British spirits, and to consolidate them with the former duties; and the laws of Excise relating to these articles were in some respects amended by the same statute. The statute 59 Geo. III. c. 53, contemplating that agreements may have been made antecedently to that statute for the sale or delivery of particular articles, without reference to the additional duties, provides that the contractors shall be considered as having authority to add a sum equivalent to the amount of duty to the price of any particular article. (a) The statute 43 Geo. III. contained a similar provision; and in the construction of that clause it was determined that a vender of spirits which were contracted for on the 21st of May, but were not shipped till after the 5th of July, 1803, was entitled to charge the purchaser with the duty imposed by the 43 Geo. III., no delivery, either actual or virtual, having taken place before the 5th of July; for the purchaser, whose duty it was to provide a vessel, had not provided one before that time; and the quantity of spirits, which the purchaser was to have, had not been set apart for him in the vender's warehouse. (b)

There are a great many other acts varying the regulations and the amount of the duties. With respect to the latter, there is not such a general consolidating act of the duties as in the case of the Customs. And although, as to the collection and management of the duties, the act 7 & 8 Geo. IV. c. 53, mentioned in the next division of the subject, very considerably ameliorates the law, yet still there is frequent occasion to refer to the former provisions, and it is very desirable that the whole law of Excise should be repealed and re-enacted in more lucid order.

Division of the subject.

The present laws of Excise may be considered under three principal heads.

I. *Of the Excise Laws in general.*II. *Of the particular Laws affecting certain particular Articles alphabetically arranged, as Ale and Beer, Brewers, Auctioneers, &c.*III. *Practical Proceedings before Justices for Penalties, &c.*

## I. OF THE EXCISE LAWS IN GENERAL.

I. *The Excise Laws in general may be subdivided into the following Heads.*

- (1.) *Repeal of former Enactments, and present Law.*
- (2.) *Of the Commissioners, Assistant Commissioners, Inferior Officers, Hours of Attendance, Bribery, &c.*
- (3.) *Of the Receiver-General, Comptroller, and Auditor.*
- (4.) *Lands and Buildings for Purposes of Excise.*
- (5.) *Present Duties of Excise, Allowances, Drawbacks, and on Licences, &c.*
- (6.) *Complaint of Overcharges.*
- (7.) *Of Entries, &c., of Searches and Seizures, with or without Warrant, obstructing Officers, removing Goods to avoid Duty.*
- (8.) *Of claiming Goods seized.*
- (9.) *Proceedings for Condemnation of Seizures, Warrants, &c.*

(a) 59 Geo. III., c. 53, s. 13, 2nd July, 1819.

(b) *Haig v. Napier*, 1 Dow. Rep. 255, App. from Co. of Sess.

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*Division of the  
subject.*

- (10.) *Prosecutions and Proceedings in Courts.*
- (11.) *Proceedings before Commissioners and Justices.*
- (12.) *Of Entry of Nolle Prosequi.*
- (13.) *Mitigating Penalties.*
- (14.) *Of staying Proceedings and restoring Penalties.*
- (15.) *Appeals and Warrants for Sale, &c.*
- (16.) *Writs of Capias, Arrest and Escape, &c.*
- (17.) *Selling forfeited Property, &c.*
- (18.) *Imprisonment Allowances.*
- (19.) *Forgery.*

[41 Geo. III., c. 91, s. 5; 28 Geo. III., c. 54; 52 Geo. III., c. 143, s. 10; 1 W. IV., c. 66.]

- (20.) *Protection to Officers, Notice of Action, &c.*

[In the 24th edition of Burn, *tit. Excise*, 2nd volume, there are provisions not to be found in the 7 & 8 Geo. IV., c. 53.]

- (21.) *Offenders escaping, &c.*
- (22.) *Trial of Offences.*
- (23.) *Ale-house Keepers harbouring Offenders.*

[See 9 Geo. II., c. 35, s. 36, which was repealed by 6 Geo. IV., c. 105.]

- (24.) *Deceiving Officers, false Weights, &c.*
- (25.) *Permits.*

[6 Geo. IV., c. 80, &c. *post.*]

**(1.) Repeal of former Enactments, and present Law in general.**

(1.) Repeal of former acts, and the present laws relating to the collection and management of the Excise duties.

The most important act on the subject of the Excise duties, especially as connected with the jurisdiction of justices of the peace and inferior peace-officers, is the 7 & 8 Geo. IV. c. 53, entitled, "An act to consolidate and amend the laws relating to the collection and management of the revenue of Excise throughout Great Britain and Ireland," (a) which, after reciting that the 4 Geo. IV. c. 23, consolidated the boards of Excise, and that the laws relating to His Majesty's revenue of Excise had become very numerous and complicated, and that it would generally tend to the public benefit to consolidate and amend the same, and for that purpose to collect into one act the several powers, authorities, regulations, and provisions thereof, which apply or relate to the collection and management of the said revenue, then proceeds with the new enactments, and declares that they shall commence from 5th January, 1828; and it is enacted in

Sect. 127, "That from and after the commencement of this act, all laws, powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things, provided for or contained in any act or acts of parliament in force at and immediately before the commencement of this act, relating to the revenue of Excise in any part of the united kingdom, or to any matter or thing expressly provided for by this act, which are repugnant to or inconsistent with the several matters, clauses, provisions, and regulations of this act, or any of them, shall be and the same are hereby respectively repealed, and shall no longer be put in force

Former regulations which are inconsistent with this act, declared to be repealed.

(a) It will be observed that the enactments in this statute are, in many respects, similar to the ancient *hereditary act*, 12 Car. II., c. 24.

1. *Repeal, &c.*

or observed in any part of the united kingdom ; save and except so far as the same repeal or repeals any former act or acts, or any part or parts of any former act or acts of parliament ; and save and except so far as the same, or any of them, relate or relates to the recovering, suing for, mitigating, levying, or paying any duty, or any arrear thereof, charged or chargeable, or any penalty or forfeiture incurred for any offence against any act or acts of parliament relating to the revenue of Excise, which shall have been or shall be committed, and for the recovery of which duty or arrear thereof, penalty or forfeiture, proceeding shall have been commenced before and shall be depending at the time of the commencement of this act ; and save and except also as to any duty or arrear thereof charged or chargeable, and penalty or forfeiture which shall have been incurred, under or by virtue of any act or acts of parliament relating to the revenue of Excise by this act repealed as aforesaid, for which no proceedings for the recovery thereof shall have been commenced before and shall be depending at the commencement of this act."

Sub-commissioners and commissioners of appeal in Ireland continued to complete depending proceedings.

All duties and penalties shall, after the commencement of this act, be recovered as directed by this act.

Sect. 128. " Provided always, that all sub-commissioners and commissioners of appeal in Ireland, who at any time before the commencement of this act shall have been appointed under the laws relating to the revenue of Excise in Ireland, shall respectively continue to execute and perform the several duties of their respective offices until all proceedings which shall have been or shall be begun before and be depending at the commencement of this act before them judicially shall be completed or ended ; and that it shall be lawful for such several sub-commissioners and commissioners of appeal respectively in Ireland, and they are hereby respectively authorized and required, to continue to act in the performance of their several judicial duties pursuant to the laws in force at and immediately before the passing of this act, for the purpose of and until all such proceedings shall be completed or ended ; and that nothing in this act shall extend or be deemed or construed to extend to repeal, annul, or make void any law or part of any law, or any act or acts of parliament, or any part thereof, relating to such proceedings, or any of them, or any part thereof, until all such proceedings shall be completed and ended. Provided always, that all penalties and forfeitures which shall have been or shall be incurred under or by virtue of any act or acts of parliament relating to the revenue of Excise before the commencement of this act, for the recovery of which no proceedings shall have been commenced before and be depending at the commencement of this act, and all penalties and forfeitures which shall be incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise after the commencement of this act, shall be recovered and applied in such manner and by such form or forms and ways of proceeding as are by this act directed and provided ; any thing in any act or acts of parliament to the contrary thereof notwithstanding."

As the s. 127 only repeals those prior enactments which are *repugnant to or inconsistent with* the new regulations, it follows that where there is any prior law not repugnant to or inconsistent with the new law, it is still applicable and in force ; and there seem a few provisions of this nature relating to offenders escaping, &c. ; the trial of felonies in any county ; the deceiving officers by false weights, &c. In the notes to this edition the former enactments and decisions upon them are referred to.

(2.) *Of the Commissioners, Inferior Officers, bribing Officers, Hours of Attendance, &c.*2. *Of the commissioners, &c.*

[*Former acts*, 12 Car. II., c. 24; 15 Car. II., c. 11, and c. 26; 5 W. III., c. 20; 11 Geo. I., c. 30; 12 Geo. I., c. 28; 23 Geo. II., c. 26; 8 Geo. III.; 49 Geo. III., c. 66, s. 2.]

By 7 & 8 Geo. IV. c. 63, s. 1, it is enacted, "That it shall be lawful for His Majesty, his heirs and successors, from time to time to appoint, under the great seal of the united kingdom, any number of persons not exceeding thirteen to be commissioners of Excise for the collection and management of the whole of the revenue of Excise arising in and throughout the whole of the united kingdom of Great Britain and Ireland, and the islands and territories thereunto respectively belonging, and also to appoint any number of persons not exceeding four to be assistant commissioners of Excise, to sit and act in manner hereinafter mentioned, in and for Scotland and Ireland; and that each of such commissioners and assistant commissioners, when so appointed, shall have and hold his respective office during His Majesty's pleasure."

Appointment of commissioners of Excise for the united kingdom, and assistant commissioners for Scotland and Ireland.

Sec. 2 enacts, "That any four or more of the commissioners of Excise shall constitute a board of commissioners of Excise for the united kingdom, for the collection and management of the whole of the revenue of Excise arising in and throughout the whole of the united kingdom of Great Britain and Ireland, and the islands and territories thereunto respectively belonging, and of all the duties imposed or to be imposed by any act or acts of parliament which have been or are or shall be made payable to His Majesty, his heirs and successors, as duties of Excise, or duties under the collection and management of the commissioners of Excise, and of all arrears of any of such duties, and of all penalties and forfeitures arising or which shall have arisen, or shall arise or accrue, or remain or become due to His Majesty, his heirs and successors, within the said united kingdom of Great Britain and Ireland, and the islands and territories thereunto respectively belonging, under any law or laws touching or relating to the said revenues; and that every such board shall have full power and authority to order and direct, and to do and permit to be done, throughout the united kingdom, or in any part thereof, all acts, matters, and things which shall by this act, or by any other act or acts of parliament, be required to be made or done by the commissioners of Excise, or which shall relate to or in anywise concern the revenue under their collection and management; and that all rules, orders, acts, matters, and things relating to or concerning the said revenue, which shall have been or shall be made or done by any such board, shall be good, valid, and effectual in law, to all intents and purposes whatsoever, as if made or done by all the commissioners of Excise. Provided always, that every such board, and the commissioners of Excise respectively, shall in all things relating to the execution of the duty of such board, or of such commissioners respectively, be subject to the authority, direction, and control of the lord high treasurer and commissioners of the treasury, and shall obey all orders and instructions which shall have been or shall from time to time be issued to such board or commissioners in that behalf by the lord high treasurer, or any three or more of the commissioners of the treasury."

Four commissioners to constitute a board of Excise.

Their power and authority.

Commissioners subject to orders and control of the treasury.

Sec. 3. "That in all cases relating to the revenue under the collection and management of the commissioners of Excise, where 'England' or 'Great Britain' is or shall be mentioned in this act, or in any other act or acts of parliament relating to the revenue of Excise, the same shall be deemed and taken to extend to and include Wales and the town of Berwick-upon-Tweed; and that where 'the united kingdom' is or shall be

Wales and Berwick-upon-Tweed included in all acts mentioning England or Great Britain.

## 2. Of the commissioners, &amp;c.

Definition of other terms.

Commissioners to appoint collectors and other subordinate officers, and to give them such salaries and allowances as the treasury shall direct. (a)

The number of inferior officers shall not be increased without the permission and approval of the treasury.

mentioned, the same shall be deemed and taken to extend to and include Great Britain and Ireland, and the islands and territories thereunto respectively belonging; and that where 'the revenue of Excise' is or shall be mentioned, the same shall be deemed and taken to extend to and to include the whole revenue under the collection and management of the commissioners of Excise; and that where any power or authority (excepting such power and authority as is restricted to the limits of the chief office of Excise in London) is or shall be given to the commissioners of Excise generally, the same shall be deemed and taken to extend over and throughout the united kingdom as aforesaid; and that where any power or authority is or shall be given to the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, the same shall be deemed and taken to extend only over and throughout Scotland or Ireland, and the islands and territories thereof respectively; and that this act, and the several provisions thereof respectively, shall be deemed and taken to apply to all acts of parliament relating to the revenue of Excise which shall hereafter be made, except in any of the above cases where the same shall be otherwise specially directed or provided."

Sect. 4. "That it shall be lawful for the commissioners of Excise, or any four or more of them, and they are hereby authorized and required from time to time to appoint, by writing under their hands and seals, such and so many collectors and other subordinate officers, (b) and accountants, clerks, and assistants, for collecting, receiving, managing, and accounting for the said revenue of Excise, as to the said commissioners, or any four or more of them, shall seem meet and requisite, taking in the name of His Majesty, from them and every of them, sufficient security for the due performance of the respective duties committed to their charge; and all such commissions and appointments shall be deemed, construed, and taken to be good, valid, and effectual, and the persons holding the same shall have full power and authority in respect thereof to execute the duties of their respective offices, and to enforce, in the execution thereof, all laws, regulations, penalties, and forfeitures relating to the said revenue in every part of the united kingdom; and it shall be lawful for the said commissioners, or any four or more of them, and they are hereby authorized to place, remove, promote, suspend, reduce, discharge, or restore, as they shall see cause, any such collector or other subordinate officers, or accountants, clerks, or assistants, and to allow and pay to them respectively for their salaries, and to them or to any other person or persons, for charges necessarily arising in the collection or management of the said revenue, such sum and sums of money, allowance and allowances, as shall be conformable to such rules, regulations, and directions as may from time to time be received by the said commissioners from the lord high treasurer, or any three or more of the commissioners of the treasury, for the direction and guidance of the commissioners of Excise in such behalf. Provided always, that the number of each description of officers and persons so to be appointed shall not in any case (except as hereinafter mentioned) exceed the number which shall be fixed and allowed by any general warrant or warrants, order or orders, which shall have been or shall from time to time be issued for that purpose by such lord high treasurer or commissioners of the treasury: and provided also, that in all cases in which it may be deemed necessary to appoint a greater number of officers of the lowest class than shall have been authorized by any such

(a) As to appointment of gaugers, see 12 Car. II., c. 24, s. 33, and *post*, 238.

(b) There are several subordinate officers of various descriptions in each department of the Excise and Customs

who bear no legal name, and are admitted into the service on taking oath of office, giving bond if required, and most ample testimonies of their qualifications. 1 *Highmore on Excise*, 12.

warrant or warrants, order or orders, the persons to be named to every such appointment shall be submitted by the commissioners of Excise to and approved by such lord high treasurer or commissioners of the treasury.

Sect. 5. "Provided always, that all collectors and other subordinate officers, and accountants, clerks, and assistants, who are or have been or shall be from time to time duly and legally appointed by the commissioners of Excise, do and shall remain and continue in their respective offices, notwithstanding the death or removal of any commissioner or commissioners by whom they were so appointed, and notwithstanding any alteration, change, or other determination of the commission of such commissioners, until the respective appointment of such collectors or other subordinate officers, or accountants, clerks, or assistants, shall become void by death, or shall be revoked by the commissioners of Excise."

Sect. 6. "That it shall be lawful for the lord high treasurer, or any three or more of the commissioners of the treasury, from time to time to order and direct any one or more of the commissioners of Excise, together with two of the assistant commissioners of Excise, to sit and act as such commissioner or commissioners and assistant commissioners respectively in and for Scotland, and to order and direct any one or more of the commissioners of Excise, together with two of the assistant commissioners of Excise, to sit and act as such commissioner or commissioners and assistant commissioners respectively in and for Ireland, for the despatch of business in those parts respectively of the united kingdom, under the control and direction nevertheless of the board of commissioners of Excise; and that such commissioner or commissioners and assistant commissioners for Scotland and Ireland respectively (under such control and direction as aforesaid) shall have and be invested with the collection and management of the revenue of Excise, and all matters and things relating thereto arising in Scotland and Ireland respectively; and that any two of such commissioner or commissioners and assistant commissioners, in Scotland and Ireland respectively, shall (under such control and direction as aforesaid) have full power and authority to order and direct, and to do and permit to be done, all acts, matters, and things relating to the revenue of Excise in Scotland and Ireland respectively; and that all rules, orders, acts, matters, and things which shall have been or shall be so made and done by such commissioner or commissioners and assistant commissioners, or any two of them, in Scotland and Ireland respectively, shall be good, valid, and effectual in law, to all intents and purposes whatsoever. Provided always, that all and every such commissioner or commissioners and assistant commissioners, in Scotland and Ireland respectively, shall in all things observe, perform, and fulfil, and cause to be observed, performed, and fulfilled, in and throughout Scotland and Ireland respectively, the several orders, rules, directions, and regulations, touching or relating to the said revenue, which shall have been or shall be made or given by the board of commissioners of Excise."

Sect. 7. "That no person who shall be appointed to be a commissioner or assistant commissioner of Excise, or who shall be appointed to any other office relating to the revenue of Excise, shall be capable of acting as such commissioner or assistant commissioner, or in any other such office, until he shall, before two or more justices of the peace in the county where his office is or shall be, or before one of the barons of the Exchequer of England, Scotland, or Ireland, take and subscribe the oath hereinafter following; that is to say,

*I, A. B., do swear to bear true allegiance to His Majesty, and to execute the office of* , *to which I am appointed, truly and*

## 2. *Of the commissioners, &c.*

Inferior officers shall continue, notwithstanding any change of the commissioners.

Appointment of assistant commissioners for Scotland and Ireland, under the control of the commissioners of Excise.

No person shall be capable of acting in any office under the Excise before he has taken the following oath. (a)

(a) See 12 Car. II., c. 23, s. 24; 15 Car. II., c. 11, s. 27; and see *Highmore on Excise*, 171.



**2. Of the commissioners, &c.**

Certificate of the taking of such oath to be recorded.

**Penalty for.**

No member of the House of Commons to be a commissioner or officer of Excise.

No officer to vote or interfere in elections for members of parliament under a penalty of 50*l.* and of being rendered incapable of holding any office. (a)

*faithfully, without favour or affection; and that I will from time to time true account make and deliver to such person or persons as shall be duly appointed to receive the same; and that I will not take any fee or reward in or for the execution of the said office from any other person than H. M., or those whom H. M. shall appoint in that behalf.*

And the justices of the peace, or baron of the Exchequer, before whom such oath as aforesaid shall have been taken and subscribed, shall certify the taking thereof as aforesaid to the general quarter sessions, or Court of Exchequer, as the case may be, to be there recorded, and to the auditor of Excise, by whom such certificate shall be entered; and if any person shall act as a commissioner or assistant commissioner of Excise, or in any other office relating to the revenue of Excise, before he shall have taken and subscribed such oath as aforesaid, such person shall, for every month in or for which he shall have so acted, without having taken such oath, forfeit and lose the sum of fifty pounds."

Sec. 8. "That no person being a member of the Commons House of Parliament shall, during the time of his being such member of Parliament, be capable of being a commissioner or assistant commissioner of Excise, or commissioner of appeal under this act, or of being an officer of Excise, or person employed in the charging, collecting, or managing of any part of the revenue of Excise, or in comptrolling or auditing the accounts thereof, nor shall be capable of taking, holding, or executing, or being in any manner concerned in executing, either by himself or deputy, or by any other person or persons in trust for him, or for his use and benefit, any such office or employment; and if any person shall, during the time of his being a member of the Commons House of Parliament, at any time take, hold, or execute, or be in any manner concerned in executing, either by himself or deputy, or by any other person or persons in trust for him, or for his use and benefit, any such office or employment as aforesaid, such person shall be and is hereby declared to be incapable of sitting, voting, or acting in any manner as a member of the Commons House of Parliament in such parliament."

Sec. 9. "That no commissioner or assistant commissioner of Excise, or commissioner of appeal under this act, or any officer of Excise, (b) or person employed in the charging, collecting, or managing of any part of the revenue of Excise, or in comptrolling or auditing the accounts thereof, shall be capable of giving his vote for the election of any person to serve in parliament; and if any commissioner or assistant commissioner, or commissioner of appeal, or any officer or other person hereby made incapable of voting as aforesaid, shall nevertheless presume to give his vote during the time he shall hold, or within two calendar months next after he shall have ceased to hold or execute any office or employment as aforesaid, such vote so given shall be held null and void to all intents and purposes whatsoever; and every such commissioner, assistant commissioner, commissioner of appeal, officer, and person as aforesaid, who shall give any such vote, or who shall, by word, message, or writing, or in any other manner whatsoever, endeavour to persuade any elector to give, or to dissuade any elector from giving his vote for the election of any person to serve in parliament, shall for every such offence (the same being proved by two or more credible witnesses upon oath) forfeit and lose the sum of five hundred pounds, one moiety whereof shall be paid to the informer, and the other moiety thereof to the poor of the parish in which such offence shall have been committed and such penalty incurred; and every such penalty shall and may be recovered by any person who

(a) See a decision on 22 Geo. III., c. 41. *Evans v. Stevens*, 4 T. R. 459.

(b) It was held that the words "officer," or "officers of Excise," in the 57

Geo. III., c. 123, s. 13, are general, and apply to any officer of Excise, &c. *The Attorney-General v. Slee, M'Clint. Rep.* 567; 1 Chitty's Col. Stat. 268, note a.

shall, within twelve months next after such penalty shall have been incurred, inform or sue for the same, by action of debt, bill, plaint, or information, in any of His Majesty's Courts of Record at Westminster, Elinburgh, or Dublin, in which no essoign, protection, privilege, or wager of law, nor more than one imparlance, shall be allowed; and every person convicted of any such offence shall be and is hereby declared to be incapable of ever holding or executing any office or place of trust whatsoever under His Majesty, his heirs or successors. (a) Provided always, that nothing herein contained shall extend, or be deemed or construed to extend, to repeal or to alter any of the laws touching or in anywise relating to election in any part of the united kingdom, excepting so far as is hereby expressly provided."

SECT. 10. "That no officer of Excise or person employed in the collection or management of or accounting for the revenue of Excise, or any part thereof (except the keeper of an office of Excise as hereinafter mentioned), shall, whilst he shall be such officer, or so employed as aforesaid, deal or trade in any goods or commodities subject to any duty of Excise, or shall carry on or be concerned in any trade or business which is or shall be under or subject to any law or laws of Excise, upon pain of forfeiting for such offence, on due conviction thereof, his office or employment, and being by such conviction rendered incapable of ever holding any office, trust, or employment in or relating to the revenue of Excise."

SECT. 11. "And be it further enacted, that no commissioner or assistant commissioner of Excise, or officer of Excise, or person employed in the collection or management of or accounting for the revenue of Excise, or any part thereof, shall, during the time of his acting as such commissioner or assistant commissioner or officer, or being so employed as aforesaid, be compelled to serve as a mayor or sheriff, or in any corporate or parochial or other public office or employment, or to serve on any jury or inquest, or in the militia; any law, usage, or custom to the contrary thereof notwithstanding."

SECT. 12. "And be it further enacted, that if any commissioner or assistant commissioner of Excise, or commissioner of appeal under this act, or any officer of Excise, or person employed in the collection or management of or accounting for the revenue of Excise, or any part thereof, shall directly or indirectly ask or demand or take or receive any sum of money or other recompense or reward whatsoever, or any promise or security for any sum of money, or other recompense or reward whatsoever, or shall make, or enter into, or acquiesce in any collusive agreement with any person or persons to do or to conceal or to connive at any act or thing whereby any of the provisions of this act, or any other act or acts of Parliament relating to the revenue of Excise, shall or may be evaded or broken, or the said revenue defrauded, or to do or perform, or to permit or suffer to be done or performed, any act or thing contrary to the duty of such commissioner or assistant commissioner of Excise, or commissioner of appeal, or such officer or person so employed as aforesaid, or to neglect or forbear or omit to do or perform any act or thing belonging or appertaining to the duty of such commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, every such commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, and so offending, shall for every such offence forfeit and lose the sum of five hundred pounds, and being thereof duly convicted, shall be thereby

2. *Of the commissioners, &c.*

No person holding any office of Excise shall deal in any goods subject to the Excise laws. (b)

Commissioners and officers of Excise exempted from serving in any public office, or in the militia.

Penalty on persons employed in the Excise taking money or reward, or entering into any collusive agreement contrary to their duty. (c)

(a) See 5 W. III., c. 20, s. 48; 11 & 12 W. III., c. 2; 12 & 13 W. III., c. 10.

(b) Under 12 Geo. I., c. 28, s. 7, forfeiture of 50*l*.

(c) See act 11 Geo. I., c. 30, s. 40.

*Assumpsit* will not lie to recover money promised to an officer for doing his duty, *Crowp*. 805. Money had and received lies against custom-house officer who has taken extortionate fees; *Stevenson v. Mortimer*, *Crowp*. 805.

2. *Of the commissioners, &c.*

Penalty on person offering such reward, or proposing such agreement, 400*l.* (b)

rendered incapable of thereafter serving His Majesty in any office or employment whatsoever; (a) and if any person shall directly or indirectly give or offer or promise to give to such commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, any sum of money or other recompense or reward whatsoever, or any security for any sum of money or other recompense or reward whatsoever, or shall propose or make or enter into any collusive agreement with such commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, in order to corrupt and prevail upon such commissioner or assistant commissioner of Excise, or commissioner of appeal, or such officer or person so employed as aforesaid, to do or to conceal or to connive at any act or thing whereby any of the provisions of this act, or any other act or acts of parliament relating to the revenue of Excise, shall or may be evaded or broken, or the said revenue defrauded, or to do or perform, or to permit or suffer to be done or performed, any act or thing contrary to the duty of such commissioner or assistant commissioner of Excise, or commissioner of appeal, or such officer or person so employed as aforesaid, or to neglect or forbear or omit to do or perform any act or thing belonging or appertaining to the duty of such commissioner or assistant commissioner of Excise, or commissioner of appeal, or such officer or person so employed as aforesaid, every person so offending shall for every such offence (whether such sum of money or other recompense or reward, or promise or security for the same, or such agreement, be received, accepted, entered into, acquiesced in, or performed, or not) forfeit and lose the sum of five hundred pounds."

Indemnification of either party first giving information against the other.

Sect. 15. "Provided always, that in case any commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, who shall have directly or indirectly asked or demanded, or taken or received, any sum of money or other recompense or reward whatsoever, or any promise or security for the same, or who shall have made or entered into or acquiesced in any collusive agreement as aforesaid, shall, before any complaint or information shall have been made or given, or any proceeding had against him for committing such offence, give information of the gift or offer of, or promise to give, any sum of money or other recompense or reward whatsoever, or any security for the same, or of any collusive agreement proposed or made or entered into as aforesaid, and proceedings being thereupon instituted, such penalty as aforesaid shall be recovered against the person concerning whom such information shall have been given; or in case any person who shall have directly or indirectly given or offered, or promised to give, any sum of money, or other recompense or reward whatsoever, or security for the same, or who shall have proposed or made or entered into any collusive agreement as aforesaid, shall, before any complaint or information shall have been made or given, or any proceedings had against him or her for having committed such offence, give information of the asking or demanding, or of the taking or receiving as aforesaid, of any sum of money, or other recompense or reward whatsoever, or any promise or security for the same, or of any collusive agreement made or entered into or acquiesced in as aforesaid, by any such commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, and proceedings being thereupon instituted, such penalty as aforesaid shall be recovered against the commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, concerning whom such information as aforesaid shall have been given; then and in either of such cases the party so first

(a) See 15 Car. II., c. 11, s. 16.

(b) See 11 Geo. I., c. 30, s. 40.

giving information as aforesaid shall be exempted from and indemnified against the penalties and disabilities imposed on such party for such offence by this act."

Sect. 14. "That the board of commissioners of Excise shall sit at the chief office of Excise established in London, and directed and appointed to be called the Excise office by an act passed in the eighth year of the reign of His late Majesty King George the Third (amongst other things), for carrying into execution an agreement made for the purchase of Gresham College and the ground and buildings thereunto belonging, and for vesting the same unalienably in the Crown, for the purpose of erecting and building an Excise office there; or at such other place within the limits hereinafter mentioned, as the lord high treasurer, or any three or more of the commissioners of the treasury, shall in that behalf appoint; and that in all cases, and to and for all intents and purposes whatsoever, the chief office of Excise shall be deemed and taken to be the office of Excise, unto which all other offices of Excise within the united kingdom shall be subordinate and accountable; and that all parts of the cities of London and Westminster, the borough of Southwark, and the several suburbs thereof, and parishes within the weekly bills of mortality, together with the parishes of St. Mary-le-bone and St. Pancras in the county of Middlesex, shall be within and under and subject to the immediate jurisdiction of such chief office of Excise."

Sect. 15. "That an office of Excise shall be held and kept in Edinburgh and in Dublin respectively; and the commissioners of Excise shall appoint, under their hands and seals, or under the hands and seals of any four of them, such person as they think needful in Edinburgh and in Dublin respectively, and in each such respective town throughout the united kingdom in which a market is or may be legally held every week, or oftener, throughout the year, as they may think fit, and in the several towns of Holyhead, Llangefni, and Llanerchthmethyl, in addition to the market town of Beaumaris, in the county of Anglesea, to hold and keep therein, and in some known and public place thereof, an office of Excise, at which all entries shall be made (other than the entry required to be made of any building, place, vessel, or utensil for the purpose of carrying on trade or business), and at which all duties of Excise shall be received, and all other matters and things relating thereto shall be performed, as is or shall be directed by this act, or any other act or acts of parliament relating to the revenue of Excise; and the person respectively so appointed (the place where he or she intends to hold or keep such office being immediately after such appointment published in full and open market, or otherwise publicly made known) shall attend at and keep open such office during such times as are in this act or may hereafter be in that behalf directed."

Sect. 16. "That the chief office of Excise in London, and the offices of Excise in Edinburgh and Dublin respectively, shall be kept open from eight of the clock in the morning until three of the clock in the afternoon; and that the office of Excise in every other place shall be kept open from eight of the clock in the morning until two of the clock in the afternoon, for the transaction of business, or from or to such other hours as shall from time to time be directed by the lord high treasurer, or any three or more of the commissioners of the treasury; and that no holidays whatever shall be permitted or allowed to be kept at the said chief office in London, or the offices in Edinburgh and Dublin respectively, or at any other office of Excise, except Christmas-day and Good Friday in every year, and any days which are or shall be appointed by His Majesty's

2. *Of the commissioners, &c.*

The board of commissioners of Excise to sit at the chief office of Excise established in London.

The limits thereof. (a)

Offices of Excise to be held in Edinburgh and Dublin; and commissioners to appoint persons to hold offices of Excise in the market towns of the united kingdom, and in certain towns in Anglesea. (b)

Regulation of office-hours and attendance, and appointment of certain days to be kept as holidays. (c)

(a) As to this head office, see 12 Car. II., c. 24, and 5 W. III., c. 20, s. 16.

(b) See former act, 15 Car. II., c. 11, s. 10.

(c) See former acts, 23 Geo. II., c. 26, s. 12; 49 Geo. III., c. 66.

2. *Of the commissioners, &c.*

Proof of keeping an office or acting as an officer to be admitted as sufficient till contrary evidence produced. (a)

Salaries and superannuation allowances not liable to any deductions, or assignable, or subject to be taken in execution. (b)

proclamation for the purpose of a general fast or thanksgiving, the anniversaries of the restoration of His Majesty King Charles the Second, and of the coronation of His Majesty, and the birthdays of their Majesties and of the Prince of Wales and their respective successors, and also such days as are or shall be appointed by any warrant issued for that purpose by the lord high treasurer, or any three or more of the commissioners of the treasury; but that all business at the said offices shall be carried on and performed on every day throughout the year, Sundays and the days before mentioned only excepted; any law, custom, or usage to the contrary notwithstanding. Provided always, that it shall and may be lawful for the commissioners of Excise, and for the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, to direct and enforce the attendance of any officer, clerk, or other person employed in the revenue of Excise, for any time or at any place when or where the same shall in the judgment of such commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, be required for the better discharge of the official duties of any such officer, clerk, or other person."

Sect. 17. "That if, upon the trial of any indictment, information, action, suit, or prosecution whatsoever, or in any other legal or judicial proceeding, any question shall be made, or any doubt or dispute shall arise, touching or concerning the keeping of any office of Excise, or whether any person is or was a commissioner or assistant commissioner of Excise, or a collector or other officer of Excise, or commissioned or appointed to act as such, evidence of the actual keeping of such office of Excise, or that such person is, or at the time in question was reputed to be, such commissioner or assistant commissioner, or such collector or other officer, or does or did then act as such commissioner or assistant commissioner, or as such collector or other officer so commissioned and appointed (as the case may require), shall in every such case be admitted and be deemed and taken to be respectively sufficient and legal proof of such facts respectively, without producing or proving the particular commission, appointment, or other authority, whereby such person is or was commissioned or appointed to be such commissioner or assistant commissioner, or such collector or other officer as aforesaid, unless by other evidence the contrary be made to appear; any law, custom, or usage to the contrary thereof notwithstanding."

Sect. 121. "That no salary or sum of money granted or allowed to any commissioners, assistant commissioners, officer, or other person appointed or to be appointed to any office, or employed or to be employed in or about the collection, receipt, or management of the revenue of Excise, or as or by way of compensation for past services, upon the superannuation or retirement of such commissioner, assistant commissioner, officer, or other person, or otherwise, shall, after the commencement of this act, be wholly or in part assignable or transferrable by any such commissioner, assistant commissioner, officer, or other person in manner whatsoever, or subject or liable to be seized or taken under or by virtue of any writ of attachment or execution, or any other process whatsoever, before the same shall have been actually paid by the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, or by the person or persons employed or directed by them respectively for that purpose, to or for the use of such commissioner, assistant commissioner, officer, or other person, to whom the same shall have been granted or allowed; any thing in this act,

(a) See 6 Geo. I., c. 21, s. 24; 11 Geo. I., c. 30, s. 32.

(b) As to allowances to superannuated officers, see 49 Geo. III., c. 96.

or any other act or acts of parliament, or any law, custom, or usage to the contrary thereof notwithstanding."

The duties of the commissioners, collectors, &c. as to collecting and paying over the duties and penalties is prescribed in other sections.

Sect. 44. "That the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, and every collector, receiver, and other person throughout the united kingdom, who shall be intrusted with the collection, receipt, custody, or management of any part of the revenue of Excise, shall keep and render such separate and distinct accounts, and in such manner and form, as shall from time to time be directed by the commissioners of Excise, of all and every duty and duties, penalty and penalties, sum and sums of money collected, had, or received by him or them, or intrusted to his or their care or custody, and of all and every balance and balances of money in his or their hands, or under his or their control and management respectively; and if any commissioner or assistant commissioner of Excise in Scotland or Ireland, or if any such collector, receiver, or other person in any part of the united kingdom, shall neglect or omit to keep and render such accounts as aforesaid, or shall knowingly render or furnish false accounts of or relating to any duty or penalty, or sum of money collected, had, or received, or to be collected, had, or received by him or them, or intrusted to his or their care or custody, or of any balance of money in his or their hands, or under his or their control and management, every such commissioner, assistant commissioner, collector, receiver, or other person so offending, and being thereof duly convicted, shall be adjudged guilty of a misdemeanor, and shall suffer the punishment of fine and imprisonment, at the discretion of the Court in which such offender shall be prosecuted for such offence, and shall by such conviction be rendered for ever incapable of holding or enjoying any office under the crown."

Sect. 45. "That the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland respectively, and every collector, receiver, or other person throughout the united kingdom, intrusted with the collection, receipt, custody, or management of any part of the revenue of Excise, shall from time to time collect, receive, apply, pay, transfer, and remit all and every duty and duties, penalty and penalties, sum and sums and balance and balances of money, which shall at any time be intrusted to his or their care or custody, or come into his or their hands, or be under his or their control and management respectively, in such manner and form and at such times as the commissioners of Excise shall in that behalf from time to time order and direct; and if any commissioner or assistant commissioner of Excise in Scotland or Ireland, or if any such collector, receiver, or other person in any part of the united kingdom, shall neglect or omit so to collect, receive, apply, pay, transfer, or remit as aforesaid, any such duty or penalty, or sum or balance of money, or any security for money, in his or their hands, or shall detain or misapply the same, every such commissioner, assistant commissioner, collector, receiver, or other person so offending, shall forfeit his office or employment, and shall be liable to pay, over and above the penalty of any bond which he may have entered into in respect of his office or employment, treble the amount of such duty or penalty, or sum or balance of money, or security for money, neglected or omitted so to be collected, received, applied, paid, transferred, or remitted as aforesaid, or so detained or misapplied."

Sect. 46. "That the commissioners of Excise shall and they are hereby required to collect and cause to be collected all and every the duties and every part of the revenue of Excise, and to keep separate and distinct accounts thereof respectively at the chief office of Excise in London; and shall set forth in such accounts the amounts respectively charged, and collected, and received, and remaining in arrear of each of such duties, and other parts respectively of the said revenue, and of the several payments made or allowed by such commissioners for or in respect of such duties and other

2. *Of the commissioners, &c.*

Commissioners in Scotland and Ireland, and collectors or receivers of money, to keep distinct accounts thereof.

Persons knowingly furnishing false accounts to be punished by fine and imprisonment, and rendered incapable of holding office.

Collectors to receive, pay, apply, and remit duties, as ordered by commissioners.

Commissioners to collect and keep accounts of the duties of Excise charged or received, and of payments made, and render such accounts to the treasury when required.

2. *Of the commissioners, &c.*

Commissioners to pay over the revenue of Excise to the receiver-general.

Act not to affect pensions payable by the commissioners of Excise.

Observations, decisions, &c.

The collections, &c.

Gaugers, commonly called Excisemen.

Certificate, for obtaining an order to be instructed in the Excise.

parts of the said revenue respectively, and of the expenses respectively of the collection or management of the revenue of Excise, and of all other payments and expenses made or incurred on any other account whatsoever; and the said commissioners of Excise shall render and furnish such accounts as aforesaid to the lord high treasurer, or the commissioners of the treasury, when and so often and in such manner and form as the same shall be directed or required by the lord high treasurer, or any three or more of the commissioners of the treasury."

Sect. 47. "That the commissioners of Excise shall daily pay or cause to be paid into the hands of the receiver-general of Excise in England, or in such other manner as the lord high treasurer, or any three or more of the commissioners of the treasury, shall from time to time direct, order, or appoint, all money, and shall indorse and deliver over or transfer to such receiver-general, or in such other manner as aforesaid, all bills of exchange, promissory notes, drafts, checks, or orders for the payment of money which shall from time to time be collected or received by or paid or transmitted to such commissioners, for or on account of the duties or revenue of Excise (except only the necessary charges paid of collecting, receiving, levying, managing, paying, and accounting for the same, and all other payments legally made thereout); and if any commissioner of Excise shall fraudulently or knowingly and wilfully detain or misapply any money, bill of exchange, promissory note, draft, check, or order for the payment of money as aforesaid, or any part thereof, or any security for money, every such commissioner so offending shall forfeit his office, and shall be rendered incapable of serving His Majesty, his heirs or successors, in any office or place of profit or trust whatsoever, and shall also forfeit and lose treble the amount of every sum of money, bill, note, draft, check, or order for the payment of money, or security for money, so detained or misapplied as aforesaid."

Sect. 48. "Provided always, that nothing in this act contained shall extend or be construed to extend to make void, alter, or prejudice any disposition, appropriation, appointment, matter, or thing whatsoever, relative to the regular and usual payment of any pension or annuity charged and made payable to any person or persons in pursuance of any act or acts of parliament, or by virtue of any grants or letters patent made or granted by any of His Majesty's royal predecessors, kings or queens of this realm, but that the same dispositions, appropriations, and appointments shall continue, be in force, and take effect in the payment of all and every the annuities and pensions payable by the commissioners or receivers-general of Excise, in the same manner and at the same time and times that the said annuities and pensions have been usually paid before the commencement of this act."

The kingdom of England and Wales (exclusive of the bills of mortality) is divided into upwards of fifty *collections*; some called by names of particular counties; others by the names of great towns, where one county is divided into several collections, or where a collection comprehends the contiguous parts of several counties. Every collection is subdivided into *districts*, within each of which there is a *supervisor*; and each district is parcelled into *out-rides* and *foot-walks*, within each of which there is a *gauger* or surveying officer. *Gilb Exch. Append.* 297, 298.

By stat. 12 C. 2, c. 24, sect. 33. "The commissioners or sub-commissioners in their respective circuits and divisions shall constitute under their hands and seals such and so many *gaugers* as they shall find needful."

In order to which, he who would be made an Excise officer must procure a certificate that he is above twenty-one and under thirty years of age; that he understands the four first rules of arithmetic; that he is of the communion of the church of England; how he has been employed, or what business he has followed; that he is not incumbered with debts; whether single or married; and if married, how many children he has,

## I. IN GENERAL. (2.) *Of the Commissioners, &c.*

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for if he has above two he cannot (by the rules of the office) be admitted. *Gilb. Exch. Append.* 293.

He must also nominate two persons to be his sureties; and it must be certified that they are of sufficient ability, and that the said certificate is of his own handwriting. Such certificate, written by him, must be signed by the supervisor of Excise where the party applying lives. *Gilb. Exch. Append.* 293. His chief duty is to take accounts and survey what articles are excisable. *High. on Excise*, 20.

At the bottom of the certificate must be his affidavit, that neither he nor any one else to his knowledge hath directly or indirectly given or promised to give any treat, fee, gratuity, or reward for his obtaining or endeavouring to obtain an order for his being instructed. *Id.* 294.

When an order for instructing is granted, it is directed to an experienced officer, who receives such person as his pupil; and the like books as officers have being delivered to such pupil, he goes with and attends the officer, who instructs him and takes surveys, and in his own books makes the like entries as if he were an officer, until the instructor certifies that he is fully instructed. *Id.*

After he is thus certified for, and until he is employed, he is called an *expectant*, being to wait till a vacancy happens. *Id.*

The plaintiff declared in debt, that by an act for granting several rates upon tonnage of ships and vessels it is enacted, that if any gauger gauge any vat, &c. of beer, &c., and do not leave a true note in writing of the last gauges, containing the true quantity and quality, he shall forfeit 5*l.* for every offence; that the defendant gauged divers vessels, and did not leave a note in writing. On demurrer it was contended to be too general, for he should have specified what liquors, so that the Court might have perceived whether they were excisable or not; and of that opinion were the Court. *Chance v. Adams*, A. D. 1734, cited *High. on Excise*, 225.

The business of the *supervisor* is, to be continually surveying the houses and places of the persons within his district liable to duties; and to observe and see whether the officers duly make their surveys, and make due entries thereof in their books and in their *specimen* papers; (a) and every supervisor is in his own book to enter what he himself does each day and part thereof; and also to set down the behaviour, good or bad, the diligence or negligence of the several officers of his district; and at the end of every six weeks to draw out a diary of every day's business, and of the remarks made each day of the several officers in his district, and to transmit such diary at the end of every six weeks to the chief office. *Gilb. Exch. App.* 303, 304.

Each commissioner takes and peruses a proportion of these diaries; and when he meets with any remarkable complaint against any officer, he communicates it to the rest; who thereupon come to an agreement, either to *admonish*, *reprimand*, *reduce*, or *discharge*. For small faults, officers are admonished; for great ones, reprimanded; for greater, reduced; but for the greatest they are discharged. The commissioner who peruses the diary writes in the margin *admonish* or *reprimand*, &c. as is agreed on by the board. *Gilb. Exch. App.* 304.

These diaries, after having been thus written upon, are delivered to the clerk of the diaries, who, in a book called the *reprimand-book*, places the admonitions, reprimands, &c. to each officer's account, and writes every offender word thereof; which reprimand-book is resorted to, upon discovering new faults; and if it be there found that the officer has before been admonished and reprimanded so often that there are no hopes of his amending, he then is discharged. The said book is likewise resorted to when application is made for advancing or preferring an officer into a

## 2. *Of the commissioners, &c.*

Security to be proposed.

Affidavit.

Order for instruction, and certificate thereon.

*Expectant.*

*Supervisor.*

Is to make diaries and transmit them to the chief office.

The duty and authority of the commissioners in reprimanding and punishing officers guilty of neglect.

Business of the clerk of the diaries, with the form and use of the reprimand-book.

(a) See form, &c. of *specimen* book, *post*.



## 2. Of the commissioners, &amp;c.

The business of collectors.

The manner of reducing officers for faults.

The manner of discharging and restoring officers.

better post. Frequent admonitions or reprimands are a bar to preferment, unless they are of old standing; but if for three years last he stands pretty clear of admonitions and reprimands, those of elder date are not much regarded. *Gilb. Exch. App.* 305.

The collector's business is, every six weeks, to go his rounds; and in the intervals of rounds he is to be assisting in prosecuting offenders before justices: he is also to peruse the supervisor's diaries, and where he finds an officer complained of, is to examine him and the supervisor, and, having heard both, is in the margin to write his opinion of each fact: he is also to have an eye how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book the charge on each particular person in his collection. *Id.* 303, 306.

For faults, gaugers are reduced either to be only assistants, or from footwalks to out-rides. Supervisors are reduced to be again only gaugers; and collectors are reduced to be supervisors. *Id.*

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged are never again restored, unless one of the discharges appears to have been occasioned upon a misrepresentation of the case. *Id.* 307.

## (3.) Receiver-general, &amp;c.

Appointment of a comptroller and an auditor of Excise for the united kingdom.

## (3.) Of the Receiver-General, Comptroller, and Auditor.

7 & 8 Geo. IV., c. 53, s. 49, enacts, "That it shall be lawful for the lord high treasurer, or any three or more of the commissioners of the treasury, from time to time, under his hand and seal, or under their hands and seals, to appoint a comptroller and an auditor for the united kingdom on behalf of His Majesty, his heirs and successors, for the purpose of comptrolling and auditing respectively all accounts of and belonging to the revenue of Excise, with such salaries respectively, payable by the commissioners of Excise out of the revenue of Excise, as the lord high treasurer, or any three or more of the commissioners of the treasury, may in that behalf order and direct; and that such comptroller and auditor respectively shall in all respects be subject to such rules, orders, regulations, and directions as the lord high treasurer, or any three or more of the commissioners of the treasury, shall from time to time make or prescribe, and transmit to the said comptroller and auditor respectively, for their direction and guidance in their respective offices."

Sect. 50. "That all money, bills, notes, drafts, checks, or orders for payment of money, received by or coming into the hands of the receiver-general of Excise (a) on account of the revenue of Excise (except as is hereinafter excepted), shall be paid by him into the hands of the governor

Moneys, &c. received by the receiver-general of Excise to be paid into the bank forthwith, to the account of the receiver-general of Excise.

(a) The receiver-general derives his appointment from the Crown, and gives great security for the money received. He pays the same weekly into the exchequer, and strikes tallies; but the commissioners are likewise accountable as well as the receiver; and they make up the account under the several branches to which the money is appropriated. See *High. on Excise*, 10.

The receiver is charged in such account by the comptroller and accountant, and the several collectors in the country, with the receipt of the money. He dis-

charges himself by tally, by the allowance of salaries and other incidents, by order of the board. His accounts are received by the treasury, and annually carried to an auditor appointed by the Crown to receive such accounts; and, afterwards, these accounts are lodged at the pipe; and from the auditor he has his quietus, without coming to a baron, except to swear his account. See *Gilb. Ex.* 257. A quietus is a complete release, granted from the exchequer on finally settling the accounts. See *High. on Excise*, 11.

and company of the Bank of England, that is to say, all money, notes, drafts, checks, and orders, either on the same day or on the day next after the same shall have been received, and all bills on the day on which the same, having been first duly accepted, shall have been indorsed by the commissioners of Excise, or any two of them, for which money, bills, notes, drafts, checks, and orders, the entry in the book hereinafter mentioned shall be a sufficient discharge; and all such money, bills, notes, drafts, checks, and orders, so to be paid to the governor and company of the Bank of England, shall be placed to an account to be raised in the books of the said governor and company, and to be intituled 'the account of the public moneys of the receiver-general of Excise,' inserting the name of such receiver-general for the time being."

Sect. 51. "Provided always, that it shall be lawful for such receiver-general to retain and keep in his own hands at the close of each day, for the payment of casual and ordinary and daily demands, out of the money so received by him as such receiver-general, any sum not exceeding thirty thousand pounds, or such further sum, not exceeding fifty thousand pounds, over and above the said thirty thousand pounds, as shall be directed or authorised by the commissioners of Excise to be retained by such receiver-general, or such further sum of money as shall or may from time to time, by a permission in writing under the hand or hands of the lord high treasurer, or of any three or more of the commissioners of the treasury, be allowed to be retained by such receiver-general."

Sect. 52. "And be it further enacted, that the governor and company of the Bank of England, or some person duly authorized on their behalf, shall daily, upon receiving any money, bill, note, draft, check, or order from the receiver-general, make an entry of the money, and of every bill, note, draft, check, and order so received, in a book to be provided by the said governor and company, with the approbation of the lord high treasurer or commissioners of the treasury, and sent for that purpose by such receiver-general; and such book shall be forthwith, after the making of such entry, re-delivered to the persons making such payment, and shall be inspected daily after its return by the Excise comptroller of the cash or his clerk (such clerk being first duly authorized by such comptroller, and for whose conduct therein he shall be answerable), who shall compare the same with the book kept by such comptroller of the cash, for the purpose of seeing that the receiver-general constantly pays into the Bank all the money, bills, notes, drafts, checks, and orders which he is required to do under the provisions of this act; and any default which such comptroller of the cash or his clerk (duly authorized as aforesaid) may discover in that behalf shall, by such comptroller of the cash, be immediately reported to the commissioners of Excise."

Sect. 53. "That the receiver-general of Excise shall pay, or cause to be paid, into the receipt of the Exchequer at Westminster, all money placed to the account of the receiver-general as aforesaid in the Bank of England, on such days in every week respectively as the lord high treasurer, or any three or more of the commissioners of the treasury, shall from time to time direct, order, or appoint, and in such manner as hereinafter mentioned; that is to say, the said receiver-general or his clerk (duly authorized by him for that purpose, and for whose conduct therein he shall be answerable) shall make an order upon the governor and company of the Bank of England, which order shall be countersigned by the Excise comptroller of the cash, to write off from his account the sum desired; and the said governor and company, or some person duly authorized on their behalf, shall thereupon write off such sum, and deliver a note, drawn (and which for greater security shall be cancelled) in such manner and form as shall be approved of by the lord high treasurer or commissioners of the treasury, for the amount, to the said receiver-general or his clerk, who shall pay the same into the Exchequer; and the bank clerks attending there shall receive such note as cash to the amount thereof; and it shall

### 3. *Receiver-General, &c.*

What sums may be retained by the receiver-general in his hands for the payment of ordinary and daily demands.

Bank book to be kept and compared by the comptroller of the cash, and any default stated to the commissioners.

Mode in which payment are to be made into the Exchequer.

No bills, notes, &c. to be re-delivered, except

3. *Receiver-General, &c.*

to solicitor,  
for the purpose  
of prosecution,  
of which the  
commissioners  
to be forthwith  
informed.

On the death  
or removal of  
receiver-general,  
the balance to  
vest in and be  
transferred to  
the account of  
his successor.

Receiver-general  
to keep account,  
and (observing  
these rules) not to  
be answerable for  
any money actually  
received by the Bank.

Forging any instrument  
to obtain money from  
the Bank on account  
of the receiver-general  
felony without benefit  
of clergy. (a)

not be lawful for the governor and company of the Bank of England to pay or transfer from the account of the receiver-general any part of the money so deposited and placed to such account, otherwise than into the Exchequer in manner aforesaid, or to deliver any bill of exchange, promissory note, draft, check, or order for the payment of money, save and except to His Majesty's solicitor of Excise in England, or his clerk, upon his application for the same, countersigned by the said receiver-general or his clerk, and such comptroller of the cash or his clerk, for the sole purpose of prosecuting an extent for the recovery of the money for which any such bill of exchange, promissory note, draft, check, or order for the payment of money shall have been given; and in such case the commissioners of Excise shall be immediately acquainted therewith, if sitting, by such solicitor, receiver-general, and comptroller of the cash, or if not sitting, then at the time of their next assembling; and such delivery shall be entered at the Bank in the bank book of the receiver-general, to be kept as is hereinbefore directed."

Sect. 54. "That upon the death, resignation, or removal of every receiver-general of Excise, the balance of cash for which such receiver-general shall at that time have credit in his account as such receiver-general, with the governor and company of the Bank of England, shall immediately upon a successor being appointed to the said office of receiver-general vest in such successor, in trust for the purposes aforesaid, and shall be forthwith transferred, carried over, and placed by the governor and company of the Bank of England to the account of such successor, to be applied in such manner as aforesaid."

Sect. 55. "That the receiver-general of Excise shall keep the account with the Bank of all money issued on his account as aforesaid; and such receiver-general, observing the rules and regulations by this act prescribed, shall not be answerable for any money which he shall have so paid or caused to be paid into the Bank of England; but the governor and company of the Bank of England shall be answerable for all money, bills, notes, drafts, checks, and orders which shall be actually received by them from and on account of such receiver-general as aforesaid, except such as may have been delivered out for the purpose of prosecuting an extent as aforesaid, and may not have been returned into the Bank of England."

Sect. 56. "That if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or shall knowingly and wilfully aid or assist in forging or counterfeiting, the name or hand-writing of any receiver-general of Excise, or of any Excise comptroller of the cash as aforesaid, or of any of the persons duly authorized as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money, bills, notes, drafts, checks, or orders for the payment of money, in the hands or custody of the governor and company of the Bank of England on account of such receiver-general as aforesaid; or if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or shall knowingly and wilfully aid or assist in the forging or counterfeiting, of any draft, instrument, or writing, in the form of a draft, instrument, or writing made by any receiver-general of Excise, or by any Excise comptroller of the cash as aforesaid, or by any person or persons authorized as aforesaid, or shall utter or publish any draft, instrument, or writing so forged or counterfeited, knowing the same to be forged or counterfeited, with an intention to defraud His Majesty, or any person whomsoever; every person so offending, and being thereof lawfully convicted, shall be and is hereby declared and adjudged to be guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy."

(a) Forging debentures, &c. 41 Geo. III., c. 91; 38 Geo. III., c. 54, s. 9; 53 Geo. III., c. 143, s. 10.

(4.) *Lands and Buildings for Purposes of Excise.*

*4. Lands and Buildings, &c.*

Sect. 122. "That it shall be lawful for the commissioners of Excise, with the consent of the lord high treasurer, or any three or more of the commissioners of the treasury, to contract for or purchase in trust for His Majesty, his heirs and successors, for the use and service of the revenue of Excise, any messuages, buildings, lands, tenements, or hereditaments, either in fee simple or for any other or lesser estate or interest therein, which they the said commissioners of Excise may deem desirable to be contracted for or purchased for the use and service of the revenue of Excise; and that it shall be lawful for the commissioners of Excise to pay the consideration money agreed to be paid or given for the estate or interest so contracted for or purchased out of any money arising from the revenue of Excise which shall be in their hands; and that the several messuages, buildings, lands, tenements, or hereditaments, which at any time or times hereafter may be so contracted for or purchased, with all the rights, members, easements, and appurtenances to the same respectively belonging, shall be conveyed and assured to and vested in the secretary of His Majesty's commissioners of Excise for the time being, and in his successors in such office in perpetual succession, according to the respective nature and quality of the said messuages, buildings, lands, tenements, and hereditaments, and the estate and interest therein so contracted for or purchased in trust for His Majesty, his heirs and successors, for the use and service of the revenue of Excise."

Commissioners of Excise, with consent of the treasury, may purchase lands, &c. for their use, to be conveyed to their secretary, in trust for His Majesty.

Sect. 123. "That upon the death, resignation, or removal of the present secretary, or of any future secretary of the commissioners of Excise in England, Scotland, or Ireland respectively, all messuages, buildings, lands, tenements, and hereditaments, which have been heretofore purchased or otherwise acquired or taken by or in the name or names of the present or any former secretary or secretaries of the commissioners of Excise in England, Scotland, or Ireland respectively, in trust for His Majesty or his royal predecessors, for the use and service of the revenue of Excise, and which are still holden in such trust, by whatsoever mode or conveyance the same may have been purchased or otherwise acquired and taken, either in fee or for any other or lesser estate or interest (whether such trust shall or shall not be expressed on the face of the conveyance or assurance of such messuages, buildings, lands, tenements, or hereditaments), and all erections and buildings which are or which shall or may be hereafter erected and built on any such lands, tenements, or hereditaments, together with the rights, members, easements, and appurtenances to the same respectively belonging (other than and except such messuages, lands, tenements, and hereditaments as may be of copyhold tenure), shall be and become and remain and continue vested in the secretary of His Majesty's commissioners of Excise in England for the time being, and in his successors in such office, in perpetual succession, according to the respective nature and quality of the said messuages, buildings, lands, tenements, and hereditaments, and the several estate and interest of and in the same respectively, in trust for His Majesty, his heirs and successors, for the use and service of the revenue of Excise."

Lands and buildings already purchased or taken in the name of any secretary of the commissioners to vest in the secretary for the time being.

Sect. 124. "That it shall be lawful for the secretary for the time being of His Majesty's commissioners of Excise in England, by and under the authority and direction of such commissioners (testified by writing under their hands and seals, or the hands and seals of any two or more of them), to sell, exchange, or in any manner dispose of, or to let, set, or demise, either by public auction or private contract, the freehold and leasehold messuages, buildings, lands, tenements, and hereditaments respectively, which shall for the time being be vested in such secretary as aforesaid, under and by virtue of this act, with their respective appurtenances, to any body or bodies corporate, or any person or persons who may be

The secretary, under the authority of the commissioners, may sell or let lands vested in him as herein mentioned.

#### 4. *Lands and Buildings, &c.*

The money produced by the sale of any such lands to be paid to receiver-general of Excise.

Purchasers of such lands, &c. shall stand possessed thereof, discharged of all prior claims thereon in right of His Majesty.

willing to purchase or take the same; and it shall be lawful for such secretary, under such authority and direction as aforesaid, for that purpose to make and execute all such conveyances, assurances, and agreements as may be thought proper, and also to do any other act, matter, or thing in relation to any such messuages, buildings, lands, tenements, or hereditaments, as shall by the said commissioners be deemed beneficial for the revenue of Excise, or for the better management thereof, and which might be done by any person or persons having a like interest in any such messuages, buildings, lands, tenements, or hereditaments."

Sect. 125. "That the money arising and produced by the sale or exchange of any of the said messuages, buildings, lands, tenements, or hereditaments, which under the provisions of this act shall be paid by the respective purchaser or purchasers thereof, or the body or bodies corporate, or person or persons making such exchange, shall be paid unto the receiver-general of Excise, or to such person or persons as the said commissioners of Excise, or any two or more of them, shall direct or appoint to receive the same, in trust for His Majesty, his heirs and successors; which money shall be accounted for by the commissioners of Excise as part of the revenue of Excise; and the receipt of the said receiver-general, or of such other person or persons as aforesaid, for such money (which receipt shall be indorsed on the conveyance or assignment of the said messuages, buildings, lands, tenements, and hereditaments), shall be a complete discharge to the purchaser or purchasers, or body or bodies corporate, or person or persons by whom or on whose account such money shall have been paid."

Sect. 126. "That from and immediately after the payment of such purchase money as aforesaid, and the execution of every such conveyance and assignment as aforesaid, the purchaser or purchasers, or body or bodies corporate, or person or persons making such exchange as aforesaid therein named, shall be deemed and adjudged to stand seised and possessed of the messuages, buildings, lands, tenements, and hereditaments which shall be so purchased by, and conveyed, assigned, or made over to such purchaser or purchasers, or body or bodies corporate, or person or persons making such exchange as aforesaid respectively, freed and absolutely discharged of and from all manner of prior estates, leases, rights, titles, interests, charges, incumbrances, and demands whatsoever, which can or may be had, made, set up, in, to, out of, or upon, or in respect of the same messuages, buildings, lands, tenements, and hereditaments, by any person or persons whomsoever, by, from, or under, or in trust for His Majesty, his heirs and successors, on any account whatsoever, save and except such estates, leases, rights, titles, interests, charges, incumbrances, claims, and demands, if any, as in any such conveyance or assignment shall be specially excepted."

#### (5.) *Duties of Excise and Licences.*

#### (5.) *Duties of Excise, and on Licences.*

The 43 Geo. III., c. 69, consolidated most of the duties of Excise; and in schedules to the act each article is specified in alphabetical order. *Schedule A. of duties*, beginning with "Auctions," and ending with "Wire;" *Schedule B. of countervailing duties* of Excise on certain commodities imported from Ireland into Great Britain, and beginning with "Beer," and ending with "Wire;" and *Schedule C. of allowances, bounties, and drawbacks* of Excise, enumerating the several articles. This act was amended and in part repealed by 45 Geo. III., c. 94; 46 Geo. III., c. 138; 48 Geo. III., c. 120, s. 1; 49 Geo. III., c. 63; 55 Geo. III., c. 94; and various subsequent acts.

This act (43 Geo. III., c. 69, s. 4), sect. 3, enacts, "that the duties

shall be under the management of the respective commissioners of Excise, and shall be accounted for, &c., as former duties;" and

5. *Duties of Excise, &c.*

Sect. 4. "That duties and drawbacks under this act shall be levied, &c., as former duties, &c. unless hereby altered."

Sect. 5. That "duties shall be paid in proportion to the actual quantity."

Sect. 6. That "duties shall be carried to British consolidated fund."

Sect. 8. This "act shall not affect pensions payable by the commissioners, &c. of Excise."

Sect. 9. This "act shall not alter the hereditary revenue of His Majesty in Scotland, or the payment of annuities, &c. out of the revenues of Excise."

Sect. 10. "The sum reserved out of the duties on licences to retail wine, by 30 Geo. II., c. 19, shall be accounted for out of the duties on such licences granted by this act."

Sect. 11. "The amount of what would have been the hereditary duties of Excise shall be computed, set apart, and paid out of the duties by this act granted, as directed by 27 Geo. III., c. 13, s. 51."

Sect. 12. That "in future 36 gallons shall be reckoned a barrel of beer or ale, made by common brewers in Great Britain, and the allowance shall be three gallons out of that quantity for waste."

Sect. 13. That "such allowance shall be in full for all losses."

Sect. 14. That "no beer or ale shall be sold by the common brewers at any other than the above rate; but not to extend to other brewers."

Sect. 15. This "act shall not void licences granted under any law of Excise."

Then follow the schedules A, B, and C, above referred to, enumerating the duties, allowances, bounties, and drawbacks.

The *amount* of the duties, &c., on each article is varying continually. They will be stated when we consider the second branch of the subject, and therefore no table thereof is here given. The *particular* regulations as to each item, so far as it is the duty of magistrates to enforce them, will be found arranged under the second division of this subject.

The *general* regulations will follow under titles 6 to 28.

The 7 & 8 Geo. IV., c. 53, s. 25 and 26, directs at what times and places Excise traders shall pay their duties. See the clause, *post*, title *Entries, &c.*

The 7 & 8 Geo. IV., c. 53, s. 44 to s. 56, relates to the collection and application of the duties and penalties. See *post*, *Vendor*.

We have seen that sometimes the duty is on the *maker* or *vender* of the commodity, rather than on the commodity itself. In these cases, before the party can *make* or *sell* the commodity he must obtain a *licence* so to do, upon which licence certain *duties* are imposed. The 6 Geo. IV., c. 81, intitled "an act to repeal several duties payable on *Excise licences* in Great Britain and Ireland, and to impose other duties in lieu thereof, and to amend the laws for granting *Excise licences*," enacts, that from 5 July, 1825, all (a) the duties on licences shall cease, and that instead of the repealed duties the following shall be levied:

Duties on licences, general act, 6 Geo. IV., c. 81.

"For and upon every *Excise licence* to be taken out by any maker, manufacturer, trader, dealer, retailer, or person hereinafter mentioned, within Great Britain and Ireland, to be paid by such maker, manufacturer, trader, dealer, retailer, and person respectively, the respective annual sum or duty of Excise in British currency hereinafter mentioned; (that is to say),"

New duties on licences.

(a) As to wine and spirit licences, see 6 Geo. IV., c. 80, and *post*, *tit. Spirits*, and other particular heads.

5. Duties on  
Licences.

	£.	s.	d.
<b>AUCTIONS.</b> —For and upon every Excise licence to be taken out by every person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments, by auction . . . . .	5	0	0
<b>BEER.</b> (a)—Every brewer of table beer only for sale, if the quantity of beer brewed by such brewer within the year ending the 10th day of October, previous to taking out such licence, shall not exceed 20 barrels . . . . .	0	10	0
If the same shall exceed 20 barrels, and shall not exceed 50 barrels . . . . .	1	0	0
If the same shall exceed 50, and shall not exceed 100 barrels . . . . .	1	10	0
Or if the same shall exceed 100 barrels . . . . .	2	0	0
Every brewer of beer (other than table beer only) for sale, if the quantity of beer brewed by such brewer within the year ending the 10th day of October, previous to taking out such licence, shall not exceed 20 barrels . . . . .	0	10	0
If the same shall exceed 20, and shall not exceed 50 barrels . . . . .	1	0	0
If the same shall exceed 50, and shall not exceed 100 barrels . . . . .	1	10	0
If the same shall exceed 100, and shall not exceed 1000 barrels . . . . .	2	0	0
If the same shall exceed 1000, and shall not exceed 2000 barrels . . . . .	3	0	0
If the same shall exceed 2000, and shall not exceed 5000 barrels . . . . .	7	10	0
If the same shall exceed 5000, and shall not exceed 7500 barrels . . . . .	11	5	0
If the same shall exceed 7500, and shall not exceed 10,000 barrels . . . . .	15	0	0
If the same shall exceed 10,000, and shall not exceed 20,000 barrels . . . . .	30	0	0
If the same shall exceed 20,000, and shall not exceed 30,000 barrels . . . . .	45	0	0
If the same shall exceed 30,000, and shall not exceed 40,000 barrels . . . . .	60	0	0
Or if the same shall exceed 40,000 barrels . . . . .	75	0	0
Every person who shall first become a brewer of beer for sale, on taking out such licence as aforesaid for that purpose, shall pay the sum of 10s., and, within ten days after the tenth day of October next after taking out such licence, pay such further additional sum as, with the said sum of 10s., shall amount to the duty hereinbefore mentioned, according to the number of barrels of beer brewed within the preceding year, or period for which such licence was granted . . . . .	0	10	0
Every brewer of beer for sale, who shall retail such beer to be consumed elsewhere than on his, her, or their premises . . . . .	5	5	0
Every person, not being a brewer of beer, who shall sell strong beer only in casks, containing not less than 4½ gallons imperial standard gallon measure, or in not less than two dozen reputed quart bottles at one time, to be drank or consumed elsewhere than on his, her, or their premises . . . . .	3	3	0
Every person who shall be duly authorized by justices of the peace to keep a common inn, ale-house, or victualling-house, and who shall sell beer, cyder, or perry, by retail, to be drank or consumed in his, her, or their house or premises, if the dwelling-house in which such person shall reside or retail beer, cyder, or perry, as aforesaid, at the time of taking out such licence, shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated under the authority of any act or acts of parliament for granting duties on inhabited houses at a rent of 20 <i>l.</i> per annum or upwards, or shall not be rented or valued at such rent or annual value, or upwards . . . . .	1	1	0
And if rated, rented, or valued as aforesaid, at 20 <i>l.</i> per annum, or upwards . . . . .	3	3	0

(a) See alteration, by 1 W. IV., c. 81 and 64, *post*, title "Ale, Beer, and Brewer." The brewer (*vide* 1 W. IV., c. 81) will after the 10th day of October, 1830, be rated for his licence in proportion to the quantity of *malt* he may consume in his brewery, and not according to the number of barrels of beer he brews, in the course of twelve months. This is the only deviation from the 6 Geo. IV., c. 81, in reference to the brewer's licence. If a brewer retails beer, he will be bound by the 1 W. IV., c. 64, to take out a retail licence for that purpose.

# I. IN GENERAL. (5.) *Duties of Excise and Licences.*

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	£	s.	d.	5. Duties on Licences.
<b>CANDLES.</b> —Every maker of wax candles, or spermaceti candles, for sale	5	0	0	
Every chandler or maker of candles for sale, other than wax or spermaceti candles	2	0	0	
<b>COFFEE.</b> —Every person trading in or selling coffee, tea, cocoa-nuts, chocolate, or pepper	0	11	0	
<b>GLASS.</b> —Every glass-maker, for each and every glass-house	20	0	0	
<b>HIDES. (a)</b> —Every tanner	5	0	0	
Every tawer	2	0	0	
Every dresser of hides or skins in oil	4	0	0	
Every currier	4	0	0	
Every maker of vellum or parchment	2	0	0	
<b>MALT.</b> —Every maltster or maker of malt, if the quantity of malt made by such maltster or maker of malt within the year ending the fifth day of July in each year shall not exceed 50 quarters	0	7	6	
If the same shall exceed 50, and shall not exceed 100 quarters	0	15	0	
If the same shall exceed 100, and shall not exceed 150 quarters	1	2	6	
If the same shall exceed 150, and shall not exceed 200 quarters	1	10	0	
If the same shall exceed 200, and shall not exceed 250 quarters	1	17	6	
If the same shall exceed 250, and shall not exceed 300 quarters	2	5	0	
If the same shall exceed 300, and shall not exceed 350 quarters	2	12	6	
If the same shall exceed 350, and shall not exceed 400 quarters	3	0	0	
If the same shall exceed 400, and shall not exceed 450 quarters	3	7	6	
If the same shall exceed 450, and shall not exceed 500 quarters	3	15	0	
If the same shall exceed 500, and shall not exceed 550 quarters	4	2	6	
And if the same shall exceed 550 quarters	4	10	0	
Every person who shall first become a maltster or maker of malt, on taking out such licence as aforesaid for that purpose, shall pay the sum of seven shillings and sixpence, and, within ten days after the fifth day of July next after taking out such licence, pay such further additional sum as, with the said sum of seven shillings and sixpence, shall amount to the duty hereinbefore mentioned, according to the quantity of malt made within the preceding year or period for which such licence was granted	0	7	6	
<b>PAPER.</b> —Every maker of paper, pasteboard, or scaleboard	4	0	0	
Every printer, painter, or stainer of paper	4	0	0	
<b>PRINTED GOODS.</b> —Every calico printer, and every printer, painter, or stainer of linens, cottons, stuffs, or silks	20	0	0	
<b>SOAP.</b> —Every maker of soap for sale	4	0	0	
<b>SPIRITS.</b> —Every distiller or maker of low wines or spirits	10	0	0	
Every rectifier or compounder of spirits	10	0	0	
Every dealer in spirits, not being a retailer thereof	10	0	0	
Every maker of stills in Scotland or Ireland	0	10	0	
Every person in Scotland or Ireland, not being a distiller, rectifier, or compounder of spirits, who shall keep or use any still for the carrying on the trade of a chemist, or any other trade or business requiring the use of any still or stills	0	10	0	
Every retailer of spirits, (except retailers of spirits in Ireland after mentioned) if the dwelling-house in which such retailer shall reside or retail such spirits at the time of taking out such licence shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated under the authority of any act or acts of parliament for granting duties on inhabited houses, at a rent of 10 <i>l.</i> per annum or upwards, or shall not be rented or valued at such rent or annual value, or upwards	2	2	0	

(a) Sec 11 Geo. IV., c. 16. *post*, "Leather."



Excise and Customs. II. *Of Excise.*

5. Duties on Licences.		SPIRITS continued.		£	s.	d.
		If the same shall be rated, rented, or valued as aforesaid, at 10 <i>l.</i>				
		per annum or upwards, and under 20 <i>l.</i>		4	4	0
		If at 20 <i>l.</i> and under 25 <i>l.</i>		6	6	0
		If at 25 <i>l.</i> and under 30 <i>l.</i>		7	7	0
		If at 30 <i>l.</i> and under 40 <i>l.</i>		8	8	0
		If at 40 <i>l.</i> and under 50 <i>l.</i>		9	9	0
		If at 50 <i>l.</i> per annum, or upwards		10	10	0
		Every retailer of spirits in Ireland, being duly licensed to trade in, vend, and sell coffee, tea, cocoa-nuts, chocolate, or pepper, and not selling spirits in any greater quantity at one time than two quarts, or any spirits to be consumed in the house or premises of such retailer, if the dwelling-house in which such retailer shall reside or retail such spirits as aforesaid at the time of taking out such licence shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated under the authority of any act or acts of parliament for granting duties on inhabited houses, at a rent of 25 <i>l.</i> per annum or upwards, or shall not be rented or valued at such rent or annual value, or upwards		9	9	0
		If the same shall be rated, rented, or valued as aforesaid, at 25 <i>l.</i> and under 30 <i>l.</i>		10	10	0
		If at 30 <i>l.</i> and under 40 <i>l.</i>		11	11	0
		If at 40 <i>l.</i> and under 50 <i>l.</i>		12	12	0
		If at 50 <i>l.</i> and upwards		13	13	0
		STARCH.—Every starch-maker for sale		5	0	0
		SWEETS.—Every maker of any kind of sweets or made wines, or of mead or metheglin for sale		2	2	0
		Every retailer of sweets or made wines, or of mead or metheglin		1	1	0
		TOBACCO AND SNUFF.—Every manufacturer of tobacco or snuff, if the tobacco and snuff-work weighed by such person for manufacture within the year ending the fifth day of July, previous to taking out such licence, shall not have exceeded 20,000 lbs. weight		5	0	0
		If the same shall exceed 20,000 lbs. and shall not exceed 40,000 lbs. weight		10	0	0
		If the same shall exceed 40,000 lbs. and shall not exceed 60,000 lbs. weight		15	0	0
		If the same shall exceed 60,000 lbs. and shall not exceed 80,000 lbs. weight		20	0	0
		If the same shall exceed 80,000 lbs. and shall not exceed 100,000 lbs. weight		25	0	0
		If the same shall exceed 100,000 lbs. weight		30	0	0
		Every person who shall first become a manufacturer of tobacco or snuff, on taking out such licence as aforesaid for that purpose, shall pay the sum of five pounds, and shall, within ten days after the fifth day of July next after taking out such licence, pay such further sum as with the said sum of five pounds shall amount to the duty hereinbefore mentioned, according to the quantity of tobacco and snuff-work weighed for manufacture within the preceding year or period for which such licence was granted		5	0	0
		Every dealer in or seller of tobacco or snuff		0	5	0
		VINEGAR.—Every maker of vinegar or acetous acid for sale		5	0	0
		WINE.—Every dealer in foreign wine, who shall not have an Excise licence for retailing spirits, and a licence for retailing beer		10	0	0
		Every retailer of foreign wine, who shall have taken out a licence for retailing beer to be drank or consumed on his, her, or their premises, but shall not have taken out an Excise licence for retailing spirits to be so drank or consumed		4	4	0
		Every retailer of foreign wine who shall have taken out Excise licences for retailing beer and spirits respectively to be so drank or consumed		2	2	0
		WIRE.—Every wire-drawer, or other person who shall draw or cause to be drawn any gilt or silver wire, commonly called big wire		2	0	0

And that for the better securing, raising, levying, and collecting of the said duties hereby granted, the same shall be under the collection and management of the commissioners of Excise for the time being; and that all the moneys therefrom arising shall (the necessary charges of raising and accounting for the same being deducted therefrom) be paid into the receipt of His Majesty's Exchequer, and carried to and made part of the consolidated fund of the united kingdom of Great Britain and Ireland.

Sect. 3. "And whereas the duty imposed by this act on every licence to be taken out by any brewer or brewers of beer for sale is rated according to the quantity of beer brewed by the person or persons taking out such licence; and whereas no account is taken or kept by the officers of Excise in Ireland of the quantity of beer brewed there for sale, but of the malt only used and employed by all and every brewer or brewers there for that purpose; be it therefore enacted, that all and every brewer or brewers of beer for sale in Ireland shall, for the purpose of fixing and regulating the rate and amount of duty to be paid by such brewer or brewers for the licence to be taken out by him, her, or them, under this act, be deemed to have brewed one barrel of beer for every two bushels of malt used or employed by such brewer or brewers in brewing; and shall, for every licence to be taken out by him, her, or them, under this act for brewing beer for sale, pay such amount of duty, according to the rate by this act imposed, as shall be correspondent to the quantity of beer which he, she, or they shall be deemed to have brewed as aforesaid."

Sect. 4. "That from and after the said fifth day of July, one thousand eight hundred and twenty-five, all persons who shall be duly licensed under this act to deal in or sell coffee, tea, cocoa-nuts, chocolate, or pepper, shall be deemed grocers, within the meaning of the several laws of Excise in force in Ireland, at and immediately before the passing of this act, and shall be entitled to take out the licence hereinbefore mentioned to retail spirits, in any quantity not exceeding two quarts at any one time, to be consumed elsewhere than in the house or on the premises of such retailer, subject nevertheless to all and every the regulations contained in the said laws, or any of them, in respect of grocers retailing spirits, except so far as the same are repealed or altered by this act."

Sect. 5. "And whereas the duty upon certain licences authorized and required to be taken out by this act is imposed at and according to the rent at which the premises used for the purpose or purposes mentioned in such licence are rated to the duty on inhabited houses; and whereas many houses or premises in different parts of the united kingdom, for or in respect of which such licences may be required, may not be so rated; be it therefore enacted, that in all cases, and in any part of the united kingdom in which any such house or premises shall not be so rated as aforesaid, it shall and may be lawful, in order to ascertain the rent or annual value of such house or premises, for the person or persons, being the tenant or occupier thereof, who shall apply for any such licence, upon which the duty is so imposed as aforesaid, to produce to the person or persons authorized to grant such licence as aforesaid a certificate, signed by himself and the owner or landlord of the said house and premises, stating the true rent paid by or for which such house or premises is or are let to such tenant or occupier; or if the true rent, by reason of the payment of any premium, or performance of any condition or otherwise, shall not be reserved and payable to the owner or landlord by the tenant or occupier of such house or premises, then and in such case, stating the estimated rent or true annual value of such house or premises, and the rate of duty payable by such tenant or occupier for such licence, shall be paid, taken, and received, according to the rent or value so certified. Provided always, that

### 5. *Duties on Licences.*

New duties to be under the management of the commissioners of Excise.

Brewers in Ireland to be deemed, for the purposes of this act, to have brewed one barrel of beer for every two bushels of malt employed in brewing. (a)

Persons licensed under this act to retail coffee, tea, &c. in Ireland, shall be deemed grocers, entitled to a spirit retail licence under the provision of this act and former laws.

Where the house and premises shall not be rated, the rent or annual value is to be certified by the tenant and landlord; and if such certificate be unsatisfactory, the commissioners of Excise shall adopt other means for ascertaining the true rent or value thereof, which shall be conclusive.

(a) After the 10th October, 1830, this applies also to brewers in England, by 1 W. IV., c. 51. See *post*, tit. Ale, &c.

### 5. Duties on Licences.

Licences to be granted within the limits of the chief office of Excise in London by the commissioners of Excise, or such person as they may employ for that purpose, and within the limits of the cities of Edinburgh and Dublin respectively by the commissioners or assistant commissioners there, or such persons as they may employ for that purpose, and elsewhere by the collectors and supervisors of the respective Excise collections, on payment of the duties. (a)

Contents of licence. (b)

Partners need not take out more than one licence, except auctioneers. (b)

if the person or persons authorized to grant such licence shall be dissatisfied with the rent or value so certified, he or they shall and is and are hereby authorized and required to adopt such other means as the commissioners of Excise shall think fit, and shall from time to time direct, to ascertain the true rent or annual value of such house or premises; and that thereupon the rate of duty payable for and upon such licence shall be paid, taken, and received, according to the rent or annual value of the house and premises so ascertained as last aforesaid; any thing herein or in any other act or acts of parliament to the contrary thereof notwithstanding."

Sect. 6. "That every Excise licence which is authorized or required to be taken out by this act shall be granted, and the duty thereupon imposed shall be paid in and throughout the united kingdom in manner and form following; that is to say, if any such licence shall be taken out within the limits of the head or chief office of Excise in London, then such licence shall be granted under the hands and seals of two or more of His Majesty's commissioners of Excise, or of such person or persons as such commissioners shall from time to time employ for that purpose, and the duty thereupon imposed as aforesaid shall be paid at such head or chief office at the time of granting the licence; or if such licence shall be taken out within the limits of the cities of Edinburgh or of Dublin respectively, such licence shall be granted under the hands and seals of His Majesty's commissioner or commissioners and assistant commissioners of Excise acting in and for Scotland or Ireland respectively for the time being, or of any two of them respectively, or of such person or persons as such commissioner or commissioners and assistant commissioners shall from time to time employ for that purpose, and the duty thereupon imposed shall be paid at the chief office of Excise in Edinburgh or Dublin respectively at the time of granting the licence; or if such licence shall be taken out in any other part of the united kingdom without such respective limits as in that behalf respectively aforesaid, then and in every such case the same shall be granted under the hands and seals of the collector, or other person having charge of the collection, and supervisor of Excise within the collection and district in which such licence is taken out, and the duty thereupon imposed shall be paid to such collector or other person as aforesaid at the time of granting the licence; and such respective commissioners of Excise in England, and commissioner or commissioners and assistant commissioners of Excise acting in and for Scotland and Ireland respectively, and the person or persons by them respectively employed as aforesaid, and every collector or other person having charge of the collection, and supervisor as aforesaid, is and are hereby respectively authorized and required to grant and deliver every such licence to the person or persons who shall apply for and be legally entitled to receive the same, forthwith upon payment of the duty or sum of money thereupon imposed, free from all poundage, fee, gratuity, or any other payment whatsoever."

Sect. 7. "That in every licence to be taken out under or by authority of this act shall be contained and set forth the purpose, trade, or business for which such licence is granted, and the true name and place of abode of the person or persons taking out the same, and the true date or time of granting such licence, and (except in the case of auctioneers) the place at which the trade or business for which such licence is granted shall be carried on. Provided always, that persons in partnership, and carrying on their trade or business in one place and set of premises only, shall not be obliged to take out more than one licence in any one year, for the purpose of carrying on such trade or business, save and except that each and every person whatsoever exercising or carrying on the trade or business of an

(a) A licence to sell beer may also be taken out by any inhabitant paying 2*l.* See 1 Will. IV. c. 64, *post*.  
(b) See *post*, s. 26, *note*.

auctioneer, or acting as such, shall take out a separate and distinct licence for that purpose; any thing herein contained to the contrary thereof notwithstanding."

Sect. 8. "That every person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments, by auction, shall, over and above any licence to him or her granted as an auctioneer, take out such licence as is required by law, to deal in or retail, or to vend, trade in, or sell any goods or commodities for the dealing in or retailing or vending, trading in or selling, of which an Excise licence is specially required, before he or she shall be permitted or authorized to sell such goods or commodities by auction; and if any such person shall sell any such goods or commodities as aforesaid by auction without having taken out such licence as aforesaid for that purpose, he or she shall be subject and liable to the penalty in that behalf imposed upon persons dealing in or retailing, vending, trading, or selling any such goods or commodities without licence, notwithstanding any licence to him or her before granted as aforesaid for the purpose of exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments by auction; any thing herein contained to the contrary notwithstanding. Provided always, that where such goods or commodities as aforesaid are the property of any person or persons duly licensed to deal in or retail, or to vend, trade in, or sell the same, such person or persons having made lawful entry of his, her, or their house or premises for such purpose, it shall and may be lawful for any person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments by auction as aforesaid, being duly licensed for that purpose, to sell such goods or commodities as aforesaid for and on behalf of such person or persons, and upon his, her, or their entered house or premises, without taking out a separate licence for such sale."

Sect. 9. "That from and after the 5th day of July, 1825, where by any act or acts of parliament relating to Excise licences in force in Great Britain or Ireland on or immediately before the said 5th day of July, 1825, it is required that any person or persons taking out an Excise licence to exercise or carry on any trade or business therein mentioned in any part of the united kingdom should give bond at the time of granting such licence, it shall and may be lawful for such person or persons, except persons exercising or carrying on the trade or business of a brewer of beer in Ireland, or the trade or business of an auctioneer, or person selling any goods or chattels, lands, tenements, or hereditaments by auction in any part of the united kingdom, to take out such licence without giving bond as aforesaid; and that from and after the 5th day of July, 1825, where bond is given by any person or persons exercising or carrying on the trade or business of a brewer of beer for sale in Ireland, or by any person exercising or carrying on the trade or business of an auctioneer, or person selling any goods or chattels, lands, tenements, or hereditaments by auction in any part of the united kingdom, such bond shall bear date with the day or date of the licence taken out for such purpose, and shall be binding upon the person or persons by whom such bond was made and entered into from the day of such date, and not from the day on which the same may have been executed or delivered; any law or usage to the contrary thereof notwithstanding. Provided always, that nothing herein contained shall extend or be deemed or construed to extend to annul or make void any bond heretofore made, and which shall be in force and unexpired on the said 5th day of July, 1825, but that every such bond as last aforesaid shall remain and

#### 5. *Duties on Licences.*

Every auctioneer selling by auction any goods or commodities for the selling of which an Excise licence is specially required shall take out such licence, over and above his auctioneer's licence, except where the goods are the property of a licensed person, and sold on his behalf on his entered premises.

No person or persons taking out licence shall give bond, except brewers of beer for sale in Ireland, and auctioneers whose bonds shall bear date with that of the licence, and be binding upon them from that day. (a)

(a) A bond is not to be required of brewers on taking out a licence, by 1 Will. IV. c. 51.

### 5. Duties on Licences.

No one licence to authorize any person, except auctioneers, and maltsters, subject to the lowest rate of duty, to carry on his trade in more than one separate and distinct set of premises.

Not to extend to selling beer, cyder, or perry by publicans, being licensed beer retailers, or spirits, wine, or sweets, by the licensed retailers thereof, at fairs or races.

continue in force until the day of the expiration thereof; any thing herein contained to the contrary notwithstanding."

Sect. 10. "That no one licence taken out under or by authority of this act, by any person or persons, except auctioneers or maltsters, shall authorize or empower such person or persons to exercise or carry on the trade or business mentioned in such licence in more than one separate and distinct set of premises, such premises being all adjoining or contiguous to each other, and situate in one place, and held together for the same trade or business, and of which he, she, or they shall have made lawful entry, to exercise or carry on therein his, her, or their trade or business as aforesaid, at the time of granting such licence, but that a separate and distinct licence shall be taken out by all and every such person or persons as aforesaid, except as aforesaid, to exercise or carry on his, her, or their trade or business as aforesaid, at or in any other or different premises than as before mentioned. Provided always, that where the amount or rate of any such licence shall depend upon the quantity of goods made or manufactured by the person or persons to whom the same is granted, such quantity shall be computed from the respective goods only made or manufactured by such person or persons at the premises in respect of which such licence is granted, and shall not include goods made or manufactured by such person or persons at any other or different premises, for which a separate and distinct licence is required as above mentioned."

Sect. 11. "Provided always, that nothing herein contained shall extend to prohibit any person or persons duly licensed to sell beer, cyder, or perry by retail, to be drank or consumed in his, her, or their house or premises, or any retailer of spirits (not being a retailer of spirits in Ireland, licensed as a grocer, to trade in, vend, and sell coffee, tea, cocoanuts, chocolate, or pepper), or any retailer of foreign wine, or retailer of sweets or made wines, or of mead or metheglin, he or she being duly licensed respectively for such respective purpose, to carry on his or her trade or business for which he or she respectively shall be so licensed as aforesaid, in booths, tents, or other places, at the time and place and within the limits of holding any lawful and accustomed fair, by virtue of any law or statute in that behalf, or any public races. Provided also, that in all cases in which the house or premises in respect of which any Excise licence is or shall be granted shall be burnt down, or otherwise destroyed, or rendered uninhabitable by fire or other unavoidable cause or accident, it shall and may be lawful for the commissioners and assistant commissioners of Excise, or collector and supervisor, or other person or persons authorized to grant licences within the district or place in which such house or premises was or were situate, upon due notice thereof to him or them in that behalf given, to authorize and empower, by indorsement on such licence, or otherwise, as the commissioners of Excise shall direct, the person or persons authorized to carry on trade or business by such licence at the house or premises so burnt down or otherwise destroyed or rendered uninhabitable, to carry on such trade or business at any other and different house or premises in the same district or place, of which due entry shall be thereupon made by such person or persons at the time of such removal thereto. Provided always, that where such licensed person or persons as aforesaid shall be a person or persons by law required to be duly authorized by justices of the peace to keep a common inn, alehouse, or victualling house, it shall not be lawful for the commissioners or assistant commissioners of Excise, or such collector and supervisor, or other person or persons authorized to grant licences as aforesaid, to authorize or empower such licensed person or persons as aforesaid, unless such person or persons shall, besides giving such notice as hereinbefore required, produce to such collector and supervisor, or other person or persons authorized to grant licences as aforesaid, such authority from justices of the peace, as by law required in that behalf, to keep a common inn, alehouse, or victualling house, in the house or premises to which such person or persons shall

desire to remove, in consequence of such fire or other unavoidable cause or accident as aforesaid."

Sect. 12. "That it shall not be necessary for any person or persons to take out an Excise licence for the sale of any foreign goods or commodities, for the sale of which in any manner an Excise licence is required by this act, whilst such goods or commodities shall be and remain in the warehouse or warehouses in which the same shall have been deposited, lodged, or secured according to law, before payment of duty upon the importation thereof; any thing in this or any other act to the contrary thereof in anywise notwithstanding. Provided always, that every such sale shall be of not less than one entire cask or package of the liquors or goods so warehoused, and be made to one person, or to persons carrying on trade or business in partnership."

Sect. 13. "That no Excise licence shall be granted under or by authority of this act, for the sale of any beer, or cyder, or perry, by retail, to be drank or consumed upon the house or premises of the person or persons applying for such licence, to any person or persons who shall not produce at the time of applying for such licence a certificate or authority then in force, to him, her, or them in that behalf granted in due form of law by justices of the peace or magistrates, or other competent persons, for such person or persons applying for such licences as aforesaid to keep a common inn, alehouse, or victualling house; and if any such licence shall be granted to any person or persons other than as aforesaid, the same shall be and is hereby declared to be absolutely null and void to all intents and purposes, and the person or persons taking out the same shall be subject to all penalty or penalties to which he, she, or they would have been subject had no such licence been granted."

By 9 Geo. IV. c. 61, s. 17. "No licence for the sale of any excisable liquors by retail, to be drank or consumed on the premises of the person licensed, shall be granted by the commissioners of Excise, or by any officer of Excise, to any person whatsoever, unless such person shall have previously obtained from the justices a licence under this act, and which said licence of such justices shall be retained by such person after being produced to the commissioners or officers of Excise; and every licence granted by the commissioners of Excise, or by any officer of Excise, contrary to this provision, shall be null and void to all intents and purposes."

But see the new regulations, 1 W. IV. c. 64, *post*, title *Ale and Beer, &c.*

By 6 Geo. IV. c. 81, s. 14. "That no licence for the sale of any spirits or foreign wine, or sweets or made wines, or mead or metheglin, by retail, to be drank or consumed in or upon the house or premises where sold, shall be granted to any person or persons who shall not have and produce a licence for the sale of beer, cyder, or perry, by retail, to be drank or consumed in or upon such house or premises, in that behalf granted as herein by this act before mentioned; and if any licence for the sale of any spirits or foreign wine, or sweets or made wines, or mead or metheglin, by retail, to be drank or consumed in or upon the house or premises where sold, shall be granted to any person or persons other than as aforesaid, such licence shall be and is hereby declared to be absolutely null and void to all intents and purposes, and all and every such person or persons as aforesaid shall be subject and liable to all and every penalty and penalties imposed upon persons selling spirits or foreign wines, or sweets or made wines, or mead or metheglin, by retail without licence."

Sect. 15. "That the spirits called aqua vitæ in Scotland shall be deemed and taken to be British spirits to all intents and purposes, and that all persons retailing such spirits in Scotland or elsewhere shall first take out a licence to retail beer, and also a licence to retail spirits, as before directed by this act, and shall in all respects be subject to all the same rules, regulations, and restrictions to which such retailers of spirits are subject or liable; any thing in this or any other act contained to the contrary thereof notwithstanding."

*5. Duties on Licences.*

No Excise licence necessary for the sale of any excisable commodity whilst it is in the import warehouse.

Limitation of quantity.

No licence to be granted for selling beer or cyder by retail, to be drank on the premises, without a justice's licence.

Enactment of 9 Geo. IV., c. 61, s. 17, as to necessity for a justice's licence; but see 1 Geo. IV., c. 64.

No licence shall be granted to any person to retail spirits, or foreign wines, or sweets or made wines, or mead or metheglin, to be drank on the premises, who has not a retail beer licence.

No licence for retailing aqua vitæ to persons not licensed to sell beer by retail.

### 5. Duties on Licences.

Licences taken out by brewers and distillers, and by publicans, as retailers of beer, spirits, or foreign wine, or sweets or made wines, or mead or metheglin, shall expire on the 10th of October in each year, and all other licences on the 5th day of July, to be renewed yearly, and notice for renewal given by the trader 21 days at least before the expiration of his current licence; every such licence to bear date from the expiration of the former licence when regularly renewed, and when afterwards or otherwise granted, from the date of the application.

Licences may be granted to new beginners for a proportional part of the year, who shall pay duty accordingly, according to the quarter of the year in which the licence shall be taken out.

Sect. 16. "That from and after the 5th day of June, 1825, all Excise licences taken out in the united kingdom by any brewer or brewers of beer, or by any distiller or maker, distillers or makers of low wines or spirits, or by any person or persons who shall be duly authorized by justices of the peace to keep a common inn, alehouse, or victualling house, and who shall take out a licence for selling beer, cyder, or perry by retail, to be drank or consumed in the house or premises, or for selling spirits or foreign wine, or sweets or made wines, or mead or metheglin, by retail, under or by virtue of this act, or any other law or laws of Excise (except any Excise licence or licences theretofore granted, and which shall be then in force and unexpired), shall continue and be in force from the day of the date of such licences respectively until the 10th day of October following, on which day in each year all such Excise licences (except as aforesaid) shall expire; and that all other Excise licences throughout the united kingdom, except those above specified, and except as above excepted, shall continue and be in force from the day of the date of such licences respectively until the 5th day of July following, on which day in each year all such licences as last aforesaid (except as aforesaid) shall expire; and all and every person or persons who shall have taken out any such licence as aforesaid, and who shall wish or intend to continue the trade or business for which such licence was granted for any longer space of time, shall take out a fresh licence for the year following, to expire on one of such days as hereinbefore mentioned, according to the nature of the licence by him, her, or them taken out, and shall so renew the same from year to year, so long as he, she, or they shall continue such trade or business, and shall pay in each and every such case the duty thereupon imposed at such time and place as hereinbefore mentioned; and every such person or persons shall in every such case as aforesaid give notice in writing at least twenty-one days before the expiration of the current licence to him, her, or them before granted, of such his, her, or their intention to continue the trade or business for which such licence was before granted, to the collector or supervisor, or other person or persons authorized to grant licences for the district or place at which such trade or business shall be carried on; and in cases where the Excise licence is so renewed as aforesaid, and such notice as aforesaid shall have been given, the new licence shall bear date from the day or date of the expiration of the current licences before granted; but in case where such notice shall not have been given as aforesaid, and in all other cases than as aforesaid, the licence shall bear date from the day of the date of the application made for such licence, although and notwithstanding any such licence may be delivered at any day subsequent to the date of such application."

Sect. 17. "Provided always, that if any person or persons shall commence or begin to exercise or carry on any trade or business, for the exercise or carrying on of which an Excise licence is required, such person or persons not having before taken out any such licence, it shall and may be lawful for the person and persons authorized to grant licences, to grant such licence for the remainder of the current year in which such licence shall be taken out, ending on the 5th day of July or on the 10th day of October next following the date of the licence taken out by such person or persons, according to the nature of such licence, upon payment of such proportional part of the duty thereupon imposed, in such manner as hereinafter mentioned; that is to say, if such licence shall be taken out at any time within the first quarter of the current year in which such licence shall be taken out, and ending as aforesaid, or in the quarter expiring on the 10th day of October, or on the 5th day of January, next following the date of such licence, according to the nature of the licence taken out, that then the person or persons taking out such licence shall pay the whole duty imposed upon such licence, in such manner as hereinbefore mentioned at the time of granting such licence; and if such licence shall be taken out at any time within the second quarter of such current year, and

ending as aforesaid, or in the quarter expiring on the 5th day of January, or on the 5th day of April, next following the date of such licence, according to the nature of the licence taken out, the person or persons taking out such licence shall pay three-fourth parts of the duty imposed upon such licence, in such manner as hereinbefore mentioned at the time of granting such licence; and if such licence shall be taken out at any time within the third quarter of such current year, and ending as aforesaid, or in the quarter expiring on the 5th day of April, or on the 5th day of July, next following the date of such licence, according to the nature of the licence taken out, one half of the duty imposed upon such licence shall be paid in such manner as hereinbefore mentioned at the time of granting such licence; and finally, if such licence shall be taken out at any time within the last quarter of such current year, and ending as aforesaid, or in the quarter expiring on the 5th day of July, or on the 10th day of October, next following the date of such licence, according to the nature of the licence taken out, that then a fourth part only of the duty imposed upon such licence shall be paid in such manner as hereinbefore mentioned at the time of granting such licence."

Sect. 18. "Provided also, that no person or persons who shall at any time have taken out an Excise licence for the exercise or carrying on of any trade or business for which an Excise licence is required, and who shall in any subsequent year after such licence shall have expired take out a new licence for the carrying on the same trade or business, whether on the same or on other or different premises from those on which he, she, or they before carried on such trade or business, shall be deemed or taken to be a person or persons commencing or beginning to exercise or carry on such trade or business, within the intent and meaning of this act, so as to entitle him, her, or them to take out such licence, upon payment of a proportional part only of the duty thereupon imposed; but all and every such person or persons as aforesaid shall pay the whole of such duty, unless the period of time between the expiration of the former licence and the taking out of the new licence shall at the least be a period of two years."

Sect. 19. "That where any licence taken out by any brewer or brewers of beer, or by any distiller or maker, distillers or makers of low wines or spirits, or by any person or persons who, being authorized by justices of the peace to keep a common inn, alehouse, or victualling house, shall have taken out a licence for selling beer, cyder, or perry by retail, to be drank or consumed in the house or premises where sold, or for selling spirits, foreign wine, or sweets or made wines, or mead or metheglin, by retail, in the united kingdom, under any act or acts of parliament in force in Great Britain or Ireland respectively, on or immediately before the said 5th day of July, 1825, shall expire between the said 5th day of July, 1825, and the 10th day of October, 1825, it shall and may be lawful for the person and persons authorized to grant licences within the district or place in which such person or persons respectively carry on trade or business, to grant such person or persons respectively, by whom respectively the former licences were taken out as aforesaid, a licence as a brewer or brewers of beer, or as a distiller or maker, distillers or makers of low wines or spirits, or if duly authorized by justices of the peace to keep a common inn, alehouse, or victualling house, a licence for selling beer, cyder, or perry by retail, to be drank or consumed in the house or premises, or for selling spirits or foreign wine, or sweets or made wines, or mead or metheglin, for such person or persons respectively, to exercise and carry on such respective trades or businesses for the remainder of the year ending the 10th day of October, 1825, under the provisions of this act, upon payment of one-fourth part of the duty imposed upon such licences respectively, at the time of granting thereof; and that all such licences shall expire on the 10th day of October, 1825, and shall be renewed, or a new licence in that behalf granted, and for the same pur-

### 5. *Duties on Licences.*

Persons who were before licensed taking out a new licence shall not be considered beginners, unless the old licence expired two years before such new licence is taken out.

Licences taken out by any brewers, distillers, or publicans, as retailers of beer, spirits, or foreign wine, or sweets or made wines, or mead or metheglin, under any former acts which shall expire between the periods herein mentioned, shall be renewed for a proportional part of the year, upon payment of duty accordingly, according to the quarter of the year in which taken out.



**5. Duties on  
Licences.**

pose, for the whole year ensuing, to expire on the 10th day of October following; and such licences shall be so renewed from year to year, as long as such licences shall continue to be taken out by such person or persons as aforesaid, to whom the same respectively were before granted; and where any licence taken out by any such person or persons as before specified, under any act or acts of parliament in force as aforesaid, on or immediately before the said 5th day of July, 1825, shall expire between the 10th day of October, 1825, and the 5th day of January, 1826, it shall and may be lawful for the person or persons authorized to grant licences as aforesaid to grant to the person or persons by whom such licence shall have been so taken out as aforesaid a licence to exercise or carry on the same trade or business under the provisions of this act, for the remainder of the year ending the 10th day of October, 1826, upon payment of the whole duty imposed upon such licence at the time of granting thereof; and if any licence taken out by any such person or persons as before specified, under any act or acts of parliament in force as aforesaid, on or immediately before the 5th day of July, 1825, shall expire between the 5th day of January, 1826, and the 5th day of April, 1826, it shall and may be lawful for the person or persons authorized to grant such licences as aforesaid, to grant to the person or persons by whom such licence shall have been so taken out as aforesaid, a licence to exercise or carry on the same trade or business, under the provisions of this act, for the remainder of the year ending the 10th day of October, 1826, upon payment of three-fourth parts of the duty imposed upon such licence at the time of granting thereof; and if any licence taken out by any such person or persons as before specified, under any act or acts of parliament in force as aforesaid, on or immediately before the 5th day of July, 1825, shall expire between the 5th day of April, 1826, and the 5th day of July, 1826, it shall and may be lawful for the person or persons authorized to grant licences as aforesaid, to grant to the person or persons by whom such licence shall have been so taken out as aforesaid, a licence to exercise or carry on the same trade or business under the provisions of this act, for the remainder of the year, ending the 10th day of October, 1826, upon payment of one-half part of the duty imposed upon such licence at the time of granting thereof; and that all such licences which shall be so granted as aforesaid, between the 10th day of October, 1825, and the 5th day of July, 1826, shall expire respectively on the 10th day of Oct. 1826, and shall then be renewed, or a new licence for the same purpose granted for the whole year ensuing, to expire on the 10th day of October following; and such licences shall so in such manner be renewed from year to year, as long as such licences shall continue to be taken out by such person or persons as aforesaid, to whom the same were before granted respectively."

All other licences taken out by any persons other than brewers, or distillers, or publicans, retailing beer, or spirits, or foreign wine, or sweets or made wines, mead or metheglin, under any former acts which expire between the periods herein mentioned, shall be renewed for a proportional part of the year, upon payment of duty according to the quarter in which taken out.

Sect. 20. "That where any licence taken out by any person or persons whatsoever in the united kingdom, other than a brewer of beer, or than a distiller or maker, distillers or makers of low wines or spirits, or than a person or persons authorized by justices of the peace to keep a common inn, alehouse, or victualling house, who shall have taken out a licence for selling beer, cyder, or perry, to be drank or consumed in the house or premises where sold, or for selling spirits, or foreign wine, or sweets or made wines, or mead or metheglin by retail, under any act or acts of parliament in force in Great Britain or Ireland respectively, on or immediately before the said 5th day of July, 1825, shall expire between the said 5th day of July, 1825, and the 5th day of July, 1826, it shall and may be lawful for the person or persons authorized to grant licences within the district or place in which such person or persons other than as aforesaid shall carry on trade or business, to grant to such person or persons a licence to exercise or carry on the same trade or business for which such licence was before granted, under any act or acts in force as aforesaid, on or immediately before the said 5th day of July, 1825, under the provisions of this act, for the remainder of the year ending the 5th day of

July, 1826, in manner hereinafter following; that is to say, if the licence taken out by any such person or persons, other than as aforesaid, under any act or acts in force as aforesaid, on or immediately before the said 5th day of July, 1825, shall expire between the said 5th day of July, 1825, and the 10th day of October then next following, then upon payment of the whole duty imposed upon such licence at the time of granting thereof; and if the licence taken out by any such person or persons, other than as aforesaid, under any act or acts in force as aforesaid, on or immediately before the said 5th day of July, 1825, shall expire between the said 10th day of October, 1825, and the 5th day of January, 1826, then upon payment of three-fourth parts of the duty imposed upon such licence at the time of granting thereof; and if the licence taken out by any such person or persons, other than as aforesaid, under any act or acts in force as aforesaid, on or immediately before the said 5th day of July, 1825, shall expire between the said 5th day of January, 1826, and the 5th day of April then next following, then upon payment of one-half of the duty imposed upon such licence at the time of granting thereof; and finally, if the licence taken out by any such person or persons, other than as aforesaid, under any act or acts in force as aforesaid, on or immediately before the said 5th day of July, 1825, shall expire between the said 5th day of April, 1826, and the said 5th day of July, 1826, then upon payment of one-fourth part of the duty wholly imposed upon such licence at the time of granting thereof; and all such licences so granted as aforesaid between the said 5th day of July, 1825, and the 5th day of July, 1826, shall expire respectively on the 5th day of July, 1826, to be then renewed, or a new licence for the same purpose granted for the whole year ensuing, to expire on the 5th day of July following; and such licences shall in such manner be renewed from year to year, as long as such licences shall continue to be taken out by such person or persons, other than as aforesaid, to whom the same were before granted respectively."

Sect. 21. "Provided always, that upon the death of any person or persons licensed under or by virtue of this act, or any law or laws of Excise; or upon the removal of any such person or persons from the house or premises at which he, she, or they were authorized by such licence to exercise or carry on the trade or business mentioned in such licence, it shall and may be lawful for the person and persons authorized to grant licences, to authorize and empower, by indorsement on such licence, or otherwise, as the commissioners of Excise shall direct, the executors or administrators, or the wife or child of such deceased person, or the assignee or assigns of such person or persons so removing as aforesaid, who shall be possessed of and occupy the house or premises before used for such purpose as aforesaid, in like manner to exercise or carry on the same trade or business mentioned in such licence, in or upon the same house or premises at which such person or persons as aforesaid deceased or removing as before mentioned, by virtue of such licence to him, her, or them in that behalf granted, before exercised or carried on such trade or business, for and during the residue of the term for which such licence was originally granted, without taking out any fresh licence or payment of any additional duty, or any fee thereupon for the residue of such term and until expiration thereof. Provided always, that a fresh entry of the premises at which such trade or business shall continue to be so exercised or carried on as aforesaid shall thereupon be made by and in the name or names of the person or persons to whom such authority as aforesaid shall be granted; and provided also, that no such authority as aforesaid shall be granted for the sale of beer, cyder, or perry, or sweets, or made wines or sweets, mead or metheglin by retail, to be drank or consumed in or upon the house or premises for which the original licence was granted, except and in such cases where a proper certificate granted and given by a justice of the peace or magistrate, or other competent person according to the law, made after the death or removal of the former occupier or occupiers of the premises shall have

*5. Duties on Licences, &c.*

Licences may be transferred to the executors, wife, child, or assignee of the person licensed; but in the case of retailing beer to be consumed upon the premises, not without certificate of a magistrate.

**5. Duties on Licences, &c.**

Persons disabled by conviction from keeping a common inn, &c. shall not be allowed to retail beer under any Excise licence, and clerk of the peace neglecting to deliver a copy of conviction shall forfeit 10*l*.

Where the retail beer licence shall become void by conviction as aforesaid, the retail spirit licence shall become void also.

Upon the expiration of the magistrate's authority to keep a public-house within the year (no conviction having taken place), a proportional part of the duties on the Excise licences shall be returned.

taken place, shall be produced, approving of the person or persons to whom such certificate shall be given or granted as aforesaid."

But see the new regulations, 1 W. IV. c. 64, *post*, title *Alehouse, &c.*

6 Geo. IV. c. 81, s. 22. "That all and every person or persons who shall be disabled by any conviction from holding or having a licence to keep, or from keeping a common inn, alehouse, or victualling house, shall also by such conviction be disabled from taking out and from having any Excise licence to sell, and from selling beer, cyder, or perry by retail in any manner whatsoever, under any Excise licence or licences obtained for such purpose; and if any such person shall, after such conviction as aforesaid, take out or have any Excise licence or licences for any such purpose as aforesaid, the same shall and is hereby declared to be absolutely null and void to all intents and purposes; and every person who shall, after such conviction as aforesaid, sell any beer, cyder, or perry by retail in any manner whatsoever, shall incur the penalty for so doing without licence; and in all such cases in the prosecution for the recovery of such penalty a certificate from the clerk of the peace or person acting as such, of any such conviction as aforesaid, shall on the trial in such prosecution be legal evidence thereof, which certificate such clerk of the peace, or other person acting as such, is hereby authorized and required, within one week after any such conviction shall have been returned to his office, to deliver to the collector of Excise, or other person or persons authorized to grant Excise licences within the district or place in which such conviction shall have taken place, setting forth a copy of such conviction signed by himself, for which he shall demand or receive no fee or reward whatsoever; and if any such clerk of the peace or other person acting as such as aforesaid shall neglect or omit to deliver such certificate as aforesaid, he shall for every such offence forfeit the sum of ten pounds."

Sect. 23. "That where the licence for the sale of beer, cyder, or perry by retail, to be drank or consumed upon the house or premises of the person or persons to whom the same is granted shall become void, and the person or persons thereupon disabled in such manner as before mentioned by this act, the licence for the sale of any spirits or foreign wine, or sweets or made wines, or mead or metheglin by retail, to be drank or consumed upon the house or premises thereupon granted, shall become null and void also, to all intents and purposes; and in such case if the person or persons to whom the same respectively were granted shall sell any spirits or any foreign wine, or any sweets or made wines, or any mead or metheglin respectively by retail, to be drank or consumed upon the house or premises, after such conviction as aforesaid shall have taken place in manner before mentioned in this act, and every such licence as aforesaid has thereby become void, such person or persons shall incur the penalty for selling spirits or foreign wine, or sweets or made wines, or mead or metheglin, to be consumed upon the premises by retail without licence; and in all such cases, in the prosecution for the recovery of such penalty as aforesaid, such conviction shall be proved in such and the like manner as before specified by this act in a prosecution under similar circumstances for the sale of beer, cyder, or perry by retail, to be drank or consumed on the house or premises without licence."

Sect. 24. "And whereas the periods at which justices of the peace or magistrates, or other competent persons as aforesaid, are in the practice of granting such certificates or authorities as aforesaid to persons to keep common inns, alehouses, or victualling houses, are various, and at different times in different parts of the united kingdom: and whereas the same do not in any manner correspond with the period at which Excise licences are granted, or for which the same continue in force; and that upon the expiration of such certificate or authority as aforesaid, the Excise licence to sell beer, cyder, or perry by retail, to be drank or consumed upon the house or premises where sold, granted upon such certificate or authority as aforesaid expires, and the Excise licences to

sell spirits, foreign wines, sweets or made wines, and mead or metheglin by retail, to be drank or consumed upon the house or premises, which are granted upon such retail beer Excise licence do thereupon also expire: be it therefore enacted, that if the term for which any such certificate or authority as aforesaid is granted shall expire (no conviction as before mentioned having taken place) at any time within the first quarter of the current year for which such Excise licences as aforesaid respectively were granted, and no such certificate or authority shall be renewed or granted for the succeeding year, three-fourth parts of the duties thereupon respectively paid by the person or persons to whom the same respectively were granted shall be returned to the person or persons then holding such licences, and carrying on trade or business in such house or premises; and if such certificate or authority as aforesaid shall expire as aforesaid at any time within the second quarter of the current year for which such licences as aforesaid respectively were granted, and shall not be renewed or granted for the succeeding year, one-half part of the duties paid thereon respectively shall be returned as aforesaid; and if such certificate or authority shall so expire as aforesaid at any time within the third quarter of the current year for which such licences as aforesaid respectively were granted, and shall not be renewed or granted as aforesaid, then one-fourth part of the duties paid thereon respectively shall be returned as aforesaid; and the collector or other person or persons to whom the duty or duties payable on such licences respectively was or were paid at the time of granting the same, shall and are hereby respectively authorized and required to return such sum or sums of money as aforesaid to such person or persons as aforesaid, on application to him or them being thereupon made by such person or persons for that purpose."

Sect. 25. "That all and every person or persons in the united kingdom, required by any law or laws of Excise to make entry of his, her, or their premises, in order to exercise or carry on therein any trade or business for which an Excise licence is required, and who shall have taken out such licence, shall paint or cause to be painted, or shall place and fix in letters publicly visible and legible, and at least one inch long, in and upon his, her, or their entered premises, his, her, or their names respectively, at full length (or where there are partners or more than one person engaged in carrying on jointly the same trade or business, the name or style of the firm or partnership), and after such name or names the word 'licensed,' adding thereto the words necessary to express the purpose or trade or business for which such licence has been granted; and such person or persons shall cause such letters to be painted or placed and fixed in some conspicuous place on the outside of the front of his, her, or their said premises, over the principal outward door or gate, or entrance door thereto, and not more than three feet from the top of such outward door or gate, or entrance door; and if any such person or persons as aforesaid shall not paint or place and fix such letters as aforesaid, or shall not preserve and keep the same so painted, placed, and fixed, or shall not repaint or renew the same as often as necessity shall require, for the purpose of keeping the same in good order and condition during the continuance of his, her, or their licence, he, she, or they shall forfeit for every such offence the sum of twenty pounds; and if any person or persons not being licensed to exercise or carry on any trade or business for which a licence is required by this act shall put or have any such letters as aforesaid upon his, her, or their premises, or any letters importing that he, she, or they does or do exercise or carry on any such trade or business, or is or are licensed so to do, all and every such person or persons shall for every such offence forfeit the sum of twenty pounds."

Sect. 26. "That if any person or persons shall make or manufacture, deal in, retail, or sell any goods or commodities hereinafter mentioned, or shall exercise or carry on any trade or business hereinafter mentioned, for the making or manufacturing, or dealing in, retailing, or selling of which

*5. Duties on Licences, &c.*

Parties licensed, to put up over their premises their names and trades: penalty for not so doing, or unlicensed persons doing the same, 20l.

Penalty for not taking out licences required by this act.

5. Duties on  
Licences, &c.

goods or commodities, or for the exercising or carrying on of which trade or business, a licence is required by this act, without taking out such licence as is in that behalf required, he, she, or they shall for every such offence respectively forfeit and lose the respective penalty thereupon imposed, as hereinafter follows; (that is to say),

Penalties. (a)

Every distiller or maker of low wines or spirits, and every rectifier or compounder of spirits, so offending respectively, shall respectively forfeit and lose five hundred pounds:

Every manufacturer of tobacco or snuff, so offending, shall forfeit and lose two hundred pounds:

Every person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments by auction; every brewer of table beer only, for sale; every brewer of beer for sale (other than table beer only) for sale; every brewer of beer for sale, who shall retail such beer to be consumed elsewhere than on his, her, or their premises; every person, not being a brewer of beer, who shall sell strong beer only in casks, containing not less than four gallons and a half, or in not less than two dozen reputed quart bottles at one time, to be drank or consumed elsewhere than on his, her, or their premises; every maker of wax or spermaceti candles, for sale; every chandler or maker of candles for sale, other than wax or spermaceti candles; every glass-maker; every tanner; every tawer; every dresser of hides or skins in oil; every currier; every maker of vellum or parchment; every maltster, or maker of malt; every maker of paper, pasteboard, or scale-board; every printer, painter, or stainer of paper; every calico printer, and every printer, painter, or stainer of linens, cottons, stuffs, or silks; every maker of soap for sale; every dealer in spirits, not being a retailer thereof; every retailer of spirits in Ireland, being licensed to trade in, vend, and sell coffee, tea, cocoa-nuts, chocolate, or pepper; every starch maker for sale; every maker of sweets or made wines, or of mead or metheglin, for sale; every maker of vinegar or acetous acid, for sale; every dealer in foreign wine; and every wire-drawer or other person who shall draw or cause to be drawn any gilt or silver wire, commonly called big wire, so offending respectively; shall respectively forfeit and lose the sum of one hundred pounds:

Every person who shall sell beer, cyder, or perry by retail, to be drank or consumed in his, her, or their house or premises; every retailer of spirits, not being a retailer of spirits in Ireland, duly licensed to sell coffee, tea, cocoa-nuts, chocolate, or pepper; every retailer of foreign wine; every retailer of sweets or made wines, or of mead or metheglin; every person trading in or selling coffee, tea, cocoa-nuts, chocolate, or pepper; every dealer in or seller of tobacco or snuff; every maker of stills in Scotland or Ireland; every person in Scotland or Ireland, not being a distiller, rectifier, or compounder of spirits, who shall keep or use any still for the carrying on the trade of a chemist, or any other trade or business requiring the use of any still or stills; so offending respectively, shall respectively forfeit and lose the sum of fifty pounds."

Sect. 27. "That if any spirits shall be sold or delivered in any quantity

The occupiers' of premises where goods are retailed without licence by persons unknown shall be deemed to be the retailers thereof, if privy or consenting thereto.

(a) A., B., C., D., and E. carried on trade in partnership as distillers, and C. alone carried on the business of a retail dealer in spirits within two miles of the distillery, contrary to the 4 Geo. IV., c. 94, s. 132, 133; and his name was not inserted as one of the partners in the distillery in the Excise-book, or licence, as required by the 6 Geo. IV., c. 81, s. 7; held, that these being mere revenue regu-

lations, the breach of them by one of the partners, with the knowledge of the others, did not render the trade carried on by the five so illegal as to deprive them of the right to recover the price of spirits sold by them, or for the breach of a guaranty for the due accounting of an agent, to whom they had consigned the spirits for sale; 10 Bar. & Cress. 93; and see 3 Term Rep. 560.

less than two gallons, or if any beer, wine, cyder, perry, sweets, mead, or metheglin, or vinegar, or any other goods for the retail of which a licence is by this act required, shall be sold by retail in any house or premises, or in any part of any house or premises, by any person or persons unknown, or who shall not be licensed for that purpose according to this act, the occupier of such house or premises, or part of any house or premises, where such spirits or other liquors or goods shall be so sold as aforesaid, if but one occupier only, and if more than one, then the several occupiers thereof, being privy or consenting thereto, shall be deemed and taken to be the retailer or retailers of such spirits, or other liquors or goods, and as such shall be subject and liable to the penalties imposed upon persons for the sale of spirits, or such other liquors or goods, by retail, without licence."

Sect. 28. "That if any person or persons licensed to exercise or carry on any trade or business, or make or sell any goods for which an Excise licence is required, shall not produce and deliver such licence to be read and examined by any officer or officers of Excise, within a reasonable time after such officer or officers shall demand the production thereof, such person or persons shall for each and every such offence forfeit the sum of twenty pounds."

Sect. 29. "And for the encouragement of those who shall discover offences committed against the laws relating to Excise laws, be it further enacted, that where any person or persons shall be lawfully convicted of any offence in carrying on any trade or business, or making or selling any goods without licence, for the carrying on of which trade or business, or the making or selling of which goods, a licence or licences is or are required by this act, and the pecuniary penalty imposed for such offence shall not be paid and cannot be levied, it shall and may be lawful for the commissioners of Excise to cause such reward as they shall think fit, not exceeding ten pounds in each case, to be paid to the several and respective persons who shall appear to them to be entitled thereto as informers, out of any moneys in their hands arising by any penalties or forfeitures incurred under the laws of Excise."

Sect. 30. "Provided always, that nothing in this act contained shall in anywise prejudice the privileges heretofore used and enjoyed by any university in the united kingdom of Great Britain and Ireland, or the respective chancellors or scholars of the same respectively, or their successors, or the master, wardens, freemen, and commonalty of the vintners of the city of London, or other city or town corporate in any part of the united kingdom, or the mayor or burgesses of the burgh of St. Alban's, in the county of Hertford, or their successors, but that they may respectively use and enjoy such privileges as they have heretofore respectively lawfully used and enjoyed the same."

Sect. 31. "That all powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things, which in and by any act or acts of parliament relating to the revenue of Excise in force in Great Britain or Ireland respectively on or immediately before the said 5th day of July, 1825, are provided, settled, or established for securing, enforcing, managing, raising, levying, collecting, paying, mitigating, or recovering, adjudging, or ascertaining the Excise duties or penalties thereby granted or imposed, and for preventing, detecting, and punishing frauds relating thereto, other than and except in such cases for which other penalties, regulations, or provisions are made or prescribed by this act, shall be exercised, practised, applied, used, and put in execution in and for the managing, raising, levying, collecting, mitigating, adjudging, ascertaining, recovering, and paying the several duties and penalties respectively hereby granted or imposed, and for the due enforcement of all other matters and things herein contained, so far\* the same are not repugnant to or inconsistent therewith, as fully and effectually to all intents and purposes, as if all and every the said powers, authorities, rules, regulations, restrictions,

5. Duties on Licences, &c.

Penalty on licensed persons not producing their licence on demand of officer, 201.

Informers against an unlicensed trader to be paid such sum as the commissioners shall direct, not exceeding 10*l*. if the penalty cannot be recovered.

Nothing in this act contained to prejudice the universities, the vintners' companies, or the borough of St. Alban's.

Former regulations to be put in force in execution of this act, except where repealed or altered by this act.

\* Sic. in orig. "as" is omitted.

*5. Duties on Licences, &c.*

Penalties and forfeitures to be recovered and applied as other Excise penalties, unless otherwise by this act provided.

Former regulations which are inconsistent with this act declared to be repealed.

Irish licences of 1825 to be charged and paid according to the rates imposed by this act.

Duties on licences for selling plate, and on hawkers, &c. not repealed by this act.

Commencement of this act.

This act may be altered in the present session.

Spirit and plate licences.

exceptions, provisions, clauses, matters, and things were particularly repealed and again enacted in this present act."

Sect. 32. "That all penalties and forfeitures imposed by this act (save and except in such case where any special provision is herein made) shall be sued for, levied, recovered, mitigated, and distributed by such ways, means, and methods, and in such manner, as by any law or laws of Excise in force is or shall in that behalf be directed, provided, and enacted in Great Britain and Ireland respectively."

Sect. 33. "That all powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things, provided for or contained in any act or acts of parliament in force relating to the revenue of Excise in Great Britain or Ireland respectively, on or immediately before the 5th day of July, 1825, expressly repealed, altered, or re-enacted by this act, or which are repugnant to or inconsistent with the several matters, clauses, provisions, and regulations of this act, any or either of them, shall, and the same are hereby respectively, from and after the said 5th day of July, 1825, declared to be repealed, and shall no longer be put in force or observed in any part of the united kingdom."

Sect. 34. "Provided always, that for and upon the several Excise licences taken out by any person or persons in Ireland, in and for the year 1825, under the laws of Excise then in force, there shall be raised, levied, collected, and paid, so much only of the duties payable thereon as shall be equal and correspondent to the several sums of money made payable by this act upon such licences, from and after the 5th day of July 1825, so far as the same can be computed, adjusted, and ascertained; and that it shall and may be lawful for the commissioners and several collectors of Excise, and they are hereby authorized and required to repay out of any money in their hands arising from duties of Excise, to all and every person and persons who have taken out any Excise licence in Ireland, in and for the year 1825, and paid the duty thereon payable by the laws then in force, so much as may be the computed, adjusted, and ascertained excess of the duties so paid over and above the rate of duty on such licence made payable by this act from and after the 5th day of July, 1825, upon the application of such person and persons to such commissioners, or the collectors of Excise for the same."

Sect. 35. "Provided always, that nothing in this act contained shall extend or be deemed or construed to extend to repeal the Excise duties on licences for selling or making gold or silver plate in Ireland, or on licences for exercising the trade or calling of a hawker, pedlar, petty chapman, or other trading person going from place to place in Ireland; or on licences to travelling tinkers or person, hawking about tea for sale in Ireland; or on licences for servants or other persons employed in carrying goods of any such hawker or pedlar; or on horses or other beasts bearing or drawing burden, which such person shall so travel with in Ireland; nor to repeal the duties on Excise licences to persons letting horses to hire, for the purpose of travelling post in Ireland; or on Excise licences to persons trading in, vending, or selling gold and silver plate in Great Britain; any thing hereinbefore contained to the contrary notwithstanding."

Sect. 36. "That this act shall commence and take effect from and immediately after the 5th day of July, 1825."

Sect. 37. "That this act, or any of the provisions thereof, may be altered, varied, or repealed, by any act to be passed in this session of Parliament."

The 6 Geo. IV., c. 80, contains several regulations relative to spirit licences, which will be stated under the head *Spirits*.

Plate licences were provided for by 6 Geo. IV., c. 118.

(6.) *Complaints of Overcharges of Duty, &c.*6. *Of Overcharges, &c.*

7 and 8 Geo. IV. c. 53, s. 120. "That it shall be lawful for the commissioners of Excise, or any three or more of them, within the limits of the chief office of Excise, and for any two or more of the justices of the peace in any other part of the united kingdom, within whose jurisdiction respectively any person or persons chargeable with any duty of Excise shall have been charged therewith, upon complaint to them respectively made by any such person or persons, of any overcharge in that behalf made by any officer of Excise, within twelve calendar months next after the making of such charge, and such commissioners and justices are hereby respectively authorized and required to hear, adjudge, and determine such complaint, and to examine the witness or witnesses upon oath, who shall be thereupon produced, as well on the behalf of the person or persons making such complaint as on the behalf of His Majesty, and of all parties therein concerned, and shall thereupon, by warrant under their hands, discharge or acquit such person or persons of so much of such charge as shall be made out and proved before such commissioners of Excise or justices of the peace respectively to have been overcharged; and if such person or persons shall, before such acquittal, have paid any money upon or in respect of such overcharge, it shall be lawful for the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, and they are hereby respectively required upon such acquittal as aforesaid, to repay to such person or persons out of the public monies in their hands, or at their discretion, to allow out of the next duties becoming payable by such person or persons, so much money as shall have been so paid as aforesaid; any thing in this act or in any other act or acts of parliament to the contrary thereof in any wise notwithstanding. Provided always, that no such complaint shall be heard before the said commissioners of Excise, unless the same shall be entered by or on behalf of the complainant in a book to be kept for that purpose in the office of the solicitor of Excise, for the summary jurisdiction at the chief office of Excise, stating the particulars thereof, and the name and place of residence of every such complainant; and upon every such complaint being so entered, a notice shall be given by the said commissioners of the time and place by them appointed for the hearing of such complaint, and if such complainant shall not appear at the time and place appointed for the hearing of any such complaint, it shall be lawful for the said commissioners, or any three or more of them, to dismiss such complaint, upon proof of notice of the time and place appointed for the hearing of such complaint having been given to such complainant, or left at the place mentioned in such complaint book as aforesaid to be the place of the residence of such complainant; and that no such complaint shall be heard before any justices of the peace, unless a notice in writing of the time and place of hearing thereof (which notice shall contain and set forth the ground and substance of such complaint) shall be given to the collector of Excise in whose collection, or to the supervisor of Excise in whose district such overcharge shall have been made, within eight days at the least before the time appointed for the hearing of such complaint: and provided always, that the payment of any duty with which any such complainant as aforesaid shall have been charged, or any proceedings for the recovery of such duty, shall not be delayed or suspended by reason of the making of any such complaint, or of the same being depending."

Complaints of overcharge may be heard and determined by any three commissioners or two justices, in their respective jurisdictions, within twelve months after. (a)

No complaint shall be heard in London unless entry thereof be made at the chief office, or, if in the country, unless notice be given to the Excise officer.

Not to suspend the payment of duty, or any proceedings.

(a) It was resolved, that an action for money had and received does not lie against an Excise officer for an overpayment, *Whitbread v. Brooksbank*, *Corp.* 60.



7. Of Entries,  
&c.

(7.) Of Entries and Specimen Books.—Payments to be made by Traders.—Searches, and obstructing Officers.—Seizures and Warrants.—Liability of Goods, Materials, &c.—Administering Oaths.—Perjury.—Fraudulent Removal and Concealment.—Unlawful Manufacturers.—Assisting Officers.—Indictments for obstructing, &c.

In what manner the entry of premises, &c. subject to the survey of the Excise shall be made.

Sect. 18. "That all and every person or persons required to make entry (a) of any building, place, vessel, or utensil, under this act, or any other act or acts of parliament relating to the revenue of Excise, shall deliver such entry, with his or their signature thereto, to the officer of Excise in whose survey such building, place, vessel, or utensil shall be intended to be used; and such officer shall copy such entry into the book kept and known by the name of the *general entry book*, for the division or ride in which such building, place, vessel, or utensil shall be intended to be used; and the supervisor of the district shall examine and compare the copy so made in such book as aforesaid with the original entry; and such officer, upon his being removed from such division or ride, shall deliver over to the officer succeeding him in such station such book and all such original entries."

What shall be sufficient proof of such entry.

Sect. 19. "That where, upon the trial of any indictment, information, action, suit, or prosecution, or upon any other legal or judicial proceeding whatsoever, any such original entry shall be tendered or offered in evidence, it shall be lawful to prove by any credible witness the signature or signatures to such entry to be the handwriting of the person or persons by whom or in whose name or names such entry was made; and that in any such case it shall not be necessary to prove such entry by the testimony of the officer who received, or of the person who may have attested such signature or signatures, or the receipt of such entry; and if upon any trial as aforesaid, or upon any other legal or judicial proceeding, any question shall be made or shall arise, whether any building or place, or any vessel or utensil, of which entry is required to be made under this act, or any other act or acts of parliament relating to the revenue of Excise, was entered by the person or persons by whom the same shall have been used, it shall be deemed and taken to be sufficient proof of such entry, if upon the production of any credible witness of the entry book of the division or ride in which such building, place, vessel, or utensil shall have been used, such building, place, vessel, or utensil shall be found, or shall appear in the copy, or what shall purport to be the copy in such book of any entry thereof, made by such person or persons as aforesaid; and if, upon the production of such book, no such building, place, vessel, or utensil shall be found, or shall so appear therein, or if found shall so appear to have been entered for another or different purpose than the purpose for which the same shall be charged or alleged to have been used by such person or persons, every such building, place, vessel, or utensil shall be deemed and taken to be and\* unentered to all intents and purposes whatsoever, unless by other evidence the contrary be made appear; any law, custom, or usage to the contrary thereof notwithstanding. Provided always, that where in any indictment or information it shall be averred that any person or person was or were a trader or traders under any law or laws of Excise, it shall not be necessary to prove the same by the production or proof of any entry made by or in the name of such person or persons."

\* See. In the act the word "and" is used by mistake instead of "as."

No entry shall be legal except in the name of the real owner; but the ostensible owner shall be liable.

Sect. 20. "That no entry of any building, place, vessel, or utensil made by any person or persons under any act or acts of parliament relating to the revenue of Excise, shall be or be deemed or taken to be a legal entry thereof, unless the same shall have been made by and be in the name of

(a) See form of entry by a brewer, &c., post, 265, 6, note (b).

names of a person or persons who shall, at the time of making such entry, have attained the age of twenty-one years, and who shall be the true and real owner or owners of the trade or business therein or thereby carried on, or in respect of which such entry of such building, place, vessel, or utensil shall have been made. Provided always, that the person or persons who shall act as the visible owner or owners of any trade or business in respect of which any such entry shall have been made, or by whom the same respectively shall be occupied or used, or who shall have the principal management thereof, shall in all respects, and notwithstanding the minority of such visible owner or owners, (a) be subject and liable to all duties, penalties, and forfeitures imposed by this act, or any other act or acts of parliament relating to the revenue of Excise, or any part thereof, to which the real owner or owners of such building, place, vessel, or utensil, or of such trade or business therein or thereby carried on, would have been liable; and all stock in such trade or business, and all materials, vessels, and utensils which shall then and there be found in or upon such building or place, to whomsoever the same shall then and there belong, shall be subject to and be charged with all such duties, penalties, and forfeitures." (b)

SECT. 21. "That every person making entry of any building, place, vessel, or utensil under any act or acts of parliament relating to the revenue of Excise, shall in every such entry distinguish and describe every such building, place, vessel, or utensil, by a particular letter or number, and shall, to the satisfaction of the supervisor or surveyor of the district or

7. *Of Entries, &c.*

In the entry of premises, vessel, &c. the same to be distinguished by letters or numbers, and fixed pipes to be painted, under penalty of 100*l.* (c)

(a) Neither minority nor coverture is any defence in general for a violation of Excise laws.—4 *Bla. Com.* 308; 2 *B. & P.* 530; 2 *T. R.* 545; 2 *Str.* 1120.

(b) 49 *Geo. III.*, c. 81, s. 8.

(c) See 58 *Geo. III.*, c. 65, s. 7. The following are forms of a common brewer's, and a spirit-dealer's and tallow-chandler's entries.

(No. 1.)

I, A. B. of \_\_\_\_\_, in the county of \_\_\_\_\_, do hereby make entry of a brewhouse, situate in \_\_\_\_\_ street, marked B. H., containing two coppers, marked No. 1 and 2, with one cock to each, which discharge into mash-tun and hop-back, one reservoir with two pipes marked p., leading into the two coppers. One mash-tun marked M. T. with four pipes, three of which connecting with one main pipe, marked p., discharge into U. B. and R. No. 2, the other, marked p., discharge into brewhouse. One hop-back, marked H. B., with two cocks, which discharge upon the backs marked 1 B. and 2 B., and one pipe, marked p., leading into tun-room No. 2, for recalcing casks. One round, marked No. 1., with one pipe, marked p., connected with the two permanent cleansers in T. R. No. 1. Two cocks which discharge into T. R. No. 1.: also one round, marked U. B., and R. No. 2., with a pipe, marked p., connected with engine, and one cock, which discharge into T. R. No. 2. Two backs, marked 1 B. and 2 B., with four cocks: two discharge into R. No. 1., one into R. and U. B. No. 2., and one into filling-up back belonging to permanent cleanse in T. R. No. 1. One engine with two pipes, one sucking out of liquor-well, one out of R. No. 2., and one raising pipe, all marked p., which charge reservoir. One lead well, into which the stillions discharge themselves. One filling-up back, marked F. B., with one pipe to the same, which charge the permanent cleanse marked p. One tun-room, marked T. R. No. 1. One tun-room, marked T. R. No. 2. One store-room, marked S. T. No. 3. The same are for the purposes of brewing of beer as a common brewer, for sale.

Dated this 1st day of Jan. A. D. 1830.

A. B.

1. Form of a common brewer's entry.

(No. 2.)

I, A. B., brandy-dealer, of \_\_\_\_\_, in the county of \_\_\_\_\_, do hereby make entry of one room, marked No. 1. for foreign spirits; also one room, marked No. 2., for British spirits: and in the which room, marked No. 1., are

2. Form of a brandy-dealer's entry.

7. Of Entries,  
&c.And a drawing,  
&c. to be de-  
livered.

Penalty, 100l.

Officer may ent-  
er any building or  
other place used  
for carrying on  
any trade subject  
to survey (if by  
night in the pre-  
sence of a con-  
stable), for the  
purpose of in-  
specting the same,  
or taking any  
account, and  
charging the  
duty of Excise.

division, paint such respective letter or number in a large and distinct character upon some convenient and conspicuous part of the outside of the walls or doors of every such building and place, and upon some convenient and conspicuous part of the outside of every such vessel and utensil, and shall continue the same so painted, and from time to time and when occasion shall require, or when requested by the supervisor or surveyor of Excise of the district or division, shall renew the same, so long as the entry thereof shall remain uncanceled, so that such letter or number so painted may be easily and distinctly observed and known by the officers of Excise: and wherever any such person shall use or employ, in any entered building or place, any fixed pipe, every such person, when required by the supervisor or surveyor of Excise, by a written notice, shall paint and continue painted every such pipe, throughout its whole length and over its whole exterior surface, with a distinct oil colour or oil colours, to the satisfaction of the supervisor or surveyor of Excise of the district or division; and every such person, after such notice, shall also deliver, in addition to the entry required to be made by such person of any such building, place, vessel, or utensil, and as part thereof, a drawing or drawings, or description, distinctly showing or exhibiting and explaining the course, direction, construction, and use of every such pipe respectively, and of every branch thereof, and of every cock therein, together with every place, vessel, and utensil respectively, from and to or with which the same shall lead or communicate. Provided always, that all pipes or parts of pipes used for the same purpose only shall be painted of the same colour; and if any such person shall use any building, place, vessel, or utensil, by him or her entered, which shall not be so distinguished and described as aforesaid, or which shall not have such letter or number so painted and continued thereon as aforesaid, or shall use any fixed pipe in any building or place so entered, which shall not be so painted, and so shown or exhibited and explained in any drawing or drawings, or description, or different from or disagreeing with any drawing or description by him or her delivered thereof, every such person using such building, place, vessel, utensil, or pipe as aforesaid, shall for every such offence forfeit and lose, over and above all other penalties, the sum of one hundred pounds."

Sect. 22. "That it shall be lawful for any officer of Excise and his assistants at any time, either by night or day (but if between the hours of eleven at night and five in the morning, then upon request, and in the

1	Store Cask, marked F.	No. 1.	16	Gallons.
1	Do. Do. F.	No. 3.	52	Do.
1	Do. Do. R.	No. 1.	55	Do.
1	Do. Do. R.	No. 2.	57½	Do.
1	Do. Do. R. Sh.	No. 1.	8½	Do.

In room, marked No. 2., are

1	Store Cask, marked X.	No. 1.	70	Gallons.
1	Do. Do. X.	No. 2.	10	Do.

All for the purpose of sale, situate in  
my hand, this 17th day of June, 1828. street,

Attested by G. H. }  
officer, June 17, 1828. }

Witness  
A. B.

(No. 3.)

3. Form of a  
tallow-chandler's  
entry.

I, C. D., do hereby make entry of one candle-office, marked C. H., one copper, marked C., one dipping mould, marked D. M., one mould closet containing 198 pipes, marked M., situate in the yard adjoining my dwelling-house, and situate in the street, in the parish of , in the county of .  
Witness my hand, this 11th day of February, 1828. C. D.  
Attested 11th Feb. }  
1828. E. F. }

presence of a constable or other lawful peace officer, (a) except in such cases as are otherwise specially provided for by any other act or acts of parliament relating to the revenue of Excise), to enter into and remain so long as such officer may think fit, for the purposes herein after mentioned, in any building or place belonging to or used by any person or persons for the purpose of carrying on any trade or business under or subject to any law or laws of Excise, or belonging to or used by any person or persons making or required to make any entry of such building or place under any such law or laws; and it shall be lawful for such officer of Excise and his assistants to inspect any such building or place, and to take such account as such officer shall deem necessary, according to the several laws, provisions, and regulations relating thereto, of all matters and things, and of all works, vessels, utensils, goods, and materials belonging or in anywise appertaining to such trade or business; and it shall be lawful for such officer, and he is hereby authorized and required, to charge any duty or duties imposed by any act or acts of parliament relating to the revenue of Excise which shall be then chargeable upon the person or persons carrying on such trade or business, and of such account and charge of duty to make a return or report in writing to the commissioners of Excise, and to the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland, or to such person as the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively may direct; such officer, in all cases where the minutes of the entries made by him in taking such account shall not appear on any such specimen left as herein after mentioned, giving (if demand be made thereof in writing at the time of taking such account) a true copy of such charge, in writing under his hand, to the person or persons carrying on such trade or business; and every such return and report of such officer as aforesaid shall be and shall be taken to be a charge of such duty or duties upon such person or persons."

7. *Of Entries, &c.*

Such officer is to charge *de. y.*, &c.

S. ct. 23. "That the supervisor or surveyor of Excise in whose district or division any person or persons shall be who shall carry on any trade or business under or subject to any law or laws of Excise, or the officer of Excise under whose survey such person or persons shall be, may leave and deposit, in some conspicuous and open part of some building or place entered by such person or persons for such trade or business, a certain book or paper called a *specimen*, for recording therein minutes of the entries made by the officers respectively who survey the premises of such person or persons, or the trade or business of such person or persons, in the books of such officers, of the state of the manufactory, and of the accounts and particulars of the survey thereof, at any time taken by such officers respectively, and the names and minutes of survey and observations of any other officer who may visit or inspect such entered premises; and every officer of Excise shall at all times have free access to such book or paper, with liberty and power to remove or take away the same, leaving

*Specimen books may be left by the officers on the premises of traders, and not to be removed or destroyed, under penalty of 200l. (b)*

(a) He must be a peace-officer at the time, *Hill v. Burnes*, 2 Bl. R. 1185.

(b) As to this book, see *R. v. Grimwood*. 1 Price, 369; and see form of specimen book and notes thereon, *post*, 268. The *specimen book* is in form a small folio memorandum book, each leaf about three inches broad and eight inches long, each page impressed with a red Excise stamp, and paged or numbered 1, 2, 3, &c., and is in this state delivered to the surveying officer, who on the first leaf

writes the trader's name, trade, and residence, and the collection, district, division, or ride, for which he is acting. This book is left on the trader's premises to enable the surveying officer or his superiors to register the operations of the trader. The duty of the surveying officer as to the entries he is to make in this book are pointed out by 7 & 8 Geo. IV., c. 53, s. 23, and the book and entries are usually in the following form.

*Specimen book.*

7. *Of Entries,*  
8c.

Penalty on  
h ordering of-  
ficers, &c. in the  
execution of  
their duty.

Form of spec-  
men book left  
and kept at a  
brewer's pre-  
mises under  
7 & 8 Geo. 4.,  
c. 53, s. 23.

a new book or paper for the like purpose as aforesaid in lieu thereof; and if any person, not being an officer of Excise, shall remove or take away, or shall conceal or withhold any such book or paper, or shall damage or destroy the same, or alter, deface, or obliterate any entry therein, or shall make any entry therein, every such person so offending shall for every such offence forfeit and lose the sum of two hundred pounds."

Sect. 24. "That if any person shall oppose, molest, obstruct, or hinder any officer of Excise, or any person employed in the revenue of Excise, or acting in the aid or assistance of any officer or person so employed, in the

[4.]	[5.]
July.	Office Stamp.
5 e p 6 silent transfer.	July 9.
6 m p 6 silent. (a)	9 m p 5 H and Bl (g) out Crs silent (Bro) U Bril no length.
6 e p 6 silent.	9 m p 7 1 R X (h) 2 R T Crs silent (o) length by.
7 m p 6 silent.	9 e p 2 1 R X (i) cleansed T Crs silent.
7 e p 7 silent.	9 e p 8 1 R X (k) Crs silent.
8 m p 6 Crs (b) L M T uncased qrs 10 0 0.	10 m 6 cld X (l) and silent.
8 p n Crs (c) L L gda.	10 e p 8 silent. (m)
8 e p 4 2 C W (d) 1 C L L gds.	10 e p 8 silent.
8 e p 6 H out (e) 2 C W pumping in 1 C silent (53) hops.	11 m p 6 silent sitting day July 20th duty and licence 300l. 1s.
8 e p 10 H and blw (f) out, Crs silent (Bro) U Bril no length.	

(a) The 6 m p means the 6th day of July, morning, past six o'clock; and the word *silent*, that the brewing utensils are not in use.

(b) Crs L M T uncased qrs. 10 0 0, means Coppers filled with Liquor, Mash-Tub not in use, and malt not wetted.

(c) Coppers filled with Liquor. Liquor on the malt.

(d) 2nd Copper filled with Wort. 1st Copper, Liquor. Liquor on the malt.

(e) Hop out; second Copper, Wort; pumping in wort; first Copper not in use. (53 lbs. hops used.)

(f) Hops and table beer out of the copper. Coppers not in use. Grains in

part gone out of mash-tub. Under-back not in use. The quantity of beer made not declared by brewer.

(g) The same as note (f).

(h) The first Round filled with strong beer, the second Round with Table beer. Coppers not in use. The quantity of strong and table beer declared by brewer.

(i) The first Round filled with strong beer, Table beer run into barrels. Coppers not in use.

(k) The first Round filled with strong beer. Coppers not in use.

(l) The strong beer run into barrels, and the brewing utensils are not in use.

(m) The same as (a).

due execution of this act or any other act or acts of parliament relating to the revenue of Excise, or in the execution of any of the powers or authorities by this act or any such act or acts given or granted to such officer or person so employed, every person so offending shall for every such offence forfeit and lose the sum of two hundred pounds."

Sect. 25. "That every person carrying on any trade or business, under or subject to any law or laws of Excise, shall pay and clear off the duty or duties in that behalf imposed by any act or acts of parliament respectively in such case made and provided, and charged upon or incurred by such person, (a) at such time and place and to such person respectively as shall for that purpose be specially directed in any act or acts of parliament relating to such duties respectively, or as shall be from time to time directed by the commissioners of Excise; and if any such person shall not pay and clear off such duty or duties at such time and place, and to such person respectively as aforesaid, or upon demand thereof made (under order of the commissioners of Excise or of the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively) by the collector of Excise in whose collection such trade or business shall be carried on, or by any officer authorized and directed by such collector, under such order as aforesaid, to make such demand, (whether such demand be made personally of any person who shall have incurred such duty or duties, or shall be left at the dwelling-house of any such person, or on the premises where such duty or duties shall have been charged or incurred,) every such person shall forfeit and lose double the value of the duty or duties so neglected to be paid and cleared off as aforesaid."

Sect. 26. "Provided always, that no person who shall carry on trade or business in any such market town as aforesaid, or in any such other town as hereinbefore specified, shall be compelled to travel out of such market town or other town, for the purpose of paying any duty of Excise, or of making any entry (other than the entry required to be made of any building, place, vessel, or utensil for the purpose of carrying on trade or business); and that no person who shall carry on trade or business out of any such market town, or other town as aforesaid, shall be compelled to travel to any other place than such market town, or other town as aforesaid, next to the place for or at which such duty shall have been charged, or such entry (other than as aforesaid) is required to be made for the purpose of paying such duty or making such entry."

Sect. 27. "That in all cases in Scotland or Ireland where any duties of Excise charged upon or payable by any person or persons shall be unpaid, and shall be in danger of being lost to His Majesty, unless immediate proceedings are taken for the recovery of such duty or duties, it shall be lawful for the collector of Excise, or other officer in charge of the collection within which such duty or duties shall have been charged or be payable, on affidavit being made before him of the facts, showing the danger such duty or duties are in of being lost, to issue a warrant under his hand against every or any person or persons upon whom such duty or duties shall have been charged, or by whom the same shall be payable, empowering any person or persons to levy such duty or duties in like manner as any penalty may be levied by any warrant issued under and by virtue of this act; and such warrant of such collector or other officer as aforesaid shall for that purpose have the same force and effect as a writ of fieri facias issued at the suit of His Majesty out of the Court of Exchequer; and such collector or other officer as

### 7. *Of Entries, &c.*

Excise traders shall pay their duties at such time and place as shall be appointed, or upon demand made by order of the commissioners, under pain of forfeiting double such duties.

Penalty double duty.

No person compelled to go further than the next market town for making entries or payment of duties.

Collectors may issue warrants to levy in Scotland or Ireland duties in danger of being lost.

(a) The 43 Geo. III., c. 69, contains a list of these duties. That act was in part altered by 45 Geo. III., c. 94; 46 Geo. III., c. 138; 48 Geo. III., c. 120, r. 1; 49 Geo. III., c. 63; 55 Geo. III., c. 94, and other subsequent acts. See *ante*, 244 to 263, as to duties payable.

7. *Of Entries, &c.*

All goods liable to an Excise duty, and the materials, vessels, &c. to be subject to arrears of duty, penalties, &c. (a)

aforsaid issuing any such warrant shall forthwith transmit the affidavit on which such warrant was issued, with his report of what had been done thereon, to the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively; and it shall thereupon be lawful for such commissioner or commissioners and assistant commissioners respectively to stay the proceedings, or to grant such other relief on such warrant as they shall think fit."

Sect. 28. "And in order to secure the duties of Excise from time to time due and owing and in arrear from any person or persons carrying on any trade or business under or subject to any law or laws of Excise, and on or by whom such duties shall have been charged or become payable, and for the enforcement of all penalties incurred by any person or persons for any offences committed against this act, or any other act or acts of parliament relating to the revenue of Excise; be it enacted, that all goods and commodities for or in respect whereof any duty or duties of Excise is, are, or shall be by law imposed, and all materials, preparations, utensils, and vessels for the making thereof, or by which any such trade or business shall have been carried on, in the custody or possession of the person or persons carrying on such trade or business, or in the custody or possession of any other person or persons, to the use of or in trust for the person or persons carrying on such trade or business, shall be and remain subject and liable to, and the same are hereby made chargeable with all the duties of Excise which, during the time of any such custody or possession, shall be charged or become chargeable, or be in arrear or owing, from or by the person or persons carrying on such trade or business for or in respect of the same, or of any such or the like goods and commodities respectively; and shall also be and remain subject and liable to all penalties and forfeitures which, during any such custody or possession, shall be incurred by the person or persons carrying on such trade or business, for any offences by such person or persons committed against this act, or any other act or acts of parliament relating to the revenue of Excise; and all such goods, commodities, materials, preparation, utensils, and vessels shall be and remain subject and liable to all such duties, penalties, and forfeitures, into whose hands soever the same shall afterwards come, or by what conveyance or title soever the same shall be claimed; (a) and it shall be law-

(a) See 28 Geo. III. c. 37, s. 21. In the case of *Austin, assignee of Dormer, v. Whithead*, 6 T. R. 436, it was determined, that a soap-maker, having incurred a forfeiture for concealing soap contrary to 1 Geo. II. c. 36, s. 2, and having become bankrupt, and a provisional assignment of his estate having been made, after which the soap was condemned and the bankrupt convicted, and thereupon a warrant issued to levy the penalty on his goods generally, such a warrant was bad, and could not justify a seizure of the soap in the hands of the assignees; and *Lord Kenyon, C. J.*, said (*inter alia*) that even if no bankruptcy had intervened in this case, the warrant could not have been supported, because it directed a seizure of the goods of Dormer generally; whereas the Excise laws only give a lien on those goods that are liable to the duties, and the materials and utensils for making the same. In *Stacey v. Hulsc, Doug.*

411; *Attorney-General v. Serle and R. v. Fowler, Doug.* 416, it was held, that a penalty for not paying the Excise duties incurred before a bankruptcy, but not substantiated by conviction till after, continues a lien upon the estate in the hands of the assignees, and might be distrained for. Calicoes in the white frame, marked the property and manufacture of third persons, in the hands of the printer, are not liable to seizure under an extent for bygone duties due from the printer, by virtue of the stat. 28 Geo. III. c. 37, s. 21, the printer not being the maker or manufacturer within the meaning of that act. Quære whether printed calicoes, the property of third persons, in the hands of the printer, are liable to seizure under an extent for duties in respect of those goods due from the printer by virtue of stat. 28 Geo. III. c. 37, s. 21. *The King v. Tregowing and others*, 2 Young & Jer. 132; but see 6 T. R. 436.

ful in all such cases to levy thereupon such duties, penalties, and forfeitures, and to use such proceedings for the recovery or enforcement of such duties, penalties, and forfeitures respectively, as may lawfully be done in cases where the debtors or offenders are the true and lawful owners of such goods, commodities, materials, preparations, utensils, or vessels."

Sect. 29. "That in all cases where any oath is or shall by this act, or any other act or acts of parliament relating to the revenue of Excise, be required and directed to be made or taken by any person or persons whomsoever, it shall be lawful for the commissioners or assistant commissioners, or any commissioner or assistant commissioner of Excise, or for the commissioners of appeal under this act, or the justices or any justice of the peace, or officers or any officer or other persons or person before whom such oath is required to be made or taken, and they and he respectively are and is hereby authorized to administer and receive such oath accordingly."

Sect. 30. "That in every case in which an oath is by this act, or any other act or acts of parliament relating to the revenue of Excise, required and directed to be made or taken, and in all proceedings for any misdemeanor, or for the recovery of any penalty incurred, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, if the person required to make or take such oath shall be and be known to be one of the people called quakers, then and in every such case the solemn affirmation or declaration of such quaker shall be administered and received as aforesaid, in lieu of such oath; any act or acts of parliament to the contrary thereof in anywise notwithstanding."

Sect. 31. "That if any person who shall make or take any such oath or affirmation or declaration shall wilfully and knowingly swear or affirm or declare falsely to any matter or thing therein, every such person, being duly convicted thereof, shall incur and suffer the pains and penalties to which persons are or shall be liable for wilful and corrupt perjury; and if any person shall corruptly procure or suborn any other person to swear or affirm or declare falsely to any matter or thing in any such oath or affirmation or declaration, every person duly convicted of such procuring or suborning shall, for every such offence, incur and suffer such penalties, forfeitures, pains, and disabilities respectively, as persons are or shall be liable to on being convicted of subornation of perjury."

In 24 ed. Burn's J., 2 vol. 84, there is a title of *offenders* removing, and an enactment in 32 Geo. III., c. 10, s. 2, respecting backing a body-warrant into another county.

Sect. 32. "That in case any goods or commodities for or in respect whereof any duty of Excise is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities, shall be removed, or shall be deposited or concealed in any place, with any intent to defraud His Majesty of such duty, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited; and in every such case, and in every case where any goods or commodities shall be forfeited under this act, or any other act or acts of parliament relating to the revenue of Excise, all and singular the casks, vessels, cases, or other packages whatsoever, containing or which shall have contained such goods or commodities respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other cattle, and all things used in the removal or for the deposit or concealment thereof respectively, shall

## 7. *Of Entries, &c.*

Officers authorized to administer oaths.

Quaker's affirmation may be accepted in lieu of an oath.

Penalties on perjury and subornation of perjury.

Goods fraudulently removed or concealed to evade the duty shall be forfeited; as also the packages or conveyances used for containing or removing the same. (a)

(a) See 11 Geo. I., c. 30, s. 16; 42 Geo. III., c. 93, s. 17, 18; 49 Geo. III., c. 81, s. 8; 57 Geo. III., c. 87, s. 8.



7. Of Entries,  
&c.

Penalty, treble  
the value, or 100*l*.

Persons found  
employed in un-  
entered Excise  
manufactories  
liable to fine and  
imprisonment.

Penalty, 30*l*.

Excise officer may  
apprehend of-  
fender, and pro-  
ceedings to con-  
viction, &c.

On nonpayment  
of penalty, three  
calendar months  
imprisonment.

Second offence,  
penalty *est*.

be forfeited; and every person who shall remove, deposit, or conceal, (a) or be concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any duty of Excise is or shall be imposed, with intent to defraud His Majesty of such duty, or any part thereof, shall forfeit and lose treble the value of all such goods and commodities, or the sum of one hundred pounds, at the election of the commissioners of Excise or Customs; or of the commissioner or commissioners and assistant commissioners of Excise or Customs in Scotland and Ireland respectively, or the person who shall inform or sue for the same."

Sect. 33. "That when any officer of Excise shall at any time find in any private or unentered place manufacturing, or in the course of manufacturing, any goods or commodities for or in respect whereof any duty of Excise is or shall be imposed, or any materials or preparations for manufacturing any such goods or commodities, and shall at the same time discover in or about such private or unentered place any person knowingly aiding, assisting, or in anywise concerned in the manufacturing of such goods or commodities, every person so discovered shall forfeit and lose the sum of 30*l*., over and above all other penalties to which the proprietor of the same, or the person in whose custody or possession the same shall be found, or by whom the manufacturing of such goods or commodities may be carrying on, is or may be subject and liable; and it shall be lawful for any officer of Excise, and all persons acting in his aid and assistance, to arrest and detain every person so discovered, and to convey him or her before one or more justice or justices of the peace for the county, shire, division, city, town, or place wherein such person shall be so discovered as aforesaid; and it shall be lawful to and for such justice or justices of the peace, on confession of the party, or by proof on the oath of one or more credible witness or witnesses made of such offence, to convict every such person so discovered as aforesaid; and every person so convicted shall, immediately on such conviction, pay the said sum of 30*l*. into the hands of the officer who shall have conveyed such offender before such justice or justices of the peace, to be paid to the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland respectively, or to such person or persons as they may respectively appoint, to be applied in such manner as other Excise penalties are by this act directed to be applied; and on any such offender refusing or neglecting to pay the said sum of 30*l*., the justice or justices so convicting as aforesaid shall and may, by warrant or warrants under his or their hand or hands, commit the said offender to the house of correction or other prison for the said county, shire, division, city, town, or place respectively, there to remain and be kept to hard labour for the space of three calendar months, to be reckoned from the day of such conviction, and the person so convicted and committed shall not under any pretence, or by reason of any authority or order other than as hereinafter mentioned, be discharged, until he or she shall have paid the said sum of 30*l*., or until the expiration of the said three months; and in case any person so convicted shall be again discovered in or about any private or unentered place or places, manufacturing or in the course of manufacturing any goods or commodities for or in respect whereof any duty of Excise is or shall be imposed, or any materials or preparations for manufacturing such goods or commodities, or aiding or assisting or in anywise concerned in manufacturing such goods or commodities, such person so again offending shall, upon the like conviction, forfeit and pay for such further offence the sum of 60*l*., and shall be committed to the house of correction or other prison in manner aforesaid, there to remain as aforesaid for and during the term of six months, or until the said sum of 60*l*. shall be paid. Provided always, that in any such case of imprisonment it shall be lawful for the

(a) *Ex parte Ransley*, 3 Dowl. & R. 572.

commissioners of Excise, or for the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, to order any person so imprisoned to be discharged at any time before the term of his or her imprisonment shall have expired."

Sect. 34. "That if any officer of Excise shall have cause to suspect that any goods or commodities forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, are deposited or concealed in any place, then and in every such case, if such place shall be within the limits of the chief office of Excise in London, upon oath being made by such officer before the commissioners of Excise, or any two or more of them, or if such commissioners shall not be publicly sitting for the despatch of business, or such place or places shall be in any other part of the united kingdom out of the limits of the said chief office, then upon such oath being made before one or more justice or justices of the peace for the county, shire, division, city, town, or place where such officer shall suspect such goods or commodities to be deposited or concealed, setting forth the ground of such suspicion, it shall be lawful to and for the said commissioners, or any two or more of them, or the justice or justices of the peace respectively (as the case may be), before whom such oath shall be made, if he or they shall judge it reasonable, by special warrant or warrants under his or their hands respectively, to authorize and empower such officer, by day or by night (but if between the hours of eleven of the clock at night and five in the morning, then in the presence of a constable or other lawful officer of the peace), to enter into every such place where any such goods or commodities shall be suspected to be deposited or concealed, and to seize and carry away the same; and it shall be lawful for any officer to whom any such warrant shall be given or granted, and he is hereby authorized, in case of resistance, to break open any door, and to force and remove any other impediment or obstruction to such entry, search, or seizure, and removal as aforesaid."

Sect. 35. "That all justices of the peace, mayors, bailiffs, constables, and all His Majesty's officers, ministers, and subjects, serving under His Majesty, by commission, warrant, or otherwise, shall be aiding and assisting, and they are hereby respectively required to be aiding and assisting to every officer of Excise in the due execution of any act or thing required and enjoined by this act, or by any other act or acts of parliament relating to the revenue of Excise, to be done; and all such persons who shall be so aiding and assisting unto any such officer of Excise as aforesaid are and shall be defended and saved harmless by virtue of this act; and if any such person shall be sued or prosecuted for or on account of any act, matter, or thing by such person done in giving such aid and assistance, every such person shall and may plead the general issue, and give this act and the special matter in evidence in defence in such behalf."

Sect. 36. "That if upon notice given or request made by any officer of Excise, to any constable, headborough, or other ministerial officer of the peace, to go with him as such officer of Excise, and to be present at the doing or performing of any act or thing at which the presence of a constable, headborough, or officer of the peace is or shall be required by this act, or any other act or acts of parliament relating to the revenue of Excise, such constable, headborough, or officer of the peace shall not go with such officer of Excise, or shall not be present at the doing or per-

### 7. *Of Entries, &c.*

Upon an officer making oath of suspicion, two commissioners, or one justice, may grant warrant to enter (if in the night, in the presence of a constable,) and seize forfeited goods lodged or concealed in any place. (a)

Justices, constables, &c. required to assist revenue officers. (b)

Constable or other peace officer, on notice or request, not going with the officer of Excise when his presence is required by law, to forfeit sol. (c)

(a) As to the liability of the officer who makes an ineffectual search, &c. see *Bostock v. Saunders*, 2 Bla. R. 912; *Brace v. Rawlins*, 3 Wils. 61; *Cooper v. Booth*, 3 Esp. R. 136; 1 T. R. 536;

*Scott v. Shearman*, 2 Bla. R. 977; *High. on Excise*, 220.

(b) See 11 Geo. I., c. 30, s. 31.

(c) *Ibid.*

7. *Of Entries, &c.*

Constables may continue assistance into neighbouring districts.

Officers of Excise and Customs to have similar powers of seizure, &c. of foreign goods, or of British spirits, forfeited under any laws of Excise or Customs.

Persons obstructing officers, &c. in making seizures, or rescuing the same, or destroying the packages, to forfeit 200*l.* (a)

forming of any such act or thing, or shall refuse or neglect so to do, or to be present as aforesaid, every such constable, headborough, or officer of the peace so offending shall for every such offence forfeit and lose the sum of twenty pounds."

Sect. 37. "That it shall be lawful for every constable, headborough, or other ministerial officer of the peace, who shall have begun to assist any officer or officers of Excise in the execution of his or their duty in any place where such constable, headborough, or ministerial officer of the peace shall have jurisdiction by law, and such constable, headborough, and ministerial officer of the peace is hereby respectively authorized and required to continue such his assistance into and in any other place, and shall be deemed a constable, headborough, or ministerial officer of the peace, and have jurisdiction accordingly, in such last-mentioned place, for the purpose of continuing such assistance."

Sect. 38. "That every officer of the Customs shall have, use, and exercise all such and the like powers and authorities for the arrest and prosecution of any person, or for the search, examination, seizure, detention, removal, and prosecution of any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any foreign or imported goods or commodities whatsoever, or any British spirits, forfeited under this act, or any other act or acts of parliament relating to the revenue of Excise, as are, shall be granted, or shall or may be used or exercised in that behalf by any officer of Excise; and that every officer of Excise shall have, use, and exercise all such and the like powers and authorities for the arrest and prosecution of any person, or for the search, examination, seizure, detention, removal, and prosecution of any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any foreign or imported goods or commodities whatsoever, forfeited under any act or acts of parliament relating to the revenue of the Customs, as are or shall be granted or shall or may be used or exercised in that behalf by any officer of the Customs; any thing in this act or in any other act or acts of parliament to the contrary thereof notwithstanding."

Sect. 39. "That if any person shall molest, obstruct, or hinder any officer of Excise, or any person employed in the revenue of Excise, or acting in aid and assistance of such officer or person so employed as aforesaid, in the search, examination, seizure, detention, or removal of any goods or commodities, or any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any other thing whatsoever forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenues of Excise or Customs, or in the due execution of his office or duty respectively in that behalf, or shall after any such officer or person so employed, or person acting in such aid and assistance as aforesaid, shall have made any such seizure as aforesaid, rescue or cause the same to be rescued, or shall attempt or endeavour so to do, or shall, whilst such officer or person so employed, or person acting in such aid and assistance as aforesaid, is or are searching for, examining, detaining, seizing, or removing any such goods or commodities, vessel, boat, cart, carriage, or other conveyance, or any such horse, cattle, or other thing whatsoever as aforesaid, break or otherwise damage or destroy the same, or any of them, or any part thereof, or any cask, vessel, case, or other package whatsoever, containing any such goods or commodities, every person so offending shall for every such offence forfeit and lose the sum of two hundred pounds."

(a) 6 Geo. I., c. 21, s. 7; 9 Geo. II., c. 35, s. 26; 42 Geo. III., c. 38, s. 35; 43 Geo. III., c. 81, s. 16. By several acts relating to particular articles of Ex-

cise, further penalties were imposed; but the 9 Geo. II., c. 35, s. 26, was repealed by 6 Geo. IV., c. 105.

Sect. 40. "That if any person armed with any offensive weapon whatsoever shall with force or violence assault or resist any officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid or assistance of such officer or person so employed, who in the execution of his office or duty shall search for, take, or seize, or shall endeavour or offer to search for, take, or seize any goods or commodities forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise or Customs, or who shall search for, take, or seize, or shall endeavour or offer to search for, take, or seize any vessel, boat, cart, carriage, or other conveyance, or any horse, cattle, or other thing used in the removal of any such goods or commodities, or who shall arrest or endeavour or offer to arrest any person carrying, removing, or concealing the same, or employed or concerned therein, and liable to such arrest, then and in every such case it shall be lawful for every such officer and person so employed, and person acting in such aid and assistance as aforesaid, who shall be so assaulted or resisted, to oppose force to force, and by the same means and methods by which he is so assaulted or resisted, or by any other means or methods, to oppose such force and violence, and to execute his office or duty; and if any person so assaulting or resisting such officer as aforesaid, or any person so employed, or any person acting in such aid and assistance as aforesaid, shall in so doing be wounded, maimed, or killed, and the said officer or person so employed, or person acting in such aid and assistance as aforesaid, shall be sued or prosecuted for any such wounding, maiming, or killing, it shall be lawful for every such officer or person so employed, or person acting in such aid and assistance, to plead the general issue, and give this act and the special matter in evidence in his defence; and it shall be lawful for any justice or justices of the peace, or other magistrate or magistrates before whom any such officer or person so employed, or person acting in such aid and assistance as aforesaid, shall be brought, for or on account of any such wounding, maiming, or killing as aforesaid, and every such justice of the peace and magistrate is hereby directed and required to admit to bail every such officer, and every person so employed, and every person acting in such aid and assistance as aforesaid; any law, usage or custom to the contrary thereof in anywise notwithstanding."

Sect. 41. "That whenever any person shall be charged with violently assaulting or resisting as aforesaid any officer of Excise, or person so employed, or person acting in such aid and assistance as aforesaid, in the due execution of his office or duty, and such charge shall, by affidavit or by certificate of an indictment or information being filed against such person for any such offence, be made to appear to any judge of any of His Majesty's superior Courts of record in which such indictment or information shall be found or filed, or into which the same shall have been removed, it shall be lawful for such judge to issue his warrant in writing, under his hand and seal, and thereby to cause any person being a defendant in such indictment or information to be apprehended and brought before him or some other judge of such Court, or before some one of His Majesty's justices of the peace, in order that such defendant may be bound to the King's Majesty, with two sufficient persons as sureties, in such sum (the same not being in any case less than 100*l.*) as in the said warrant shall be expressed, with condition to appear in such Court at the time mentioned in such warrant, to answer His said Majesty in the said Court concerning any articles on behalf of His Majesty to be there objected against him for any such offence as aforesaid; and in case any such defendant shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice of the peace respectively, and they are hereby respectively directed and required to commit such defendant to the common gaol of the county, shire, division, city, town, or place where the offence shall have been committed, or where such

### 7. *Of Entries, &c.*

Officers, &c. violently resisted in making any seizure, may oppose force to force; and upon being prosecuted therefor, shall be admitted to bail; and may plead the general issue.

Persons against whom indictments or informations for resistance shall have been found or filed, to give security to answer it; or in default, may be committed.

7. *Of Entries*  
&c.

If an offender be in prison for want of bail, a copy of the indictment or information may be delivered to the gaoler, with a notice of trial, and proceedings had thereon.

Defendant, if acquitted, to be discharged.

Indictments or informations for assaulting officers may be tried in any county, and offenders convicted thereof sent to hard labour.

defendant shall have been apprehended, until such defendant shall become bound as aforesaid, or shall be discharged by order of such Court in term time, or by one of the judges of such Court in vacation; and the recognizance to be taken thereupon shall be returned and filed in such Court, and shall continue in force until such defendant shall have been acquitted of such offence, or, in case of conviction, shall have received judgment for the same, unless sooner ordered by such Court to be discharged."

Sect. 42. "That where any such defendant is or shall be committed to and detained in gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to the gaoler, keeper, or turnkey of the gaol wherein such defendant is or shall be so detained, with a notice thereon indorsed, that unless such defendant shall, within such space of time as shall be for that purpose limited and fixed by the Court in which such indictment or information shall be found or filed, or into which the same shall have been removed, cause an appearance and also a plea or demurrer to be entered in the said Court to such indictment or information, and appearance and the plea of not guilty will be entered thereto in the name of such defendant; and the prosecutor of such indictment or information shall also be at liberty to indorse on the copy of such indictment or information so delivered a further notice, that the issue to be joined on such indictment or information will be tried in the next term, or at the next assizes, or at the next general gaol delivery or Court of Justiciary to be holden in or for the county, shire, division, city, town, or place in which the offence shall be alleged to have been committed, or the venue laid in such indictment or information; and in case any defendant so committed or detained as aforesaid shall neglect to cause an appearance and also a plea or demurrer to be entered in such Court to such indictment or information, within the space of time so to be limited and fixed by such notice as aforesaid, then, upon an affidavit being made and filed in such Court, of the delivery of a copy of such indictment or information, with such notice as hereinbefore first mentioned indorsed thereon as aforesaid, to such gaoler, keeper, or turnkey, as the case may be, (which affidavit may be made before any judge or commissioner of the said Court authorized to take affidavits in the said Court), it shall be lawful for the prosecutor of such indictment or information to cause an appearance and the plea of not guilty to such indictment or information to be entered in the said Court for such defendant, and such proceedings shall be had thereupon as if the defendant in such indictment or information had appeared and pleaded not guilty according to the usual course of such Court; and if upon the trial of such indictment or information the defendant so committed and detained as aforesaid shall be acquitted of all the offences therein charged upon such defendant, it shall be lawful for the judge before whom such trial shall be had, although he may not be one of the judges of the Court in which such indictment or information shall be found or filed, or into which the same shall have been removed, to order that such defendant shall be forthwith discharged out of custody as to such commitment."

Sect. 43. "And for the better and more impartial trial of any indictment or information which shall be found, commenced, or prosecuted for any such violent assault or resistance as aforesaid, be it enacted, That every such offence shall and may be inquired of, examined, tried, and determined in any county in England, if such offence shall have been committed in England, or in any of the islands thereof, or in any county in Scotland, if the same shall have been committed in Scotland or in any of the islands thereof, or in any county in Ireland, if the same shall have been committed in Ireland or in any of the islands thereof, in such manner and form as if the same offence had been committed in such county respectively; and that whenever any person shall be convicted of any such violent assault or

resistance as aforesaid, it shall be lawful for the Court before which any such offender shall be convicted, or which by law is authorized to pass sentence upon any such offender, to award and order (if such Court shall think fit) sentence of imprisonment, with hard labour, for any term not exceeding the term of three years, either in addition to or in lieu of any other punishment or penalty which may by law be inflicted or imposed upon any such offender; and every such offender shall thereupon suffer such sentence in such place, and for such term as aforesaid, as such Court shall think fit to direct."

Sect. 64. "That all goods, commodities, and chattels whatsoever forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, shall and may be seized by any officer or officers of Excise, or person or persons employed in the revenue of Excise, or person or persons acting in the aid and assistance of any such officer or person so employed as aforesaid; and that on all trials of seizures whatsoever, in any of the Courts of Exchequer or elsewhere, the seizure, together with the form and manner of making the same, shall be taken to have been as set forth in the information, without any evidence thereof; and it shall be lawful for all judges and other judicial persons before whom any such seizure shall be brought to trial or hearing, and having respectively jurisdiction in that behalf, and they are hereby respectively authorized and required to proceed to trial on the merits of the cause, without inquiring into the fact, form, or manner of making the seizure."

Sect. 107. "That all officers of the Customs who shall make any seizure under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, of any excisable goods or commodities, shall forthwith give notice of such seizure at the next office of Excise, or to the supervisor or other officer of Excise of the district where such seizure shall have been made; and such supervisor or other officer of Excise shall, on such notice, take a particular account of the species and quantities of all such goods and commodities so seized respectively; and the same or any part thereof shall not afterwards be removed without a permit (where a permit is, for the removal of goods or commodities of a similar quantity, sort, or kind, required under any act or acts of parliament relating to the revenue of Excise), signed by the proper officer of Excise of the place or district from whence the same shall be intended to be removed, on pain of forfeiture thereof for such removal."

Sect. 108. "That all goods or commodities whatsoever which are or shall be prohibited, or which are or shall be subject to any duty or duties of Excise, and which shall be stopped, detained, or taken by any police officer or peace officer, or any other person, under or by virtue of any act or acts of parliament, or under or by virtue of any other authority whatsoever, shall be conveyed, and the same is and are hereby directed and required to be forthwith conveyed to and deposited and lodged in the chief office of Excise, if the same shall have been stopped, detained, or taken within the limits of the chief office, or in the nearest office of Excise if in any other part of the united kingdom, in order that all such goods or commodities as aforesaid, and the person or persons in whose custody or possession the same were found, may be prosecuted or proceeded against as the nature of the case shall or may require; any thing in any act or acts of parliament to the contrary thereof notwithstanding."

Sect. 109. "Provided always, that in case any such goods or commodities as aforesaid shall be stopped, detained, or taken by any police officer or peace officer, or any other person, on suspicion of the same having been feloniously stolen or taken or received, it shall be lawful to and for such police officer or peace officer, or other person so stopping, detaining, or taking the same, to convey to, deposit, and lodge forthwith all such goods

## 7. *Of Entries, &c.*

Goods forfeited under Excise laws may be seized by any officer of Excise, or his assistant. Allegation to be presumed to be proved.

On trials of seizures, merits to be proceeded on without inquiring into fact or form of seizure. (a)

Officers of Customs to give notice of the seizure of excisable goods.

Such goods, if removed without permit, shall be forfeited.

Seizures of excisable commodities by police or peace officers to be lodged in the chief or other office of Excise.

If stopped on suspicion of felony, to be lodged in the police office, and notice thereof given to the proper officer of Excise, who shall be permitted to examine them.

(a) See 9 Geo. II., c. 35, s. 34.

7. *Of Entries,  
&c.*

After trial, the goods to be immediately deposited in the Excise office, to be dealt with according to law.

Goods not so deposited shall be forfeited.

Parties making default to forfeit 20*l*.

Scales, weights, &c.

and commodities as aforesaid in the office of the police office nearest to the place where the same shall have been so stopped, detained, or taken as aforesaid, or any other convenient place directed by the justice or justices of the peace before whom the same shall be carried, there to remain in order to be produced at the trial of any person or persons who shall be charged with feloniously stealing, taking, or receiving the same; and every such police officer or peace officer, or other person who shall so stop, detain, or take any such goods or commodities as aforesaid, after he shall have stopped, detained, or taken the same as aforesaid, shall forthwith give notice thereof in writing at the chief office of Excise, if the same shall have been stopped, detained, or taken within the limits thereof; and if the same shall have been stopped, detained, or taken in any other part of the united kingdom, then at the office of Excise nearest to the place where the same shall have been so stopped, detained, or taken; and any officer of Excise shall thereupon be permitted to examine and take account of the same."

Sect. 110. "That when and so soon as any person or persons charged with feloniously stealing, taking, or receiving any such goods or commodities as aforesaid shall have been tried for such offence, all such goods and commodities respectively as aforesaid shall immediately be conveyed to and deposited in the chief office of Excise, or other office of Excise as aforesaid, in order that prosecution or proceedings may be had for the condemnation of such goods or commodities for such cause or causes of forfeiture as the same shall be liable to, or that the same may be restored upon payment of such duty or duties as may be due in respect thereof, or upon such conditions as the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, shall think fit, to such person or persons as shall be proved to be the legal proprietor or proprietors thereof respectively, or for the purpose of being otherwise dealt with according to law."

Sect. 111. "That in case any such goods or commodities which shall be so stopped, detained, or taken, shall not be conveyed to and deposited in the chief office of Excise, or other office of Excise, in the manner by this act directed, all such goods or commodities which shall not be so conveyed to and actually deposited in the chief office of Excise, or other office of Excise as aforesaid, shall be forfeited; and the person or persons in whose care, custody, or possession the same shall be, and who shall neglect or refuse so to convey to and deposit the same as aforesaid, shall forfeit and lose the sum of twenty pounds."

Some manufacturers and traders are required to keep just scales and weights, and assisting the officer in weighing, under penalties for neglect as with respect to glass manufactures. 19 Geo. II., c. 12, s. 14; 10 Geo. III., c. 44, s. 15; 28 Geo. III., c. 37; 26 Geo. III., c. 77, s. 8.

(A.) *Of claiming  
goods seized.*

No claim to be entered in the Courts of Exchequer as to any goods seized, unless in the real names of the proprietors thereof.

(8.) *Claiming Goods seized.*

By 7 & 8 Geo. IV., c. 53, s. 62. "That no claim shall be entered in any of His Majesty's Courts of Exchequer in England, Scotland, or Ireland, to any goods, commodities, or chattels whatsoever, seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise or Customs, which are returned into such Court, unless such claim shall be, within the time limited by the practice of the said Court, entered in the real name or names of the proprietor or proprietors of the same, describing the place of residence and the business or profession of such person or persons; and if such person or persons shall reside in London, Edinburgh, or Dublin, or within ten miles thereof respectively, oath shall be made by every such person before one of the barons of the said Courts of Exchequer respectively, that the goods, com-

modities, or chattels respectively so claimed was or were really and truly the *bonâ fide* property of such person or persons at the time of such seizure; but if any such person shall not reside in London, Edinburgh, Dublin, or within ten miles thereof respectively, then and in such case oath shall be made in like manner by such person, or by the agent or attorney or solicitor by whom such claim shall be entered, that he has full and legal authority and directions from such proprietor to enter such claim, and that to the best of his knowledge and belief such goods, commodities, or chattels respectively were at the time of the seizure thereof really and truly the *bonâ fide* property of the person or persons in whose name or names such claim is so entered, which oath shall be indorsed and certified on the back of the indenture of appraisement upon which such claim shall be entered; and on failure thereof, the goods, commodities, or chattels respectively shall be condemned, and judgment shall be entered thereon by default, in the same manner as if no claim had been entered thereto; and every person who shall be convicted of making or taking a false oath to any of the facts hereinbefore directed or required to be sworn, shall be deemed guilty of perjury, and shall be liable to all the pains and penalties to which persons are liable for wilful and corrupt perjury."

Sect. 63. "That upon the entry of any such claim to any goods, commodities, or chattels whatsoever, seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise or Customs, which are returned for condemnation as aforesaid, the person or persons who shall enter any claim as proprietor or proprietors thereof respectively, and who shall reside within the jurisdiction of the Court in which such claim shall be entered, shall be bound, with two other sufficient persons as sureties, in the penalty of 100*l.*, to answer and pay the costs occasioned by such claim; and where any such proprietor or proprietors shall not reside within such jurisdiction, the agent, attorney, or solicitor by whose directions such claim shall be entered shall in like manner be bound, with two other sufficient persons as sureties, in the like penalty, to answer and pay the costs occasioned by such claim; and in default of giving such security within the time limited by the practice of the Court in which such claim shall be entered, all such goods, commodities, or chattels respectively shall be adjudged to be forfeited, and shall be condemned as unclaimed; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

Sect. 64. "That all goods, commodities, and chattels whatsoever forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, shall and may be seized by any officer or officers of Excise, or person or persons employed in the revenue of Excise, or person or persons acting in the aid and assistance of any such officer or person so employed as aforesaid; and that on all trials of seizures whatsoever, in any of the Courts of Exchequer or elsewhere, the seizure, together with the form and manner of making the same, shall be taken to have been as set forth in the information, without any evidence thereof; and it shall be lawful for all judges and other judicial persons before whom any such seizure shall be brought to trial or hearing, and having respectively jurisdiction in that behalf, and they are hereby respectively authorized and required to proceed to trial on the merits of the cause, without inquiring into the fact, form, or manner of making the seizure."

#### 8. *Of claiming goods seized.*

Claimants shall be bound with two sureties in a penalty of 100*l.* to pay costs of claim; and in default thereof the goods, &c. shall be condemned.

Goods forfeited under Excise laws may be seized by any officer of Excise, or his assistant. Allegation to be presumed to be proved.

On trials of seizures, merits to be proceeded on without inquiring into fact or form of seizure. (a)

(a) See 9 Geo. II., c. 35, s. 34.



9. Of Proceedings for Condemnation, &c.

Proceedings necessary for the condemnation of seizures, where the owners of the goods do not appear to claim. (a)

(9.) Proceedings for Condemnation of Seizures, Warrants, &c.

7 & 8 Geo. IV. c. 53, s. 93, enacts, "That in all cases where any seizure shall be made of any goods, commodities, or chattels, under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, and no person shall appear to claim the goods, commodities, or chattels so seized, then and in every such case, if such seizure shall have been made within the limits of the chief office of Excise, it shall be lawful for any officer of Excise who shall have made such seizure, after the expiration of fourteen days next after the day on which such seizure shall have been made, (a) to cause notice in writing, signed by the solicitor of Excise for the summary jurisdiction, to be affixed on some conspicuous part of the outside of the chief office of Excise, signifying the day when the commissioners of Excise, or any three or more of them, will proceed to hear and adjudge the matter of such seizure; and if any such seizure shall have been made as aforesaid in any part of the united kingdom out of the limits of the chief office of Excise, it shall be lawful for any officer of Excise who shall have made such seizure to cause a notice, issued by any justice or justices of the peace within whose jurisdiction any such seizure shall have been made, and before whom any information shall have been exhibited for the condemnation thereof, to be affixed on some conspicuous part of the outside of the office of Excise, next to the place where such seizure shall have been made, during the market day next after the expiration of six days from the day on which such seizure was made, or during any other subsequent market day, in which notice there shall be specified the day (the same being any day after the termination of eight days from the date of such notice) and the place, when and where the justices of the peace will proceed to the hearing and adjudging of the matter of any such seizure; and it shall be lawful for the said commissioners of Excise and justices of the peace respectively, within their respective jurisdictions, and they are hereby respectively authorized and required to proceed, on the day and at the place mentioned in such notice, to examine into the cause of any such seizure, and to give judgment accordingly; and such judgment shall be as good, valid, and effectual in law, as if the respective proprietor or proprietors of the goods, commodities, or chattels seized respectively, had been respectively summoned in manner hereinbefore in this act directed."

Proceedings upon the seizure of horses or cattle, or goods of a perishable nature.

Sect. 94. "Provided always, that where any horses or other cattle, or any goods of a perishable nature, shall be seized by any officer or officers of Excise as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise or Customs, it shall be lawful for the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, and they are hereby respectively authorized to order any such seizure as aforesaid to be liberated and delivered up to the claimant or claimants thereof, upon such claimant or claimants entering into a bond to His Majesty, in the penalty of double the value of the horses or other cattle or goods respectively so liberated and delivered up as aforesaid, with a condition thereunder written, that such bond shall be void upon pay-

(a) The Court will set aside a condemnation of goods seized, passed for want of claim, in order that the defendant may enter a claim under circumstances where the party applying offers payment of the costs of the condemnation, on the terms of his paying also the

costs of the application: and they refused in such a case to order the defendant to find bail as one of the terms of making absolute a rule to show cause. *The Attorney-general v. Cullem*, 8 Price, 668; and 1 Price, 48.

ment of the appraised value of such horses or other cattle, or of such goods respectively, as aforesaid, on the condemnation thereof as forfeited; (a) and if no claimant of any such horses or other cattle, or of such goods respectively, shall appear, or, if appearing, such claimant shall refuse or neglect to enter into such bond as aforesaid, it shall be lawful for the commissioners of Excise, and commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, and they are hereby respectively authorized, at any time after the expiration of fourteen days from the making of any such seizure, to order and direct that all such horses or other cattle, or all such goods respectively, as aforesaid, shall be sold at public auction, notwithstanding the condemnation thereof shall not at that time have taken place: Provided always, that if any such horses or other cattle, or if any such goods as aforesaid, shall be afterwards ordered to be restored without any proceeding being instituted for the condemnation thereof, or if instituted before the same shall have been condemned, or if upon the hearing or trial for the condemnation of such horses or other cattle, or of such goods as aforesaid, the decision or verdict thereupon shall be in favour of the claimant or claimants thereof, the appraised value of such horses or other cattle, or of such goods as aforesaid, or the proceeds of the sale thereof respectively, at the election of such claimant or claimants, shall on demand thereof be paid to such claimant or claimants, by the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, together with such further reasonable sum, by way of compensation for the loss sustained by reason of the seizure, detention, and sale of such horses or other cattle, or of such goods as aforesaid, as the commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, shall in their discretion think fit; and if the proprietor or proprietors, or claimant or claimants, of any such horses or other cattle, or of any such goods as aforesaid, shall accept such appraised value, or proceeds of sale, together with such further sum as aforesaid, no such proprietor or claimant shall have or be entitled to maintain any action or suit for any recompense or damage on account of the seizure, detention, or sale of any such horses or other cattle, or of any such goods as aforesaid; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

Sect. 95. "That where any writ of capias, or other writ or process authorizing or directing the arrest of any person or persons, for or on account of any penalty or penalties by such person or persons incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise or Customs, or for or on account of any duty of Excise, or any other matter or thing relating to the revenue of Excise, shall issue out of the Court of Exchequer in England, Scotland, or Ireland, directed to any sheriff, sheriff depute, mayor, bailiff, or other person having the execution of any such writ of capias, or other writ or process as aforesaid, in any county, shire, division, city, town, or place in any part of the united kingdom, every such sheriff, sheriff depute, mayor, bailiff, and other person, and their and every of their under sheriffs, deputies, and other persons acting for them in any of the said offices respectively, shall, and they are hereby respectively enjoined and required, upon the request or application of any of the solicitors of Excise in England, Scotland, or Ireland (such request to be in writing, and indorsed upon the back of such writ of capias or other writ or process as aforesaid, and signed by such solicitor with his name, and addition of solicitor of Excise), to grant a special

*9. Of Proceedings for Condemnation, &c.*

Sheriff to grant warrant on a writ of capias indorsed by one of the solicitors of Excise. (b)

(a) The 12 Geo. I., c. 28, s. 16, acting under such a warrant may be removed from the Court of Common Pleas into the Exchequer. *Liddon v. East*, 1

(b) An action against an officer for *Crompt. & Jerv. 12.*

**9. *Of Proceedings for Condemnation, &c.***

Sheriffs indemnified from escapes in cases where the warrant is granted at the request of the solicitor of Excise.

warrant or warrants to such person or persons as shall be specified in such indorsement by such solicitor, for the apprehension of the person or persons named in such writ of capias, or other writ or process as aforesaid; and in default thereof every such sheriff, sheriff depute, mayor, bailiff, or other person, having execution in any such writ of capias, or other writ or process as aforesaid, and every under sheriff, deputy, or other person acting for them in the said offices respectively, by or through whom the said default shall have been made, shall be subject and liable to such process of contempt, fine, amercement, penalty, and forfeiture, as they or any of them are now by any law, custom, or usage liable to, in case of refusing or neglecting to execute the like writ of capias, or other writ or process, in the common and usual method of proceeding thereon."

Sect. 96. "That all and every such sheriff, sheriff depute, mayor, bailiff, under sheriff, deputy, and other person so granting such special warrant as aforesaid, shall be and they are hereby respectively saved harmless and indemnified against His Majesty, his heirs and successors, and against all and every other person or persons whomsoever, for or on account of any escape of any person or persons who shall or may be taken by virtue of any such warrant as aforesaid, which shall happen between the time of taking such person or persons, and the time of such person or persons being committed to proper gaol or prison, or offered and tendered to the gaol keeper or other person having charge of such gaol or prison (who is hereby enjoined and required to receive every such person or persons so apprehended as aforesaid, and to give a receipt for the body or bodies of such person or persons), and of and from all actions, prosecutions, processes of contempt, and other proceedings for or on account of any such escape; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

(10.) Prosecutions, &c. in Courts.

**(10.) *Prosecutions and Proceedings in different Courts.***

[Former acts, 24th edition of Burn's J. Vol. II. p. 58.]

By whom informations to be laid.

To be in name of attorney-general, or officer of Excise, &c.; otherwise void.

General regulations.

The statute 26 Geo. III., c. 77, s. 13, enacts, "That no person shall commence, prosecute, enter, or file any action, bill, plaint, or information, in any of His Majesty's Courts, against any person, for the recovery of any fine, penalty, or forfeiture made by any act relating to the Customs or Excise, unless in the name of the attorney-general, or of some officer or officers of the Customs or Excise; and if any action, &c. shall be commenced in any other name, the same shall be void, and the Court in which such action shall have been commenced shall not suffer any proceedings to be had thereon."

And 46 Geo. III., c. 1, s. 12, after reciting the foregoing provision, extends the regulations thereof to all proceedings for penalties and forfeitures, under any act relating to the Excise, before the commissioners of Excise, or any three or more of them in England, or before any justice or justices of the peace in England or Scotland respectively.

By 56 Geo. III., c. 104, s. 15, "no person shall commence or prosecute any action or information for the recovery of any fine, penalty, or forfeiture, incurred by virtue of any act now in force, or hereafter to be made, relating to the Customs or Excise, or issue any writ of appraisement for the condemnation of any ship, &c., or any goods seized as forfeited, by virtue of any such acts, unless the same be commenced, prosecuted, or issued by order of the commissioners of the Customs or Excise, or by or in the name of His Majesty's attorney-general; and if any action, information, or writ of appraisement is commenced, prosecuted, or issued, except upon such order, or by or in the name of His Majesty's attorney-general, the same, and all proceedings thereupon, shall be void; and the Court, or justices of peace, where, or before whom, such action,

&c. shall be commenced, &c. shall not permit any proceedings to be had thereupon." See 6 Geo. IV., c. 108, s. 100; *ante*, p. 204.

And now, by 5 Geo. IV., c. 94, "it is enacted, that the averment of the fact in the information, &c. for the recovery of any fine, &c. that such information, &c. is commenced by order of the commissioners, shall be sufficient evidence in and throughout the united kingdom, that such prosecution was commenced, &c. by order of the said commissioners, without any other evidence of the fact, unless by other positive evidence the contrary shall be made to appear." See 6 Geo. IV., c. 108, ss. 104, 105; *ante*, p. 205.

The practice, therefore, of the commissioners of Excise, which prevailed before the passing of these acts, of not receiving informations from any other than their officers, (a) is now strictly necessary, as well in respect to prosecutions before them, as to informations before the justices. (b) By these means informations at the suit of common informers are superseded, and the practice of filing collusive informations, which first gave rise to these statutes, is entirely prevented. (c)

By 7 & 8 Geo. IV., c. 53, s. 57. "That all penalties imposed by this act, or any other act or acts of parliament relating to the revenue of Excise, and incurred for or by reason of any offence or offences against this act, or the said other acts or any of them, may be sued for and recovered, and all goods, commodities, and chattels seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, may be returned for condemnation and condemned, in His Majesty's Courts of Exchequer at Westminster, Edinburgh, or Dublin respectively, as the cause of such prosecution may have arisen in England, Scotland, or Ireland. (d) Provided always, that the proceedings for the recovery of any such penalty or penalties, or for the condemnation of any such goods, commodities, or chattels, shall be commenced respectively within three years next after the commission of the offence or offences by which such penalty or penalties shall have been incurred, or after the seizure of such goods, commodities, or chattels shall have been made."

SECT. 58. "That His Majesty's Courts of Exchequer in Scotland and Ireland respectively, and the barons and judges of the said Courts respectively, shall and they are hereby respectively empowered, authorized, and required to exercise in Scotland and Ireland respectively the like jurisdiction, and to make, issue, hold, and enforce the like rules, orders, process and proceedings in and for the condemnation of any goods, commodities, and chattels forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, and in and for the recovery of any debts, duties, penalties, and forfeitures due to His Majesty, his heirs or successors, arising from or relating to the revenue of Excise, or incurred under or by virtue of this act, or the said other acts or any of them, as are directed by this act to be, or as at and immediately before the commencement of this act are, or as hereafter may be exercised, made, issued, held, or enforced for such purposes respectively in or by His Majesty's Court of Exchequer in England, and the barons and judges thereof, and according to the practice of such last-mentioned Court. Provided always, that nothing hereinbefore contained shall repeal or be deemed or construed to repeal a certain act made in the sixth year of the reign of Her Majesty Queen Anne, entitled *An act for settling and establishing a Court of Exchequer in the north part of Great Britain called*

10. *Prosecutions, &c. in Courts, &c.*

Averment of the fact in the information, or proceeding for the recovery of any fine relating to the Excise, shall be sufficient evidence that the proceeding was commenced by order of the commissioners.

Prosecutions may be in the superior Courts of record, but must be within three years.

Courts of Exchequer in Scotland and Ireland to exercise the like jurisdiction, and employ the same process for the recovery of the Excise revenue, as the Court of Exchequer in England.

Nothing herein to repeal s Anne, c. 26, except as hereinafter mentioned.

(a) *R. v. Stevenon*, 2 East, 368.

(b) The 48 Geo. III., c. 84, is an exception to this rule.

(c) See 12 Geo. I., c. 28, s. 28. *Howard, Excise*, 49.

(d) See general act, 24 Geo. II., c. 40, s. 29; 12 Car. II., c. 24, s. 45; 49 Geo. III., c. 81, s. 9.

10. *Prosecutions, &c. in Courts, &c.*

Exemplification of any Excise debt of record in any of the Courts of Exchequer in England, Scotland, or Ireland, may be transmitted to any other of such Courts, and enrolled, and the debt recovered there.

Service of subpoena in any one part of the united kingdom valid as to appearance in any other part.

*Scotland*; but that the said act shall remain in full force and effect, except only so far as the same is hereinafter expressly repealed."

Sect. 59. "And for the recovery of any debt relating to the revenue of Excise, which, by record in any of His Majesty's Courts of Exchequer in England, Scotland, or Ireland, shall be due to His Majesty, his heirs or successors, in any case where the person or persons of the debtor or debtors, or the estate or effects of such debtor or debtors, shall be within the jurisdiction of either of such Courts, but such debt shall not have originally accrued within the jurisdiction thereof; be it enacted, that where, by, or upon any judgment, decree, inquisition, specialty, account, or other matter recorded in any of His Majesty's Courts of Exchequer in England, Scotland, or Ireland, any debt relating to the revenue of Excise shall be due to His Majesty, his heirs or successors, a copy of the record of such judgment, decree, inquisition, specialty, account, or other matter, upon application made on behalf of His Majesty, his heirs or successors, to such Court, shall be forthwith exemplified and transmitted, under the seal of the said Court, to such other of His Majesty's said Courts of Exchequer as shall be named or specified in such application; and such last-mentioned Court shall, upon application made on behalf of His Majesty, his heirs or successors, cause such copy so exemplified and transmitted to be forthwith enrolled in the rolls of the said last-mentioned Court; and upon the same being so enrolled, the said last-mentioned Court shall cause execution or other process to issue for recovering and levying the said debt so due, according to the rules and practice of such Court, in like manner in all respects as if such record had been originally entered or filed in the said last-mentioned Court, or the said debt had originally accrued within the jurisdiction thereof; and the proceeds of such debt, when so recovered, shall be accounted for and paid over in the same manner as if the same had been recovered within the jurisdiction of the Court in which such debt originally accrued."

Sect. 60. "And whereas it is fit to provide for the appearance of every person to any writ or process of subpoena issued against such person out of the Court of Exchequer in England, Scotland, or Ireland, whether to answer His Majesty in such Court concerning any articles on behalf of His Majesty to be there objected against such person, or to give evidence upon the trial of any information or issue depending in such Court, or upon any inquisition to be taken upon any commission or writ of extent issued out of such Court, in whatever part of the united kingdom the person against or to whom such subpoena respectively may be issued shall be or reside; be it therefore enacted, that the service of any writ of subpoena or other process issued out of any of His Majesty's Courts of Exchequer in England, Scotland, or Ireland, upon any person who shall reside or be in any part of the united kingdom out of the jurisdiction of such Court, requiring the appearance of such person to answer His Majesty in the said Court concerning any articles to be there on His Majesty's behalf objected, or to give evidence upon the trial of any information or issue depending in such Court, (a) or upon any inquisition to be taken upon any commission or writ of extent issued out of such Court, shall be as good and effectual in law as if such writ or process had been served in that part of the united kingdom within the jurisdiction of the Court where the person so served shall be required to appear; and in case any person so served shall not appear according to the exigence of such writ or process, it shall be lawful for the Court out of which the same shall have been issued, upon proof being made of the service thereof to the satisfaction of such Court, to transmit a certificate of such default, under the seal of such Court, to the Court of Exchequer in that part of the united

(a) See what is a sufficient subpoena or summons to a witness, *R. v. Stenton and others*, 2 East, 362.

kingdom in which such writ or process shall have been served; and it shall thereupon be lawful for such last-mentioned Court in all such cases, and such last-mentioned Court is hereby authorized and required to proceed against and punish the person so having made default, in like manner as such last-mentioned Court might lawfully have done if such person had neglected or refused to appear in obedience to a like writ of subpoena or other process issued out of such last-mentioned Court. Provided always, that in cases where the subpoena or other process served shall be to give evidence, no person so having made default as aforesaid shall be proceeded against or punished by reason or on account thereof, unless it shall be made to appear to the satisfaction of such last-mentioned Court, that a reasonable and sufficient sum of money to defray the expenses of so attending to give evidence, and of returning from giving such evidence, had been tendered to such person previous to such default."

Sect. 61. "That it shall not be lawful to commence, prosecute, enter, file, or exhibit any action, bill, plaint, or information, or other legal proceeding, against any person or persons, for the recovery of any penalty or forfeiture incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise or Customs, or to issue or cause to be issued any writ of appraisement for the condemnation of any goods, commodities, or chattels whatsoever, seized as forfeited under or by virtue of this act, or the said other acts or any of them, except by order of the commissioners of Excise or Customs, or by order of the commissioner or commissioners and assistant commissioner of Excise or Customs in Ireland, and in the name and at the suit of an officer of Excise or Customs, or by and in the name and at the suit of His Majesty's attorney or solicitor-general for England or Ireland respectively, or by order of the commissioner or commissioners and assistant commissioners of Excise or Customs in Scotland, and in the name and at the suit of such officer, or by and in the name and at the suit of the lord advocate or His Majesty's solicitor-general for Scotland in Scotland; and if any such action, bill, plaint, or information, or other legal proceeding, or writ of appraisement, shall be commenced, prosecuted, entered, filed, exhibited, or issued in any other manner than as aforesaid, such action, bill, plaint, information, or other legal proceeding, or writ of appraisement, and all proceedings thereupon respectively had, shall be and are hereby declared to be null and void; any law, custom, or usage to the contrary thereof notwithstanding: Provided always, that nothing herein contained shall be deemed or construed to extend to any summary proceeding by or at the instance of any officer of Excise or Customs, for the conviction upon immediate arrest of any person or persons under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise or Customs."

Sect. 64. "That all goods, commodities, and chattels whatsoever forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, shall and may be seized by any officer or officers of Excise, or person or persons employed in the revenue of Excise, or person or persons acting in the aid and assistance of any such officer or person so employed as aforesaid; and that on all trials of seizures whatsoever, in any of the courts of Exchequer or elsewhere, the seizure, together with the form and manner of making the same, shall be taken to have been as set forth in the information, without any evidence thereof;

#### 10. *Prosecutions, &c. in Courts, &c.*

No action or information to be commenced, or writ of appraisement issued, unless by order of the commissioners, or in the name of the attorney-general, or officer of Excise or Customs. (a)

Not to extend to summary proceedings on arrests.

Goods forfeited under Excise laws may be seized by any officer of Excise, or his assistant. Allegation to be presumed to be proved.

On trials of seizures, merits to be proceeded on without inquiring into fact or form of seizure. (b)

(a) See 26 Geo. III., c. 77, s. 13; 46 Geo. III., c. 112; 56 Geo. III., c. 104, s. 15; 5 Geo. IV., s. 94; 6 Geo. IV., c. 108, ss. 104, 105. *R. v. Steventon and others*, 2 East, 368. This puts an end to informations by common informers, and collusive in-

formations. The enactment in 26 Geo. III., c. 77, s. 13, was confined to proceedings in the superior Courts, and did not extend to proceedings before commissioners of Excise or justices. *R. v. Steventon and others*, 2 East, 362.

(b) See 9 Geo. II., c. 35, s. 34.

10. *Prosecutions, &c. in Courts, &c.*

and it shall be lawful for all judges and other judicial persons before whom any such seizure shall be brought to trial or hearing, and having respectively jurisdiction in that behalf, and they are hereby respectively authorized and required to proceed to trial on the merits of the cause, without inquiring into the fact, form, or manner of making the seizure."

Refer to 9 Geo. IV., c. 25; and see 6 Bingh. 404, *ante*, Customs.

(11.) Proceedings, &c. before justices, &c.

(11.) *Proceedings for Penalties, &c., before Commissioners of Excise and Justices of Appeal, &c. (a)*

Prosecutions before commissioners of Excise or justices of the peace. (b)

By 7 & 8 Geo. IV., c. 53, s. 65. "That for the recovery of any penalty imposed by this act, or any other act or acts of parliament relating to the revenue of Excise, and incurred for or by reason of any offence committed against this act, or the said other acts or any of them, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or the said other acts or any of them, where the offence shall have been committed, or the person or persons committing the same shall be found, or where the goods, commodities, or chattels shall have been seized as aforesaid, within the limits of the chief office of Excise in London, an information thereupon may be exhibited before, (c) and be heard, adjudged, and determined by, any three or more of the commissioners of Excise; and where the offence shall have been committed, or the person or persons committing the same shall be found, or where the goods, commodities, or chattels shall have been seized as aforesaid, in any part of the united kingdom out of the limits of the said chief office, the information thereupon may be exhibited before any one or more of H. M.'s justices of the peace for the county, shire, division, city, town, or place wherein the offence shall have been committed, or the person or persons committing the same shall be found, or where the goods, commodities, or chattels shall have been seized as aforesaid; and such information shall and may be heard, adjudged, and determined by any two or more of H. M.'s justices of the peace for the said county, shire, division, city, town, or place; (d) and such commissioners of Excise, and any two or more of such justices of the peace respectively, shall and they are hereby respectively authorized and required, upon any such information having been so exhibited as aforesaid, and upon the appearance and pleading of the person or persons against whom such information shall have been exhibited, or who shall claim any goods, commodities, or chattels in such information alleged to have been forfeited, or in default of such appearance and pleading, upon proof of the service of such summons of such

(a) We have seen (*ante*, last head), that no information can be instituted for a penalty or forfeiture but by order of the commissioners of Customs or Excise, and the same must be in the name and at the suit of an officer of Excise or Customs, of His Majesty's attorney or solicitor-general, &c. (7 & 8 Geo. IV., c. 53, s. 61.); by which means informations at the suit of common informers are superseded, and the practice of filing collusive informations is entirely prevented.

(b) See former provisions, 24 Geo. II., c. 40, s. 29; 12 Car. II., c. 24,

s. 45; 49 Geo. III., c. 81, s. 9.

(c) It is said not to be necessary that the information should be in writing. 1 Shaw, *Excise*, 342, 343. See *post*, III. "of the proceeding, &c." but semble that it should be in writing, see section 71.

(d) In *R. v. Abbot*, H. T. 1783, Dougl. 55, *note*, it was contended by counsel, and assented to by the Court, that the commissioners of Excise within the bills of mortality, and justices of the peace in all other places, are put exactly upon the same footing by the different statutes relating thereto.

person or persons as hereinafter mentioned, to proceed to the examination of the fact or facts in such information alleged, and to give judgment, (a) as well for any such penalty or penalties which upon the due examination of one or more credible witness or witnesses upon oath, or upon the voluntary confession of the party accused, shall be found to have been incurred, as for the condemnation of any goods, commodities, or chattels seized as aforesaid, which upon such examination or confession shall be found to be forfeited, or respectively as the case may require; and such commissioners and justices respectively shall and they are hereby authorized and required thereupon to award and grant a warrant or warrants under their hands, (b) for the due execution of and carrying into effect, as hereinafter mentioned, such judgment: Provided always, that where any such information as aforesaid shall be exhibited before any justice or justices of any county or shire in England, Scotland, or Ireland respectively, in which there are several and distinct commissions of the peace, no information thereupon exhibited before any such justice or justices, nor any judgment thereupon given by such justices, nor any warrant or warrants thereupon granted for the due execution thereof, shall be subject or liable to any objection whatsoever by reason of any offence alleged in such information having been committed, or the person or persons committing the same having been found, or the goods, commodities, or chattels having been seized as aforesaid, in any division, city, town, or place of such county or shire having local jurisdiction, whether such city, town, or place be or be not a county in or of itself; any thing in this act, or any other act or acts of parliament, to the contrary thereof in anywise notwithstanding."

11. *Proceedings, &c. before Justices, &c.*

No information exhibited before justices of the county shall be objectionable, because there are distinct commissions of the peace within whose jurisdiction the offence was committed.

Sect. 66. "That every such information as aforesaid shall be exhibited before the commissioners of Excise, or justice or justices of the peace respectively, within four calendar months next after the offence or offences alleged in such information shall have been committed, or the goods, commodities, or chattels therein alleged to have been forfeited shall have been seized; and a notice in writing of such information having been so exhibited shall be given to the person or persons against whom the same shall have been exhibited, for the penalty or penalties incurred for such offence or offences, or to the person or persons who shall claim the goods, commodities, or chattels in such information alleged to have been forfeited, within one week next after such information shall have been exhibited; and the commissioners of Excise, or justice or justices of the peace, before whom any such information shall have been exhibited as aforesaid, are hereby respectively authorized and required to summon every person against whom any such information shall have been exhibited, or who shall claim any goods, commodities, or chattels as aforesaid, to appear and plead to and to attend the hearing of such information, at a time and place to be stated in such summons, which summons shall be served upon every such person or persons fourteen days at the least before the time appointed in such summons: Provided always, that where such information shall be exhibited as aforesaid for the recovery of double the value of any duty or duties neglected to be paid or cleared off, as by this act before directed, it shall be sufficient if such summons as aforesaid be served within twenty-four hours at the least before the time appointed in such summons: And provided also, that in all such cases it shall be deemed and taken to be sufficient service of any such notice or summons as aforesaid, if the same be left at or upon the place used or occupied by any such person or persons respectively for carrying on trade

Information to be laid within four months after offence committed; and notice of information to be given within a week after.

Summons to parties to appear and plead to the information.

14 days before the hearing

(a) The judgment may be verbally given, and afterwards drawn up in form. (b) Need not be under seal. *Willes*, 1 East, 184; 1 T. R. 320; 2 Lord R. 411. *Raym.* 1376; 2 *Str.* 608.



11. *Proceedings, &c. before Justices, &c.*

Two or more justices to meet every three calendar months or oftener, to adjudge Excise cases.

Regulations in case of the death or absence of any justice during proceedings.

Reference to former general powers of justices.

No officer of Excise to act as a justice in Excise cases, nor any Excise trader in any case relating to his trade.

or business, or at the building or place where any such offence shall have been committed, or such seizure made, or at the place of residence, or with the wife or child or menial servant of any such person or persons, the same being directed to such person or persons by the right or assumed name or names of such person or persons. (a)

Sect. 67. "That the justices of the peace, or any two or more of them, in the several counties, shires, divisions, cities, towns and places throughout the united kingdom, shall meet once in every three calendar months in their respective jurisdictions, or oftener if there shall be need or occasion so to do, to receive, hear, adjudge, and determine all matters and things brought before them relating to the revenue of Excise, and all informations exhibited or to be exhibited within such jurisdiction, for or in respect of any penalty incurred, or for the condemnation of any goods, commodities, or chattels seized as forfeited, under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise: Provided always, that if it shall happen that any justice or justices of the peace before whom any such information shall have been exhibited as aforesaid, or before whom any proceedings shall have been had upon any such information, shall die or be absent at any time after such information shall have been so exhibited, and before the person or persons against whom such information shall have been exhibited shall appear or plead to such information, or before any judgment shall be thereupon given, or before any judgment thereupon given shall be duly executed, so that the further attendance of any such justice or justices thereupon cannot be procured, it shall be lawful for any other justice or justices of the peace within the same jurisdiction to act therein for and in lieu of the justice or justices of the peace so dying or absent, in all respects relating to such information, and the due completion of the proceedings thereupon, in the same manner as if such information had been at first exhibited before such other justice or justices respectively; and that all powers and authorities, rules and regulations, given and granted by any act or acts of parliament relating to justices of the peace, or to constables or other officers acting under their authority, respecting summary proceedings, shall be enforced, and shall be applied to and executed (excepting wherein altered or otherwise specially provided for by, or which shall be repugnant to or inconsistent with, this act), for the conviction of any person or persons prosecuted by orders of the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, for any penalty incurred by such person or persons under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, and for the levy of any such penalty, or for the imprisonment of any such offender or offenders, in the same manner as if such powers and authorities, rules and regulations, had been and were repeated and contained in the body of this act."

Sect. 68. "That it shall not be lawful for any assistant commissioner of Excise, or for any officer of Excise or person employed in the collection or management of the revenue of Excise, to act as a justice of the peace in any part of the united kingdom, in the execution of any of the powers, authorities, clauses, matters, or things contained in this act, or in any other act or acts of parliament relating to the revenue of Excise; and that it shall not be lawful for any trader subject to the Excise laws to act as a justice of the peace as aforesaid in any case which relates to the particular trade or business of such trader, or in any case in which he shall be in anywise, as such trader, concerned or interested; and if any such assistant commissioner, or any such officer or person employed as aforesaid, or any such trader as aforesaid, shall presume to act as a justice of the peace,

(a) As to service of summons, see 32 Geo. II., c. 17, s. 1. and 2.

contrary to the true intent and meaning of this act all proceedings in that behalf shall be and the same are hereby declared to be utterly null and void to all intents and purposes."

Sect. 69. "That where any act or acts of parliament relating to the revenue of Excise or Customs, a penalty of treble the value of goods or commodities is imposed for or in respect of any offence committed by any person or persons against such acts, or any of them, every person so offending shall thereupon severally forfeit and lose for every such offence, either treble the value of the goods or commodities, to be estimated and taken according to and at the rate and price for which the best goods or commodities of the like sort or kind and denomination for which the duty or duties thereon have been paid were sold for in London, Edinburgh, or Dublin respectively (as the penalty may have been incurred in England, Scotland, or Ireland respectively), at the time of the commission of such offence, or the sum of one hundred pounds in lieu and instead of such treble value, at the election of the commissioners of Excise or Customs, or the commissioner or commissioners and assistant commissioners of Excise or Customs in Scotland and Ireland respectively, or the person who shall inform or sue for the same."

Sect. 70. "That whereby this act, or any other act or acts of parliament relating to the revenue of Excise, a penalty is imposed upon every person committing the offence by which such penalty is incurred, and such offence shall have been or shall be committed by several persons jointly, such several persons shall jointly and severally incur every such penalty, and it shall be lawful to proceed against such persons jointly or severally for the recovery thereof, as the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively may deem expedient; any thing in this act, or in any other act or acts of parliament, to the contrary thereof notwithstanding."

Sect. 71. "That where, in any information for the recovery of any penalty, or for the condemnation of any goods, commodities, or chattels seized as forfeited under this act, or any other act or acts of parliament relating to the revenue of Excise or Customs, any allegation or averment shall be made that such information was exhibited, or that the commissioners of Excise or Customs, or the commissioner or commissioners and assistant commissioners of Excise or Customs in Scotland and Ireland respectively, had ordered such information to be exhibited, or that the commissioners of Excise or Customs, or the commissioner or commissioners and assistant commissioners of Excise or Customs in Scotland and Ireland respectively, or the informant or person suing by such information, had made their or his election, as in such information shall be alleged or averred, such allegation and averment shall be, and the same respectively shall be deemed and taken to be sufficient proof of such facts so alleged or averred respectively, without any other or further evidence thereof."

Sect. 72. "That upon the trial of any indictment, information, action, suit, or prosecution whatsoever, or in any other legal or judicial proceeding, where it may be necessary to give proof of any order issued by the lord high treasurer or commissioners of the treasury, or by the commissioners of Excise respectively, the letter or instructions which shall have been officially received by the collector, supervisor, surveyor, or officer of Excise of the collection, district, or place in which the subject matter of any such indictment, information, action, suit, or prosecution, or other legal or judicial proceeding, may have arisen, for the direction and government of such collector, supervisor, surveyor, or officer, and in which such order is mentioned or referred to, and under which said letter or instructions such collector, supervisor, surveyor, or officer shall have acted,

11. *Proceedings, &c. before Justices, &c.*

Penalties of treble value to be either treble the value of the best goods of the like kind, or 100*l.*, at the election of the commissioners of Excise or prosecutor.

Persons incurring Excise penalties may be prosecuted jointly or severally.

Averment in information that the commissioners had ordered prosecution, &c. shall be deemed sufficient proof of such order, &c. (a)

What shall be sufficient proof, on trial, of any order of the treasury or commissioners of Excise

11. *Proceedings, &c. before Justices, &c.*

Commissioners and justices to proceed to hearing and judgment on the merits, without regard to defects in form. (a)

Witnesses summoned and not appearing, or refusing to give evidence, to forfeit *sol.* (b)

Officers of Excise and Informers to be deemed competent witnesses, notwithstanding any interest in the penalty or forfeiture under prosecution.

shall be admitted and taken to be sufficient evidence and proof of such order, to all intents and purposes whatsoever."

Sect. 73. "That it shall be lawful for the commissioners of Excise and the justices of the peace respectively, and they are hereby respectively authorized and required, upon the appearance of any person or persons summoned upon any information, or in default of the appearance of such person or persons, and upon proof of the service as before mentioned of such summons as aforesaid, to proceed to the examination of the fact or facts alleged in such information, and of the witness or witnesses on either side, upon oath, touching the penalty or penalties alleged in such information to have been incurred, or the forfeiture of any goods, commodities, or chattels therein alleged to have been seized as forfeited, and thereupon to give judgment accordingly, notwithstanding any defect or defects of form which may appear in such information, or in any proceedings thereupon or relating thereto."

Sect. 74. "That it shall be lawful for the commissioners of Excise and justice or justices of the peace, and commissioners of appeal under this act respectively, before whom any such information as aforesaid, or any matter or thing under this act, or any other act or acts of parliament relating to the revenue of Excise, shall be judicially brought, and they are hereby respectively authorized and required to summon any and every person (other than the person or persons against whom such information is exhibited), in whatever part of the united kingdom any such person so summoned shall then reside or be, to appear before the said commissioners or the justices or the said commissioners of appeal, who are to hear, adjudge, and determine such information, matter, or thing, at a certain time and place to be specified and set forth in such summons, to give evidence upon oath of the truth of any facts alleged in such information, or touching or relating thereto, or to such matter or thing as aforesaid; and every person, other than as aforesaid, being so summoned, and having the reasonable expenses for such attendance tendered, who shall neglect or refuse to appear according to the exigency of such summons, or who, having so appeared, shall refuse to take oath, or, if a quaker, to affirm, or shall refuse to give evidence, or to answer, according to the best of his or her knowledge and belief, any legal question, when thereunto required, shall for every such default or offence forfeit and lose the sum of fifty pounds."

Sect. 75. "And whereas, for better securing His Majesty's revenue of Excise, and the encouragement of the officers and others who shall detect or give information of any offence committed against the several acts of parliament relating thereto, the penalties and forfeitures by such acts imposed are directed, where such penalties are recovered, or the goods, commodities, or chattels seized as forfeited are condemned, to be divided between His Majesty and the person or persons who shall have detected or given information of the offences: and whereas, from the secret manner in which such offences are committed, it frequently happens that the officer of Excise, or other person detecting or informing of the offence, is the only or a principal witness to prove the same, but the offenders escape conviction by reason of objection being made and allowed to the competency

(a) See 9 Geo. II., c. 35, s. 34.

(b) Where the statute 7 & 8 W. III., c. 30, s. 24, enables the commissioners of Excise to summon witnesses before them, upon a charge exhibited against another for an offence against the Excise laws, and an information in a collateral proceeding recited such summons to have been duly made, proof of a printed summons distributed and issued in blank

by order of the commissioners to their agents, and afterwards filled up by one of the latter without any special directions from the board, is sufficient, although not signed by any of the commissioners, nor issued in their individual names; such having been the constant usage in that respect since the introduction of the Excise. *R. v. Stevenson and others*, 2 East, 362.

of such witness on the trial or hearing for the recovery of such penalty, or the condemnation of such goods, commodities, or chattels, on account of his interest as a person entitled to a share of such penalty or seizure; and it is therefore expedient to remove all such objections: be it therefore enacted, that upon the trial or hearing of any information or other legal proceeding for the recovery of any penalty incurred, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, any officer of Excise, or any other person who shall or may be entitled to the whole or any share of such penalty or of such seizure, shall be admitted by the Court in which, or the commissioners or the justices before whom, such information shall be tried or heard, to give evidence upon such information, and shall be deemed and taken to be a competent witness upon such trial or hearing, notwithstanding any such interest as aforesaid."

Sect. 76. "That if upon any information, for the recovery of any penalty or penalties incurred, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise or Customs, or in any action brought by the proprietor or claimer of such goods, commodities, or chattels, against any officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid and assistance of any such officer or person so employed as aforesaid, for any act, matter, or thing done in pursuance of any such act or acts of parliament, any question shall be made or shall arise whether any duty of Excise or Customs has been paid upon or in respect of the goods or commodities in such information mentioned, or whether such goods, commodities, or chattels are respectively of such sort or kind as in such information is in that behalf alleged, the proof of the payment of such duty, or that the said goods, commodities, and chattels respectively are not of such a sort or kind as aforesaid, shall lie upon the proprietor or claimer thereof."

Sect. 77. "That where any person or persons shall be in prison on any account whatsoever, and any information shall be exhibited before the commissioners of Excise, or any justice or justices of the peace, against such person or persons, for the recovery of any penalty or penalties incurred by such person or persons, or for the condemnation of any goods, commodities, or chattels seized as forfeited, under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, claimed by such person or persons, and such person or persons, on a copy of such information being delivered to the gaoler, keeper, or turnkey of the prison wherein such person or persons shall be confined or imprisoned, with a summons to appear and plead to and to attend the hearing of such information, at a time and place in such summons mentioned, shall not appear and plead in person, or by some person duly authorized in that behalf, to such information, at the time and place so mentioned, such proceedings shall be thereupon respectively had as are herein before provided and directed in cases of default of appearance to any such information; any law, custom, or usage to the contrary thereof notwithstanding."

Sect. 78. "That it shall be lawful for the commissioners of Excise and

11. *Proceedings, &c. before Justices, &c.*

Proof of payment of duties, or that goods seized are not of the sort or kind alleged, shall lie upon the proprietor or person claiming. (a)

Judgment to be entered by default against a prisoner who shall not appear and plead.

Power of commissioners and justices of the peace to mitigate penalty to one fourth part thereof. (b)

(a) See 12 Geo. I., c. 28, s. 8; 23 Geo. III., c. 70, s. 35. If the officer prove a condemnation in the *Exchequer*, this is conclusive evidence that the property is vested in the King, and a complete bar to an action. *Scott v. Shearman*, 2 Bla. R. 977; *Geyr v. Aguilan*, 7 T. R. 696. A conviction before justices is conclusive, *Brittain v. Kinnaird*,

1 Brod. & Bing. 432. Query, whether a condemnation by the commissioners of Excise is conclusive. *Henshaw v. Pleasance*, 2 Bla. R. 1174; 1 Phil. Evid. 335.

(b) See 12 Car. II., c. 24, s. 46; 23 Geo. II., c. 21, s. 38; 57 Geo. III., c. 87, s. 8; *Shaw's Excise*, 352; 2 T. R. 504.

*11. Proceedings, &c. before Justices, &c.*

Commissioners may further mitigate or entirely remit penalty.

No certiorari at the suit of a defendant to supersede or affect any proceedings by commissioners of Excise or justices of the peace.

Proviso as to certiorari at the suit of the Crown out of the Exchequer.

In proceedings before commissioners of Excise, it shall be sufficient to mention that the information was exhibited before the commissioners of Excise, without specifying their names: and any three commissioners of Excise may sign warrants.

Appointment of commissioners of appeal.

justices of the peace respectively, when they shall see cause, except in cases where there is or shall be any provision that no mitigation shall be made by the justices of the peace, and they are hereby respectively authorized and empowered to mitigate any penalty incurred for any offence committed against this act, or any other act or acts of parliament relating to the revenue of Excise, for which any information shall have been exhibited before such commissioners or justice or justices respectively, as they the said commissioners and justices respectively in their discretion shall think fit, so as such mitigation shall not reduce such penalty to less than one fourth part thereof; and that every such mitigation, and payment thereupon accordingly made, shall be a sufficient discharge of every such penalty to the person or persons convicted of such offence. Provided always, that it shall be lawful for the commissioners of Excise, and the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, when they shall see cause, and they are hereby authorized and empowered to further mitigate or entirely remit any such penalty; any thing hereinbefore contained to the contrary thereof in anywise notwithstanding."

Sect. 79. "That no writ of certiorari or other writ or process shall be issued at the suit of any defendant, out of any of His Majesty's Courts of record in England, Scotland, or Ireland, nor shall any bill of suspension, advocacy, or reduction be passed, nor shall any letter or letters of suspension, advocacy, or reduction, or any other proceeding, be issued out of the Court of Session or Court of Justiciary in Scotland, to supersede, sist, stay, remove, or in anywise affect any information or judicial proceeding before the commissioners of Excise or commissioners of appeal in this act after mentioned, or before any justice or justices of the peace in the united kingdom, in pursuance of this act, or any other act or acts of parliament relating to the revenue of Excise, or any judgment thereupon; and that every such information shall be tried and determined, and every such judicial proceeding shall be had and completed, and every such judgment executed, any such writ of certiorari or other writ or process, or bill or letter or letters of suspension, advocacy, or reduction, or other proceeding notwithstanding. Provided always, that nothing herein contained shall extend, or be deemed or construed to extend, to any writ of certiorari sued or issued in such cases in behalf of His Majesty, out of His Majesty's Courts of Exchequer in England, Scotland, or Ireland respectively."

Sect. 80. "That it shall be sufficient, in the record or written account of any proceedings before the commissioners of Excise, to state that the information was exhibited to and before the commissioners of Excise, without stating their names; and that every adjudication and determination upon any such information, by any three or more of such commissioners, shall and the same is hereby declared to be good and valid in law, and may be executed and put in force by virtue of a warrant or warrants under the hands of any three commissioners of Excise, whether the commissioners setting their hands to such warrant or warrants shall or shall not happen to be the particular commissioners by whom such adjudication or determination was made, or whether such three commissioners so setting their hands to such warrant or warrants were commissioners at the particular time or times when such adjudication or determination as aforesaid was made; provided that the persons so setting their hands to such warrant or warrants shall at the time and times of such their setting their hands thereto actually be such commissioners; any law, custom, or usage to the contrary in anywise notwithstanding."

Sect. 81. "That it shall be lawful for the lord high treasurer, or any three or more of the commissioners of the treasury, from time to time, under his hand and seal, or under their hands and seals, to appoint such and so many persons to be commissioners of appeal in England as he or they shall deem advisable, for and on behalf of His Majesty, his heirs and successors, for the purpose of hearing appeals, as hereinafter men-

tioned, from any judgment given by the commissioners of Excise upon any information exhibited before them, with such salaries respectively, payable to such commissioners of appeal out of the revenue of Excise, as the lord high treasurer, or any three or more of the commissioners of the treasury, may in that behalf order and direct; and any three or more of such persons so appointed shall constitute a Court of appeal for all such purposes as hereinafter mentioned."

Sect. 82. "That in case any officer of Excise who shall exhibit any information, or any person or persons against whom any information shall have been exhibited, or who shall appear and claim any goods, commodities, or chattels alleged to be forfeited in any information exhibited before the commissioners of Excise, shall feel aggrieved by the judgment given thereon by such commissioners, it shall be lawful for such officer, or such person or persons, upon giving such notice as hereinafter mentioned, to appeal therefrom to such commissioners of appeal as aforesaid; and it shall be lawful for such commissioners of appeal, or the major part of them, upon being served with such notice, and they are hereby respectively authorized and required, at such place and at such time as they shall in that behalf appoint, to hear, adjudge, and finally determine such appeal; and in case any officer who shall exhibit any information, or any person or persons against whom any information shall have been exhibited, or who shall appear and claim any goods, commodities, or chattels alleged to be forfeited in any information exhibited before any justice or justices of the peace as aforesaid, shall feel aggrieved by the judgment given thereon by such justices, it shall be lawful for such officer, or such person or persons, upon giving such notice as hereinafter mentioned, to appeal therefrom to the justices assembled at the next general quarter sessions of the peace (or if there be not one week between the time of giving such notice and the next general quarter sessions, then to the general quarter sessions of the peace next after the expiration of one week), to be holden in and for the county, shire, division, city, town, or place in which such judgment so appealed against shall have been given; and it shall be lawful for the justices of the peace at such general quarter sessions, upon being served with such notice, and they are hereby respectively authorized and required, at such general quarter sessions, to hear, adjudge, and finally determine such appeal; and if upon any such appeal, either to the commissioners of appeal, or justices of the peace at quarter sessions, any defect in form shall be found in the information, or in any part of the proceedings thereon or relating thereto, or in the record thereof, every such defect of form shall thereupon be rectified and amended by order of such commissioners of appeal, or of such justices, or the major part of them assembled at such general quarter sessions, before whom respectively such appeal shall be brought; any thing in this act, or any other act or acts of parliament, to the contrary notwithstanding."

Sect. 83. "Provided always, that no such appeal as aforesaid shall be allowed, unless the party or parties appellant shall, at and immediately upon the giving of the judgment appealed against, give notice in writing of such appeal to the commissioners of Excise or justices of the peace respectively from whose judgment such appeal shall be made, and also to the adverse party or parties on such appeal, and shall lodge such notice at the office or with the registrar of the commissioners of appeal, or with the clerk of the peace for the justices of the peace at such general quarter sessions as aforesaid, respectively, by and before whom such appeal is to be finally adjudged and determined; and no such appeal as aforesaid

11. *Proceedings, &c. before Justices, &c.*

Appeal from the judgment of the commissioners of Excise to commissioners of appeal. (a)

Appeal from justices of quarter sessions.

Defects of form cured upon appeal.

No appeal allowed unless a notice of appeal given.

No appeal to be heard unless notice of trial given.

(a) No appeal was given by 12 Car. R. 504. See 15 Car. II., c. 11, s. 19. II., c. 24, s. 45, against conviction of 22. 26. justices, *Shaw's Excise*, 364, 365; 2 T.

11. *Proceedings, &c. before Justices, &c.*

Deposit shall be made in certain cases.

Commissioners of appeal, or quarter sessions, on appeal to examine only the evidence before given, and in case of any new judgment to have the like power of mitigation as the original justices.

Proceedings upon determination of appeal.

shall be heard, unless the party or parties appellant on such appeal shall, within one week at least before such appeal is to be finally adjudged and determined, give notice in writing to the adverse party or parties on such appeal of the time and place where such appeal is to be heard. Provided always, that where the judgment appealed against shall be a conviction in any penalty or penalties of the party or parties appellants, such party or parties shall also, within three days next after the giving of the judgment appealed against, place and deposit in the hands of the commissioners of Excise, or of the collector of Excise in whose collection, or of the supervisor of Excise in whose district the information shall have been exhibited, the amount of the penalty or penalties in which such party or parties shall have been convicted, or of the sum or sums of money to which such penalty or penalties shall have been mitigated; or where the judgment appealed against shall be either for or against the condemnation of any goods, commodities, or chattels seized as forfeited, such goods, commodities, and chattels shall be left and deposited with the commissioners of Excise, or the collector of Excise in whose collection, or the supervisor of Excise in whose district the information shall have been exhibited, until the final adjudication and determination of such appeal."

Sect. 84. "That upon every such appeal it shall be lawful for the commissioners of appeal, or the justices of the peace at the general quarter sessions respectively, before whom respectively any such appeal shall be brought, and they are hereby respectively authorized and required to proceed to re-hear upon oath and to re-examine the same witness and witnesses, and to re-consider the same evidence, and the merits of the case whereon the original judgment appealed against shall have been given, and they shall not examine any evidence, or any witness or witnesses other than or different from the evidence and the witness or witnesses which and who shall have been before examined before the commissioners of Excise or justices of the peace respectively, at the trial and hearing of the information upon which the original judgment shall have been given: (a) and such commissioners of appeal, and justices of the peace at general quarter sessions, are hereby respectively authorized and empowered, on any such appeal, to reverse or confirm in the whole or in part the judgment appealed against, or to give such new or different judgment as they in their discretion shall in that behalf think fit; and such commissioners of appeal, and justices of the peace at general quarter sessions respectively, shall in any such new or different judgment have the same power of mitigation as is hereinbefore by this act given to justices of the peace and commissioners of Excise in judgments respectively given by them. Provided always, that it shall be lawful for such commissioners of appeal, and justices of the peace at such general quarter sessions respectively, as aforesaid, at their discretion, to state the facts of any case on which such appeal shall be made specially for the opinion and direction of the Court of Exchequer in England, Scotland, or Ireland, as the same shall have arisen therein respectively."

Sect. 85. "That where the judgment of the commissioners of Excise or justices of the peace appealed against shall be affirmed by the court of appeal, such judgment shall be enforced and executed by the commissioners of Excise or justices of the peace respectively, in like manner as if there had been no such appeal; and that where the judgment appealed against shall be reversed, and another or different judgment given by the court of appeal than the judgment given by the commissioners of Excise or justices of the peace appealed against, such new judgment shall be enforced and executed, as hereinafter mentioned, by the commissioners

(a) Before this enactment, it was held that the commissioners of appeal were bound to receive further and different evidence if tendered, *R. v. Commissioners of Appeal, 3 Maule & Selwyn, 133.*

of appeal, or justices of the peace at the general quarter sessions, by whom respectively such new judgment shall have been given."

Sect. 86. "That where any judgment is by this act required to be enforced and executed by the commissioners of Excise or justices of the peace (the same not having been appealed against, or if appealed against, having been affirmed by the court of appeal) shall be for the condemnation of any goods, commodities, or chattels seized as forfeited, it shall be lawful for such commissioners of Excise and justices of the peace respectively, and they are hereby respectively authorized and required (a) to apply the money which shall have been so deposited as aforesaid in satisfaction of such judgment; and if the same shall not be sufficient to satisfy such judgment, to award and grant a warrant or warrants under their hands, to any officer or officers of Excise, for the sale of such goods, commodities, or chattels which they respectively shall have condemned; and where the judgment to be so enforced and executed shall be for any penalty or penalties, or for any sum or sums of money to which such penalty or penalties shall have been mitigated, it shall be lawful for such commissioners of Excise or justices of the peace respectively, and they are hereby respectively authorized and required to award and grant a warrant or warrants under their hands, to any officer or officers of Excise, authorizing such officer or officers to levy the penalty or penalties, or sum or sums of money so adjudged, or so much thereof as shall not have been so satisfied as aforesaid, upon the goods and chattels of such person or persons so convicted, (b) and either to detain and keep such goods and chattels in the house or place where the same shall have been found, or to remove the same to the next office of Excise." (c)

Sect. 87. And be it further enacted, "That where any judgment is by this act required to be enforced and executed by the commissioners of appeal, or by the justices of the peace at the general quarter sessions, on appeal, shall be for the condemnation of any goods, commodities, or chattels seized as forfeited, it shall be lawful for such commissioners of appeal or justices of the peace respectively, and they are hereby respectively authorized and required to grant a warrant or warrants, under their hands, or under the hands of any two of such commissioners or justices respectively, to any officer or officers of Excise, for the sale of the goods, commodities, or chattels which they respectively shall have condemned; and where the judgment to be so enforced and executed shall be for any penalty or penalties, or for any sum or sums of money to which such penalty or penalties shall have been mitigated, it shall be lawful for such commissioners of appeal, or justices of the peace at the general quarter sessions respectively, and they are hereby respectively authorized and required to apply the money which shall have been so deposited as aforesaid in satisfaction of such judgment; and if the same shall not be sufficient to satisfy such judgment, to award and grant a warrant or warrants under their hands, or under the hands of any two of such commissioners or justices respectively, to any officer or officers of Excise, authorizing such officer or officers to levy the penalty or penalties, or sum or sums of money, so adjudged, or so much thereof as shall not have been so satisfied as aforesaid, upon the goods and chattels of such person or persons so convicted, and either to detain and keep such goods and chattels in the house or place where the same shall have been found, or to remove the same to the next office of Excise."

Sect. 88. "That it shall be lawful in any such levy warrant to order and direct therein that the goods and chattels upon which such levy shall

# 11. *Proceedings, &c. before Justices, &c.*

Commissioners of Excise and justices shall grant warrants for the sale of goods, or levying of penalties, on judgments to be enforced by them.

Commissioners of appeal and quarter sessions shall grant warrants for the sale of goods or levy of penalties, on judgments to be enforced by them.

In levy warrants any time not less than 4 nor exceeding 8 days may be appointed for the sale of distress. (d)

(a) See sect. 83.

(b) 18 Geo. II., c. 26, s. 13; and 5 Geo. III., c. 43, s. 26; 32 Geo. III., c. 10, s. 1; 28 Geo. III., c. 37, s. 21.

(c) See construction of a similar provision in 43 Geo. III., c. 74, in *Hutchins v. Morris*, 6 Bar. & Crcs. 464.

(d) See 27 Geo. II., c. 20, s. 1.



11. *Proceedings, &c. before Justices, &c.*

Penalty and expenses to be deducted from the sale, and the overplus returned.

A copy of the warrant may be taken.  
Force of the warrant.

Where sufficient distress cannot be found, a warrant may issue for the arrest of the person. (a)

Imprisonment. (b)

be made shall be sold and disposed of so soon as conveniently may be after a certain time to be limited in such warrant for the sale thereof (so as such time be not less than four days nor more than eight days), unless the penalty and penalties, or sum and sums of money for which such levy shall be made, shall, within the time limited for payment thereof as aforesaid, be paid and satisfied."

Sect. 89. "That it shall be lawful for the officer of Excise making such levy, and he is hereby empowered and required to deduct the penalty and penalties or sum and sums of money for which such levy shall be made, and all reasonable charges and expenses attending such levy, out of the money arising by such sale as aforesaid, and to return the overplus (if any) to the proprietor or proprietors of the goods and chattels upon which such levy shall have been made, or to the person or persons legally entitled thereto; and such officer shall, if required, show such warrant to the person or persons upon whose goods and chattels such levy shall be made, and shall suffer such person or persons to take a copy thereof; and every such warrant shall be of the same force and effect in all respects as a writ of *feri facias* issued out of His Majesty's Court of Exchequer in England for the recovery of any debt due to His Majesty."

Sect. 90. "That for want of sufficient goods and chattels whereon such penalty and penalties, or sum and sums of money, with the charges and expenses aforesaid, may be levied, and on a return in writing made upon any levy warrant by any officer to whom such warrant may have been directed, to the persons by whom such warrant shall have been granted, or to the commissioners of Excise, or any one or more of the justices of the peace within whose jurisdiction respectively any such warrant shall have been issued, that such officer cannot find, within the jurisdiction in which such warrant shall have been issued, any goods and chattels of the person or persons against whom such warrant shall have been granted, whereon the same can be levied, or on a return as aforesaid, that part of such penalty and penalties, or sum and sums of money, charges, and expenses, has been levied or paid, and that such officer cannot find any further goods and chattels of the person or persons against whom such warrant shall have been granted (beyond the goods and chattels already seized and sold as aforesaid), within such jurisdiction as aforesaid, whereon the residue of such penalty and penalties, or sum and sums of money, charges, and expenses, can be levied, it shall be lawful for the persons by whom such warrant shall have been granted, or for any two or more of the commissioners of Excise, or any one or more of the justices of the peace to whom respectively such return shall have been made as aforesaid, and they are hereby respectively authorized and required thereupon to grant a warrant or warrants in manner aforesaid, to any officer or officers of Excise, to arrest and convey such person or persons to the common gaol or house of correction within his or their jurisdiction respectively, and there to deliver the person or persons so arrested, with a duplicate of such warrant or warrants, to the gaoler or keeper of such gaol or house of correction, there to remain and be kept by such gaoler or keeper until satisfaction be made of such judgment as aforesaid, (c) or until such person or persons shall be ordered by the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, to be liberated or discharged; any law, bill of health, custom, or usage in England, Scotland, or Ireland, to the contrary thereof in anywise notwithstanding."

(a) See 12 Car. II., c. 24; and 2 Burn's J. 24 ed. 63; 1 Shaw's Excise, 363.

(b) See allowance to poor prisoners, *post*, sect. 113.

(c) As to a warrant of this nature, see *R. v. Rogers*, 1 Dowl. & R. 156.

Sect. 91. "Provided always, that where any goods or chattels of and belonging to any person or persons against whom any such warrant for arrest shall have been granted shall be found at any time or times after the granting or execution of such warrant, it shall be lawful for the person or persons by whom such warrant shall have been granted, or for any two or more of the commissioners of Excise, or for any one or more of the justices of the peace in whose jurisdiction respectively any such goods or chattels shall be found, and he and they is and are hereby respectively authorized and required, notwithstanding the granting of such warrant of arrest, to award and grant a fresh warrant or warrants under his or their hand or hands, to any officer or officers of Excise, to levy upon the goods and chattels so found any penalty or penalties, or any sum or sums of money, charges, and expenses, for which the former levy warrant may have been granted, or to levy so much thereof as may not have been before paid; and upon payment and satisfaction thereof, the warrant for arrest shall be discharged, and the person or persons arrested shall be forthwith liberated out of custody."

11. *Proceedings, &c. before Justices, &c.*

A fresh levy warrant may be issued when good are found after the issue or execution of arrest warrant.

Sect. 92. "That where any such warrant as aforesaid shall be granted, and cannot be executed by reason that sufficient distress, or that the person or persons against whom the same shall have been granted, cannot be found within the limits of the jurisdiction of the commissioners or justices in which such warrant shall have been issued, it shall be lawful for any one or more of the justices of the peace for any other county, shire, division, city, town, or place, within the united kingdom, and such justice or justices is and are hereby respectively authorized and required to indorse his or their name or names respectively upon such warrant; and such warrant and indorsement thereon shall be a sufficient authority to the officer or officers of Excise to whom such warrant shall be directed, or having the execution thereof, to execute the same in such other county, shire, division, city, town, or place, and to levy as aforesaid the penalty and penalties, or sum and sums of money, for which such warrant shall have been granted, or so much thereof as may not have been before paid upon the goods and chattels of and belonging to the person or persons against whom such warrant shall have been granted, which shall be found within the jurisdiction of the justice or justices indorsing such warrant, or to arrest and convey such person or persons to the common gaol or house of correction of the county, shire, division, city, town, or place where such warrant shall have been executed, there to remain until delivered, as by this act is before directed. Provided always, that no action of trespass or false imprisonment, nor any information or indictment, or other prosecution, shall be brought, commenced, or prosecuted against any justice or justices of the peace respectively for or by reason of his or their having granted subsidiary warrants, or indorsed any warrant in pursuance and under the directions of this act, in execution of any judgment, but it shall be lawful for any person or persons to bring or prosecute his, her, or their action or suit against the commissioners or justices respectively by whom the original warrant in execution of such judgment shall have been granted, in the same manner as such person or persons might have done if this act had not been made."

Warrants to be executed in any part of the united kingdom, upon indorsement by justice of the peace for the place in which the same shall be executed. (a)

No action shall be brought against any justice for granting or indorsing warrant.

(12.) *Noli Prosequi.*

By 7 & 8 Geo. IV. c. 53, s. 97. "That whenever any prosecution shall be commenced or depending for the recovery of any penalty incurred, or for the condemnation of any seizure made under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise,

(12) Of entering noli prosequi, &c.

The attorney-general may enter a noli prosequi in any prosecution under the Excise laws.

(a) See a further provision in 32 Geo. III., c. 10, s. 1.

12. *Of Noli  
Prosequi.*

it shall be lawful for His Majesty's attorney-general, or if there be no attorney general, for His Majesty's solicitor general in England and Ireland respectively, or for the lord-advocate, or if no lord-advocate, for the solicitor-general in Scotland, if it shall appear to his satisfaction that such penalty or forfeiture was incurred without any intention of fraud, or of offending against any law of Excise, to stop all further proceedings by entering a *noli prosequi*, or otherwise, to or on such prosecution, as well with respect to the share of such penalty or forfeiture to which any officer or other person shall or may claim to be entitled, as to the share thereof belonging to His Majesty; any act or acts of parliament to the contrary thereof in anywise notwithstanding."

(12) Of mitigating penalties.

(13.) *Mitigating Penalties.*

[For former enactments, see *Burn's J.* 24th ed. Vol. II. p. 64; *Shaw*, 352.]

The 7 & 8 Geo. IV. c. 53, s. 78, relates to the mitigation of penalties, see section 78, *ante*, 291.

(14) Stating proceedings, &c.

Commissioners may forbear to prosecute for penalties, or order seizures to be restored, or compound prosecutions, at any time before judgment. (a)

(14.) *Stating Proceedings, and restoring Property.*

By 7 & 8 Geo. IV. c. 53, s. 98, "That in all cases where any penalty or forfeiture shall be incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, and it shall appear to the satisfaction of the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, that the same was incurred without any intention of fraud, or of offending against this act, or any other act or acts of parliament relating to the revenue of Excise, it shall be lawful for such commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, to forbear to order any prosecution for the recovery of such penalty, or, upon such terms and conditions as they respectively shall order in that behalf; (b) to forbear to order any prosecution for the condemnation of such seizure, and to restore such seizure to the proprietor or proprietors or claimant or claimants thereof; and that in all cases where any prosecution shall have been commenced, or shall be depending, for the recovery of any duty or any penalty incurred, or for the condemnation of any seizure made under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, it shall be lawful for the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, at any time before judgment shall be thereupon respectively entered up or given, to compound any such prosecution respectively, by the acceptance of such sum of money as they respectively shall deem fit and reasonable in that behalf, for any such duty, or in mitigation of any such penalty, or for and in lieu of the value of any such seizure, in or by way of compromise of such prosecution; and upon payment and satisfaction thereof to stay all further proceedings, and to restore the seizure to the proprietor or proprietors, or claimant or claimants thereof, making or entering into such compromise. Provided

(a) See 47 Geo. III., sess. 2, c. 30, s. 19; 54 Geo. III., c. 171.

(b) It was held that it is not necessarily essential to an order of the commissioners of Customs, made under the 51st Geo. III., to restore goods seized, that any terms or conditions should be

imposed on the proprietors by the order; and the Court will not refuse to stay proceedings on a writ of appraisement on that ground, although the application proceed from the Crown. But they will not quash the writ if regularly issued.

always, that if any such proprietor or claimant of any such seizure as aforesaid shall accept such terms and conditions as aforesaid, or shall receive back any such seizure upon such terms and conditions, no such proprietor or claimant shall have or be entitled to maintain any action or suit for any recompense or damages on account of the seizure or detention thereof; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

Sect. 99. "That in all cases where any penalty or forfeiture shall be incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, it shall be lawful for the lord high treasurer, or any three or more of the commissioners of the treasury, if he or they shall see cause, by any order for that purpose to be made under his or their hand or hands, to direct the seizure, or any part thereof, to be restored to the proprietor or proprietors or claimant or claimants thereof, whether such seizure shall or shall not be condemned at the time of such order, and to mitigate or remit any penalty, or any part thereof, either before or after judgment for any such penalty, in such manner and upon such terms and conditions as under the circumstances of the case shall appear to the lord high treasurer, or any three or more of the commissioners of the treasury, to be reasonable, and as he or they shall think fit to direct by such order as aforesaid; and no person shall be entitled to the benefit of any such order, unless the terms and conditions therein contained shall be complied with; nor shall any person accepting such terms and conditions be entitled to maintain any action or suit for any recompense or damages on account of any such seizure, or the detention thereof."

14. *Of staying Proceedings, &c.*

If terms accepted, or seizures received, no proceedings to be brought for detention.

Treasury may order seizures to be restored, or penalties mitigated or remitted, before or after judgment, on such terms as they shall direct.

(15.) *Appeal and Warrants for Sale, &c.*

(15) Appeal, &c.

[See former enactments, *Burn's J.* 24th ed. Vol. II. p. 65.]

The 7 & 8 Geo. IV., c. 53, s. 81 to 92, inclusive, relates to appeal, &c. See these sections, *ante*, N. 291, 292.

(16.) *Writs of Capias, Arrest, Escape.*

(16) Capias, &c.

By 7 & 8 Geo. IV., c. 53, s. 95. "That where any writ of capias or other writ or process authorizing or directing the arrest of any person or persons for or on account of any penalty or penalties by such person or persons incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise or Customs, or for or on account of any duty of Excise, or any other matter or thing relating to the revenue of Excise, shall issue out of the Court of Exchequer in England, Scotland, or Ireland, directed to any sheriff, sheriff depute, mayor, bailiff, or other person having the execution of any such writ of capias, or other writ or process as aforesaid, in any county, shire, division, city, town, or place in any part of the united kingdom, every such sheriff, sheriff depute, mayor, bailiff, and other person, and their and every of their under-sheriffs, deputies, and other persons acting for them in any of the said offices respectively, shall and they are hereby respectively enjoined and required, upon the request or application of any of the solicitors of Excise in England, Scotland, or Ireland (such request to be in writing, and indorsed upon the back of such writ of capias or other writ or process as aforesaid, and signed by such solicitor with his name, and addition of solicitor of Excise), to grant a special warrant or warrants to such person or persons as shall be

Sheriff to grant warrant on a writ of capias indorsed by one of the solicitors of Excise. (a)

(a) An action against an officer for into Exchequer. *Liddon v. East*, 1 acting under such a warrant may be removed from the Court of Common Pleas *Crompt. & Jerv.* 12.

16. *Capias*, &c.

Sheriff's indemnified from escapes in cases where the warrant is granted at request of the solicitor of Excise.

specified in such indorsement by such solicitor, for the apprehension of the person or persons named in such writ of *capias*, or other writ or process as aforesaid; and in default thereof every such sheriff, sheriff depute, mayor, bailiff, or other person, having execution in any such writ of *capias*, or other writ or process as aforesaid, and every under-sheriff, deputy, or other person acting for them in the said offices respectively, by or through whom the said default shall have been made, shall be subject and liable to such process of contempt, fine, amerciamment, penalty, and forfeiture, as they or any of them are now by any law, custom, or usage, liable to in case of refusing or neglecting to execute the like writ of *capias*, or other writ or process, in the common and usual method of proceeding thereon."

Sect. 96. "That all and every such sheriff, sheriff depute, mayor, bailiff, under-sheriff, deputy, and other person so granting such special warrant as aforesaid, shall be and they are hereby respectively saved harmless and indemnified against His Majesty, his heirs and successors, and against all and every other person or persons whomsoever, for or on account of any escape of any person or persons who shall or may be taken by virtue of any such warrant as aforesaid, which shall happen between the time of taking such person or persons, and the time of such person or persons being committed to proper gaol or prison, or offered and tendered to the gaol-keeper or other person having charge of such gaol or prison (who is hereby enjoined and required to receive every such person or persons so apprehended as aforesaid, and to give a receipt for the body or bodies of such person or persons), and of and from all actions, prosecutions, processes of contempt, and other proceedings for or on account of any such escape; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

(17) Selling forfeited property, &c.

Forfeitures, after condemnation (where no special directions are given), shall be sold publicly to the best bidder.

No goods to be sold for home consumption at less price than the amount of the duties.

If such price not offered, goods to be destroyed, or sold for exportation, or otherwise disposed of.

**(17.) Selling forfeited Property, Paying Expenses, Distribution of Penalties and Forfeitures.**

By 7 and 8 Geo. IV., c. 53, s. 100. "That all goods, commodities, and chattels whatsoever, seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, shall after the same shall have been condemned (such cases only excepted for which other directions shall in any act or acts of parliament relating to the revenue of Excise be specially given) be publicly sold to the best bidder, at such time and place, and in such manner, as the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, shall order and direct, under and subject to all such rules, regulations, and provisions as by this act, or any other act or acts of parliament, are in that behalf made and directed."

Sect. 101. "That no goods or commodities of a sort or kind subject to any duty of Excise or Customs, and for or in respect of which every such duty shall not have been paid, which shall be ordered or directed to be sold by the commissioners of Excise, or by the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, under this act, or any other act or acts of parliament relating to the revenue of Excise, or the sale of which shall be directed under any other act or acts of parliament, shall be sold for home consumption at a less price than shall be equal to the amount of the duty and duties aforesaid which shall not have been paid; and that all such goods and commodities for which, on any sale so ordered or directed, a price shall not be offered equal at the least to the amount of such duty and duties, and all condemned goods and commodities, the importation whereof is or shall be wholly prohibited, shall be forthwith destroyed, or shall be sold for exportation, or applied and disposed of to such public use as shall

**I. IN GENERAL. (17.) *Sale of forfeited Property, &c.***

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be ordered by the lord high treasurer, or any three or more of the commissioners of the treasury."

Sect. 102. "That all costs and expenses attending the seizure, detention, custody, removal, prosecution, condemnation, and sale of any goods, commodities, or chattels whatsoever, forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, shall (such cases only excepted for which other directions shall in any act or acts of parliament relating to the revenue of Excise be specially given) be paid out of the gross proceeds arising from the sale thereof respectively, whenever the same shall be sold; and in case the same shall not be sold, but shall be destroyed or otherwise disposed of, all such costs and expenses shall be paid out of the revenue of Excise."

Sect. 103. "That all penalties and forfeitures incurred and recovered under or by virtue of this act or any other act or acts of parliament relating to the revenue of Excise (such cases only excepted for which other directions shall in any act or acts of parliament relating to the revenue of Excise be specially given) shall, after deduction therefrom of all costs and expenses relating thereto incurred, be distributed, one moiety thereof to the use of His Majesty, his heirs and successors, and the other moiety to the officer or officers of Excise, or the person or persons who shall discover, inform, or sue for the same."

Sect. 104. "Provided always, that upon proof being made to the satisfaction of the commissioners of Excise, or of the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, that any officer or other person to whom any part or share of any penalty or forfeiture, or any reward, shall be given or payable by any act or acts of parliament relating to the revenue of Excise or Customs, has acted collusively or negligently, either in making any seizure, or in the wilful omission or failure to make any seizure, or to discover any fraud, or to arrest or make known any offender against any act or acts of parliament relating to the revenue of Excise or Customs, in the particular case in or for which such part or share of any penalty or forfeiture, or such reward, is given or payable; it shall be lawful for the said commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, in such case to direct that the whole or any part of such part or share of any penalty or forfeiture, or of such reward which might and otherwise would have been given or payable to such officer or other person, shall be forfeited, and shall go and be applied in such manner as His Majesty's share of such penalty or forfeiture is by law at such time directed to be applied."

Sect. 105. "That in any prosecution for any penalty incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, and carried on in His Majesty's Court of Exchequer in England, Scotland, or Ireland, it shall be lawful for the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, under the direction of the lord high treasurer, or any three or more of the commissioners of the treasury, to order the whole or any part of the costs and expenses of such prosecution, whether the money which shall be recovered or received from the defendant or defendants, either by way of penalty or compromise, shall be sufficient to satisfy and discharge such costs and expenses or not, to be paid out of the revenue of Excise, and to allow out of such revenue to the officer or officers concerned in such prosecution, or person or persons through whose information or by whose means or assistance the offence or offences shall have been detected, any sum or sums of money, not exceeding a moiety of the sum or sums of money which shall be so recovered or received as aforesaid; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

Sect. 106. "That in any prosecution carried on in His Majesty's Court of Exchequer in England, Scotland, or Ireland, for the condemnation of

**17. *Sale of forfeited property, &c.***

Expenses attending forfeitures to be paid out of the gross proceeds of the sale thereof; or, if not sold, out of the revenue.

Penalties and forfeitures to be distributed equally between His Majesty and the informer.

On proof being made of the officer acting collusively in making seizures, the commissioners of Excise may direct his share to be forfeited.

In Exchequer prosecutions expenses may be paid, by direction of the treasury, out of the revenue of Excise, and officers allowed their moiety.

In prosecutions for seizures the expenses may be paid out of the revenue of Excise.

**17. Sale of forfeited property, &c.**

Officer's or informer's share of proceeds of sale, &c. to be paid, without deducting expenses.

Officers of Customs to give notice of the seizure of excisable goods.

Such goods, if removed without permit, shall be forfeited.

His Majesty's share of penalties to be accounted for as directed by the treasury.

Nothing herein to affect the hereditary revenue in Scotland.

any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, it shall be lawful for the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, under the direction of the commissioners of the treasury, or any three of them, to order the whole or any part of the costs and expenses attending the seizure, detention, custody, removal, or prosecution of any such goods, commodities, or chattels, whether the same be condemned or not, and also of the costs and expenses attending the condemnation thereof, if the same be condemned, and of the sale thereof if sold, whether the produce arising from the sale thereof shall be sufficient to answer the said costs and expenses or not, to be paid out of the revenue of Excise; and to distribute to and amongst the officers and persons who shall have made any such seizure, or by whose information or through whose means or assistance such seizure shall have been made, a sum or sums of money not exceeding the part, share, or proportion of such seizure, or the value thereof, in case the same shall have been sold, or if not sold, but destroyed, or otherwise applied or disposed of as aforesaid, such sum of money or reward for making such seizure as shall be by law directed to be paid in such behalf respectively as aforesaid, in full, without deducting therefrom the said costs and expenses, or any part thereof."

Sect. 107. "That all officers of the Customs who shall make any seizure under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, of any excisable goods or commodities, shall forthwith give notice of such seizure at the next office of Excise, or to the supervisor or other officer of Excise of the district where such seizure shall have been made; and such supervisor or other officer of Excise shall, on such notice, take a particular account of the species and quantities of all such goods and commodities so seized respectively; and the same or any part thereof shall not afterwards be removed without a permit (where a permit is, for the removal of goods or commodities of a similar quantity, sort, or kind, required under any act or acts of parliament relating to the revenue of Excise), signed by the proper officer of Excise of the place or district from whence the same shall be intended to be removed, on pain of forfeiture thereof for such removal."

Sect. 112. "That the commissioners of Excise, and the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, shall, and they are hereby respectively authorized and required to keep a separate and distinct account of the surplus (after deduction of all costs and expenses) of the money received on behalf of His Majesty from any penalties and forfeitures incurred under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, and to account for the same in such manner as the lord high treasurer, or any three or more of the commissioners of the treasury, shall direct. Provided always, that nothing in this act contained shall be deemed or construed to extend to effect or alter the hereditary revenue of His Majesty, his heirs and successors, in Scotland, or other revenues there granted to His late Majesty King George the Second during his life, and reserved to His present Majesty during his life by an act made in the first year of His present Majesty's reign, but the same shall continue to be paid over in like manner as heretofore; any thing in this act contained to the contrary notwithstanding."

(18) Imprisonment allowance.

Allowances to Excise prisoners.

**(18.) Imprisonment Allowance.**

By 7 & 8 Geo. IV., c. 53, s. 113. "That for the necessary subsistence of any poor person who shall be confined under or by virtue of any Exchequer process for the recovery of any duties or penalties under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, or who shall be confined under or by virtue of any

# I. IN GENERAL. (18.) *Of Imprisonment Allowance.*

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warrant granted by the commissioners of Excise, or any justices of the peace within the united kingdom under or by virtue of this act, or the said other acts, or any of them, or who shall be confined under or by virtue of any writ of extent for the recovery of any debt due to His Majesty, prosecuted under or by virtue of any order of the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, it shall be lawful for the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, to cause, at their discretion, an allowance not exceeding the sum of eightpence per day to be made to such poor person out of any money in their hands respectively arising from the revenue of Excise."

18. *Of imprisonment allowance.*

## (19.) *Forgery.*

(19) *Of forgery.*

By 7 & 8 Geo. III., c. 53, s. 56, "That if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or shall knowingly and wilfully aid or assist in forging or counterfeiting, the name or handwriting of any receiver-general of Excise, or of any Excise comptroller of the cash as aforesaid, or of any of the persons duly authorized as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money, bills, notes, drafts, checks, or orders for the payment of money, in the hands or custody of the governor and company of the Bank of England, on account of such receiver-general as aforesaid; or if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or shall knowingly and wilfully aid or assist in the forging or counterfeiting, of any draft, instrument, or writing, in the form of a draft, instrument, or writing made by any receiver-general of Excise, or by any Excise comptroller of the cash as aforesaid, or by any person or persons authorized as aforesaid, or shall utter or publish any draft, instrument, or writing so forged or counterfeited, knowing the same to be forged or counterfeited, with an intention to defraud His Majesty, or any person whomsoever; every person so offending, and being thereof lawfully convicted, shall be and is hereby declared and adjudged to be guilty of felony, and shall suffer death as in cases of felony without benefit of clergy."

Forging any instrument to obtain money from the Bank on account of the receiver-general, felony without benefit of clergy. (a)

## (20.) *Protection of Officers, Notice of Actions, Limitations, Plea, Costs, &c.*

(20) *Protection of officers, &c.*

[Former enactments, *Burn's J.* 24th ed. Vol. II. p. 66.]

By 7 & 8 Geo. IV., c. 53, s. 114. "That no writ, summons, or process shall be sued out against or served upon, nor shall any action be brought, raised, or prosecuted against any officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid and assistance of any such officer or person so employed as aforesaid, for any thing done in pursuance of this act, or any other act or acts of parliament relating to the revenue of Excise, until after the expiration of one calendar month next after notice in writing shall have been delivered to such officer or person

Protection of officers, &c. (b) No action against any officer of Excise without a month's notice, expressing the names and places of abode of the plaintiff and his attorney. (c)

(a) Forging debentures, &c. 41 Geo. 623; 5 T. R. 1; 2 Smith, R. 220. III., c. 91; 38 Geo. III., c. 54, s. 9; (c) See 28 Geo. III., c. 37, s. 23 to 52 Geo. III., c. 143, s. 10. 28, and cases, *Chitty's Stat.* Vol. I. (b) See 23 Geo. III., c. 70; 3 T. R. 262.



**20. Protection of officers, &c.**

Limitation of action against officers.

Venue.  
General issue.

\* Sic in the statute the word "for" seems to have been omitted by mistake.

Treble costs.

Tender of amends may be made within one month after notice given, and pleaded in bar if not accepted.

In case of non-suit, &c., costs may be awarded.

If verdict for plaintiff, damages and costs may be given.

Defendant may pay money into Court before issue joined. (a)

as aforesaid, or left at the usual place of his abode, by the attorney or agent for the person or persons who shall intend to sue out such writ or process, or to bring, raise, or prosecute such action as aforesaid; in which notice shall be clearly and explicitly contained and set forth the cause of such action, the time when and the place where such cause of action arose, the name and place of abode of the person or persons in whose name or names such action or suit is intended to be brought, and the name and place of abode of the said attorney or agent; and that a fee of twenty shillings, and no more, shall be paid for the preparing and serving of every such notice."

Sect. 115. "That if any action or suit shall be brought, raised, or commenced against any officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, for any thing done in pursuance of this act, or any other act or acts of parliament relating to the revenue of Excise, such action or suit shall be commenced within the space of three calendar months next after the cause of action shall have arisen, and shall be laid and prosecuted in the proper county or place wherein the same arose; and the defendant or defendants in any such action or suit may plead the general issue, and give this act and the special matter in evidence thereunder at any trial to be had thereupon; and if afterwards a verdict shall pass\* the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited, or shall discontinue such action or suit, or if judgment shall be given against such plaintiff or plaintiffs upon demurrer or otherwise, then and in every such case such defendant or defendants shall have treble costs awarded to him or them against such plaintiff or plaintiffs."

Sect. 116. "That it shall be lawful to and for any officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, to whom such notice shall be given as aforesaid, at any time within one calendar month next after such notice shall have been given, to tender amends to the person or persons in whose name or names such action or suit shall be brought, raised, or commenced, or to the agent or attorney of such person or persons; and in case such amends shall not be accepted, it shall be lawful for any such officer or person to plead such tender in bar to such action or suit, together with the plea of not guilty, and any other plea or pleas, with leave of the Court in which such action or suit shall be brought; and if upon issue joined thereon the jury shall find the amends so tendered to have been sufficient, they shall give a verdict for the defendant or defendants; and in such case, or in case the plaintiff or plaintiffs shall be nonsuited, or shall discontinue such action or suit, or in case judgment shall be given against such plaintiff or plaintiffs upon demurrer or otherwise, then and in every such case the same costs shall be awarded to such defendant or defendants as if the general issue only had been pleaded; and if, upon issue so joined, the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant or defendants, on such other plea or pleas as aforesaid, such jury shall give a verdict for such plaintiff or plaintiffs, with such damages as they shall think proper, together with costs of suit."

Sect. 117. "That in case any such officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, shall neglect to tender amends, or shall have tendered insufficient amends before action or suit brought, raised, or commenced, it shall be lawful for the defendant or defendants, by leave of the Court in which such action or suit shall be brought, raised, or commenced, at any time before issue

(a) *Collins v. Morgans*, 1 Hen. Bla. 244.

joined, to pay into Court such sum of money as such defendant or defendants shall think fit, whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such Court, as in other actions where the defendant is allowed to pay money into Court."

Sect. 118. "Provided always, that no such plaintiff or plaintiffs shall, on the trial of any such action or suit, be permitted to produce any evidence of any cause of action, except such as shall be contained and set forth in such notice as aforesaid; nor shall recover any verdict against any such officer or person as aforesaid, unless it shall be proved on the trial of such action or suit that such notice was given; and the defendant or defendants in such action of suit shall in default of such proof recover a verdict with such costs as aforesaid."

Sect. 119. "That in case any information shall be commenced and brought to trial or hearing for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of parliament relating to the revenue of Excise, wherein a verdict or decision shall be given or made for the claimant or claimants thereof, and it shall appear to the judge or Court before whom the same shall be tried or heard that there was a probable cause of seizure, such judge or Court shall certify upon the record or other written proceedings on such information, that there was a probable cause for making such seizure; and in such case the officer of Excise, or person who made or assisted in making such seizure, shall not be liable to any action, indictment, or other suit or prosecution on account of such seizure, or of the detention of any such goods, commodities, or chattels; and in case any action, indictment, or other suit or prosecution shall be brought to trial or hearing against any officer of Excise or person, on account of the seizing of any such goods, commodities, or chattels, or of the detention thereof, (whether any information shall have been or shall be brought to trial or hearing for the condemnation of the same or not,) and a verdict or sentence shall be given thereupon against the defendant or defendants therein, if the Court or judge before whom such action, indictment, or other suit or prosecution shall be tried or heard, shall certify in like manner as aforesaid that there was probable cause for such seizure, then and in such case the plaintiff or plaintiffs therein, besides the goods, commodities, and chattels respectively so seized, or the value thereof, shall not be entitled to more than two-pence damages, nor to any costs of suit, and the defendant or defendants therein shall not be imprisoned, nor be fined more than one shilling thereon."

20. *Protection of Officers, &c.*

No evidence to be given of a cause of action not expressed in the notice.

On trial for seizures, if the judge shall certify probable cause of seizure, the officer shall not be liable to action. (a)

In actions against officers, if the judge shall certify, plaintiff shall not be entitled to more than 2d. damages.

(21.) *Offenders removing.*

By stat. 32 Geo. III., c. 10, s. 1. "Where any person against whom any warrant of commitment in execution, commonly called a *body-warrant*, shall, by any three commissioners of Excise, or by any justice, under any act relating to duties of Excise, be issued, shall escape, go into, reside, or be in any other county, riding, division, city, liberty, town, or place, out of the jurisdiction of the commissioners, &c. granting such warrant, any three commissioners or a justice of the peace where such person shall so be, on proof being made on oath of the handwriting of such commissioners or justice granting such warrant,

(21.) *Offenders removing.*

Offenders removing out of the jurisdiction where they were convicted. (b)

(a) It was held that a condemnation of goods by the commissioners of Excise is not conclusive evidence to a jury on an action of trespass; nor does the *onus probandi* lie on the plaintiff, but on the officer. *Henshaw v. Plousance*, 2 Bla. Rep. 1174; but see *ante*, s. 76, *ante*, 291.

(b) See the 7 & 8 Geo. IV., c. 53, s. 92, *ante*, 297; 5 Price, 195.

**21. Offenders removing.**

may indorse the same, which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute the same within such jurisdiction, and to convey such offender before the commissioners or justice who indorsed the same, or some other justice of the county, &c. where such warrant was indorsed, who may, by indorsement upon such warrant, commit such offender to the common gaol or house of correction of the county, riding, or place where such warrant shall be executed, according to the exigency of such warrant, there to remain until delivered by due course of law."

**(22.) Trial of offences.****(22.) Trial of Offences.**

By 19 Geo. II. c. 34, s. 5, offences relating to the Excise made felony by any act may be tried in any county, but the attainder shall work no corruption of blood or forfeiture of lands.

**(23.) Alehouse keepers.****(23.) Alehouse Keepers harbouring Offenders.**

Alehouse keepers harbouring offenders, &c., forfeited 100*l.* and not to have licence.

By 9 Geo. II., c. 35, s. 30, 31, any alehouse harbouring offenders forfeited 100*l.*; but this enactment was repealed by 6 Geo. IV., c. 105.

**(24.) Concealment, &c.****(24.) Concealing prohibited Goods, Seizures, Utensils, deceiving Officers, False Weights, &c.**

Concealing goods liable to duties, forfeits the goods and treble value.

Besides the provisions in 7 & 8 Geo. IV., c. 53, s. 32, relating to the fraudulent removal or concealment of goods (*ante*, 271), there are other former provisions still in part in force. Thus

By 11 Geo. I. c. 30, s. 16. "And for the more effectual discovering and detecting the running of any goods, merchandises, and commodities whatsoever, which are either prohibited to be imported, or which are liable to any duty or duties of Customs and Excise, and inland duty or duties, or to any or either of them, be it enacted by the authority aforesaid, that in case, from and after the said twenty-fourth day of June, one thousand seven hundred and twenty-five, any person or persons whatsoever shall knowingly harbour, keep, or conceal, or shall knowingly permit or suffer to be harboured, kept, or concealed, such prohibited goods or run goods, wares, merchandises, or commodities whatsoever, liable to any duty or duties of Customs, Excise, and inland duties, or to any or either of them, the party or parties offending therein, whether he, she, or they, have or have not, or do or do not claim or pretend to have any property or interest in such goods, wares, merchandises, or commodities so harboured, kept, or concealed, shall, for every such offence, forfeit and lose all such goods, wares, merchandises, and commodities whatsoever so harboured, kept, and concealed, and treble the value thereof."

**(25.) Of Permits and Certificates.****(25.) Of Permits and Certificates.**

General regulations.

To prevent fraud, there are certain regulations relating to the removal of some commodities, requiring the party before removing them to obtain a permit or certificate. We will here consider only the general clauses and regulations. The particular regulations for the removal of particular

commodities, with the decisions thereon, will be found under those particular heads.

By 23 Geo. III. c. 70, s. 8. "The commissioners of Excise in England and Scotland shall, on or before 29th September, 1783, provide moulds or frames for making of paper to be used for permits, which paper shall have the words *Excise Office* visible in the substance thereof; and shall also provide plates engraved with certain marks, stamps, and devices, in manner as to them shall seem meet (which marks, stamps, and devices, on the said plates, may be altered in such manner and as often as the said commissioners shall think necessary), for printing, stamping, and marking the said paper; and all permits from thenceforth to be granted by the officers for the duties of Excise and inland duties for the removal of any exciseable commodity shall be printed, stamped, and marked by the said plates on paper so made; which paper shall be made, and the said plates engraven, by persons appointed by the said commissioners; and the said paper and plates shall be kept by officers appointed by the said commissioners: and the officers appointed for printing permits shall not print, stamp, or mark any paper whereon permits shall be granted but on the paper provided as aforesaid."

Sect. 9. "If any person not authorized by the said commissioners shall make, or cause to be made, or knowingly assist in making, or, without being authorized as aforesaid, shall knowingly have in his possession, without lawful excuse (the proof whereof shall lie on the person accused), any frame, mould, or instrument, for making such paper; or shall make, or cause to be made, or knowingly assist in making such paper; or shall procure the words *Excise Office* to appear visible in the substance of any paper whatever; or (not being appointed as aforesaid) shall engrave, cast, cut, or make, or procure to be engraven, &c., any plate or other thing, with any mark thereon, in imitation of that made and used for the printing, stamping, and marking paper to be used for permits; every person so offending, being thereof convicted, shall be adjudged a felon, and shall suffer death, without benefit of clergy."

52 Geo. III., c. 143, s. 9. "If any person (not being lawfully appointed or authorized) shall make, or cause to be made, or knowingly assist in making, or, without being authorized as aforesaid, shall knowingly have in his possession, without lawful excuse (the proof whereof shall lie on the person accused), any frame, mould, or instrument, for the making of paper, with the words *Excise Office* visible in the substance of such paper; or shall make, or cause to be made, or knowingly assist in making any paper in the substance of which the words *Excise Office* shall be visible; or shall, by any art or contrivance, procure the words *Excise Office* to appear visible in the substance of any paper whatever; or (not being appointed as aforesaid) shall engrave, cast, cut, or make, or cause to be engraven, cast, cut, or made, any mark, stamp, or device, in imitation of that made or used by the direction of the commissioners of Excise in England or Scotland for the printing, stamping, or marking paper to be used for permits to accompany any exciseable commodity removing from one part of Great Britain to another; every person so offending, being thereof convicted, shall be adjudged guilty of felony, and suffer death without benefit of clergy."

11 Geo. I., c. 30, s. 10. "No person shall demand or receive any permit from the officer, for the removal of brandy, arrack, rum, spirits, and strong waters, coffee, tea, and cocoa-nuts, without the special direction in writing of the person, or his servant, out of whose stock the same are to be removed, on pain of forfeiting 50*l.*, or, in default of payment, to suffer imprisonment for three months."

Sect. 10. "If any person shall take out permits for removing such goods, and if, within the time limited in such permits, he shall not either send away the goods, or return such permits to the officer, he shall forfeit treble the value of the goods mentioned in such permits, and not removed,

*25. Of Permits and Certificates.*

1. Paper to be used for permits.

Plates to be used.

Felony for any other person to engrave, &c.

2. Limitation of time in permits, and removing the goods.

25. *Of Permits and Certificates.*

to be estimated according to the highest rate of the like goods at the time of the forfeiture; and if such permits are not so returned, and there shall not appear a sufficient decrease to answer the removal, the person out of whose stock the goods shall be authorized to be removed shall forfeit the like quantity, to be seized by the officer out of the like goods then in his possession."

21 Geo. III. c. 55, s. 27. "It is the true intent and meaning of the several acts which direct the giving of permits for removing exciseable goods, that the officers who give the same should, and they are bound to express and limit, in every such permit, as well the time for which such permits shall be in force for removing such goods from the stocks of the persons taking out such permits, as also the time within which the same shall be delivered into the stocks of the persons to whom the same shall be permitted to be sent."

Sect. 27. "If any goods liable to Excise or inland duties, and which are required to be removed with permit, are not actually removed from the stocks of the persons taking out such permits, within the time limited in the respective permits; or, in default of removing the goods, the respective permits shall not be returned to the officer from whom the same were had; the person from whose stock the said goods are thereby authorized to be removed shall be subject to the penalties and forfeitures in 11 Geo. I., c. 30: and in case the goods mentioned in such permits shall be removed from the stocks of the persons taking out the same, within the time limited therein, and shall not, within the time limited, be actually delivered into the stocks of the persons to whom the same are mentioned to be sent, all such goods so removed shall be deemed goods removed or removing without permit."

Sect. 28. "In case the said goods shall, by unavoidable accident, be prevented from being delivered within the time limited in such permit, the Court, where any information shall be brought for the condemnation of any such seizure, shall, upon proof of such accident, direct the goods to be restored to the owner." (a)

a. Counterfeiting, altering, or misapplying permits.

22 Geo. III. c. 68, s. 26. "If any person shall counterfeit or forge, or cause to be counterfeited or forged, any permit or certificate for the removal of any exciseable commodity; or shall knowingly give any false permit or certificate, or receive any false permit or certificate to accompany any such commodity; or shall fraudulently alter or erase any permit or certificate after the same shall have been granted by the proper officer of Excise; or shall knowingly publish or make use of any permit or certificate so counterfeited, forged, false, altered, or erased; every person so offending shall, for each offence, forfeit 200*l.*; which forfeiture shall be prosecuted in any of the Courts of Record at Westminster, or in the Court of Exchequer in Scotland; one moiety whereof shall be to the king, and the other to him who shall sue; and such permit or certificate so counterfeited, &c. shall be of no effect."

23 Geo. III. c. 70, s. 10. "If any person shall counterfeit or forge, or cause to be counterfeited or forged, any permit for the removal of any exciseable commodity; or shall knowingly give any false permit, or receive any false permit with any such commodity; or shall fraudulently alter or erase any permit after the same shall have been granted by the proper officer of Excise; or shall knowingly publish or make use of any permit so counterfeited, forged, false, altered, or erased; every person so offending shall, (in lieu of any former penalty) for every offence, forfeit 500*l.*; which forfeiture shall be prosecuted in any of the Courts of Record at Westminster, or in the Court of Exchequer in Scotland."

Sect. 12. "Upon every action entered for the said penalty of 500*l.* a *capias* in the first process shall issue, specifying the penalty; and the

(a) *Irring v. Wilson*, 4 T. R. 485.

defendant shall give bail to appear at the day of the return of the writ; and at the time of such appearance shall give bail to pay the penalty, in case he shall be convicted, or to yield his body to prison."

25. *Of Permits and Certificates.*

57 Geo. III. c. 123, s. 13. "Every person who shall sell, lend, or make use of, or cause or suffer any permit, granted under any law of Excise, to be sold, lent, or made use of, for any other purpose than to accompany the removal of the goods for which the same was granted, and which shall be therein described, or shall produce or cause the same to be produced to any officer or person as having been received with any goods other than as aforesaid, or shall use, or cause or suffer to be used, any permit, so as that any account kept by the officers of Excise by such permit may be frustrated or evaded, shall forfeit 500*l.* over all other penalties and forfeitures; and every permit used for any purpose other than to accompany the removal of the goods for which it was granted shall be deemed a false permit, and such use shall, over all other penalties and forfeitures, subject the person using the same to the penalties and forfeitures for using any false permit."

22 Geo. III. c. 68, s. 26. See Art. 3.

41 Geo. III. c. 91, s. 5. "If any person shall counterfeit or forge, or cause to be counterfeited or forged, any certificate authorized or required to be granted by any officer of Excise, by virtue of any act in force relating to the duties of Excise, or shall knowingly give any false certificate, or receive any false certificate, or alter or erase any certificate after the same shall have been granted by any officer of Excise, or shall knowingly publish or make use of any certificate so counterfeited, forged, false, altered, or erased, every person so offending, being thereof convicted, shall be adjudged guilty of felony, and be transported for seven years."

4. Forging certificates or debentures.

38 Geo. III. c. 54, s. 9. "If any person shall counterfeit or forge, or cause to be counterfeited or forged, any debenture, in any case in which a debenture is, by any act relating to the duties of Excise, required to be granted, or knowingly make use of any counterfeited or forged debenture, every person so offending, being thereof convicted, shall be deemed guilty of felony, and suffer death without benefit of clergy."

52 Geo. III. c. 143, s. 10. "If any person shall forge, counterfeit, or alter, or cause to be forged, counterfeited, or altered, or assist in forging, counterfeiting, or altering, any debenture or certificate for the payment or return of money, or any part of such debenture or certificate, or any signature thereon, in any case in which such debenture or certificate is by any act relating to the duties of Customs or Excise required, or shall wilfully utter or make use of any such debenture or certificate so forged, counterfeited, or altered, every person so offending, being thereof convicted, shall be adjudged guilty of felony, and suffer death without benefit of clergy."

23 Geo. III. c. 70, s. 11. "If any officer of Excise or inland duties shall deliver out, or suffer to be delivered out, any paper having the words *Excise Office* visible in the substance thereof, either before or after the stamp or mark provided by the commissioners of Excise shall be printed thereon, or before the same shall be filled up, agreeable to the request-note brought from any trader for the purpose of having a permit for the removal of some exciseable commodity; or if any such officer shall knowingly grant any false permit, or make a false entry in the counterpart of any permit by him granted for the removal of any exciseable commodity, or shall knowingly take any exciseable commodity into the stock of any dealer, brought in with a false or forged permit, or shall knowingly permit the same to be done; every such officer, being thereof convicted, shall be adjudged guilty of felony, and be transported for any time not exceeding seven years."

5. Officers delivering out paper for permits improperly, or granting false permits, &c.

38 Geo. III., c. 54, s. 8. "If any officer of Excise shall knowingly accept any counterfeited, forged, or untrue certificate, or, under colour of

## 25. Of Permits and Certificates.

6. Penalties and forfeitures how to be recovered and applied.

7. General issue.

any such certificate, knowingly give to any maker, manufacturer, or dealer, any undue credit in any book relating to the duties of Excise, with intent that any such maker, &c. may obtain any undue drawback for any goods never in reality shipped and exported, every officer so offending, being thereof convicted, shall be adjudged guilty of felony, and be transported for seven years."

11 Geo. I. c. 30, s. 39; 21 Geo. III. c. 55, s. 46; 57 Geo. III. c. 123, s. 17. "The penalties and forfeitures by these acts shall be sued for, recovered, or mitigated, as by any law of Excise, or in any of the Courts of Record at Westminster, (those by 11 Geo. I. c. 30, and 21 Geo. III. c. 55, also in the Court of Exchequer in Scotland); one moiety of which shall be to the king, and the other to him who shall discover, inform, or sue for the same."

And see the general clause of 49 Geo. III. c. 81, s. 9; 21 Geo. I. c. 55, s. 49; 23 Geo. III. c. 70, s. 34. "Actions against persons sued for any thing done in pursuance of these acts shall be commenced within three months, and be laid in the proper county; and the defendants may plead the general issue, and recover treble costs."

The 7 & 8 Geo. IV. c. 53, s. 107, contains a regulation that goods seized by officers of Customs or Excise shall not be removed without a permit; and if they be they shall be forfeited.

With respect to *ale and beer*, the 1 & 2 Geo. IV., c. 22, s. 4, enacts, that no beer shall be sent out by brewers without a *certificate* stating the date, quantity, and quality of beer sent out by him. See *post*, title *Ale*, &c.

The 10 Geo. I., c. 10, s. 16, and 11 Geo. I., c. 30, s. 10; 12 Geo. III., c. 46, s. 5; 21 Geo. III., c. 55, s. 24 and 26; 22 Geo. III., c. 68, s. 21, 24, relate to *permits* on removal of *coffee, tea, cocoa-nuts, and chocolate*. But by 9 Geo. IV., c. 44, s. 5, permits for removal of *coffee and cocoa* are rendered unnecessary. See title *Coffee*, &c., *post*, —.

The 6 Geo. IV., c. 80, s. 115, &c. contains regulations as to the *permit* on removing *spirits*. See title *Spirits* and cases thereon, *post*, —. Upon a prior act (57 Geo. III., c. 123, s. 13.) it was held, that the word *officer* or *officers* of Excise therein mentioned are general, and apply to any officer of Excise whose accounts may be frustrated or evaded by the fraudulent use of permits. (a)

So with respect to *soap*, the 59 Geo. III., c. 90, s. 8, requires the maker to cause a *certificate* to accompany soap about to be delivered, stating the date, quantity, quality, sort, and kind of soap, &c. See title *Soap*, *post*, —.

The 26 Geo. III., c. 59, s. 30, &c. as to wholesale dealers, and the 42 Geo. III., c. 93, s. 6, as to others, and the 54 Geo. III., c. 77, s. 6, contain regulations as to the *permit* on removing *wine*. See title *Wine*, and cases thereon, *post*, —, (b)

## II. Of the particular Laws affecting particular Articles alphabetically arranged, &c.

- (1.) *Ale, Beer, and Brewers.*
- (2.) *Auctioneers.*
- (3.) *Brewers.*
- (4.) *Bricks and Tiles.*

(a) *Attorney-general v. See, M'Clell.* 217, S. C.; *The King v. Commissioners of Excise*, 2 T. R. 381; *Cooke v. Shall*, Rep. 567.

(b) See constructions, *Toussaint v. Durlam*, 1 Brod. & Bing. 5; 3 Moore, 5 T. R. 225.

- (5.) *Candles.*
- (6.) *Chocolate.*
- (7.) *Cocoa-Nuts.*
- (8.) *Coffee, Tea, Chocolate, and Cocoa-Nuts.*
- (9.) *Cottons and Calicoes, (see Linen Cloths).*
- (10.) *Cyder, Perry, Mum, Metheglin, and Mead.*
- (11.) *Glass.*
- (12.) *Hides, see Leather.*
- (13.) *Hops.*
- (14.) *Leather, Hides, and Skins.*
- (15.) *Linen Cloths, Silks, Cottons, and Calicoes.*
- (16.) *Mead and Metheglin.*
- (17.) *Malt.*
- (18.) *Mum.*
- (19.) *Paper.*
- (20.) *Perry.*
- (21.) *Plate.*
- (22.) *Powder, see Starch.*
- (23.) *Salt.*
- (24.) *Silks.*
- (25.) *Snuff, see Tobacco.*
- (26.) *Soap.*
- (27.) *Spirituous Liquors.*
- (28.) *Starch, Hair-powder, and Stone-blue.*
- (29.) *Stone-blue, see Starch.*
- (30.) *Stone Bottles.*
- (31.) *Sugar.*
- (32.) *Sweets, or Made Wines.*
- (33.) *Tea.*
- (34.) *Tobacco and Snuff.*
- (35.) *Vinegar, Acetous Acid, and Verjuice.*
- (36.) *Wine.*
- (37.) *Wire.*

(1.) *Ale, Beer, and Brewers. (See tit. Alehouses, Vol. I., and Malt, post, — and Cyder.)*

(1.) *Ale, Beer, and Brewers.*

[12 C. II., c. 24; 15 C. II., c. 11; 22 & 23 C. II., c. 5; 1 W. sess. 1. c. 24; 7 & 8 W. c. 30; 8 & 9 W. c. 19; 12 & 13 W. c. 11; 12 Geo. I., c. 28; 1 Geo. III., c. 3; 2 Geo. III., c. 14; 5 Geo. III., c. 43; 6 Geo. III., c. 14; 22 Geo. III., c. 68; 24 Geo. III., sess. 2, c. 41; 25 Geo. III., c. 73; 27 Geo. III., c. 13; 28 Geo. III., c. 37; 32 Geo. III., c. 8; 42 Geo. III., c. 38; 43 Geo. III., c. 38; 43 Geo. III., c. 69; 49 Geo. III., c. 81; 53 Geo. III., c. 103; 55 Geo. III., c. 30; 56 Geo. III., c. 58; 59 Geo. III., c. 32; 1 & 2 Geo. IV., c. 22; 3 Geo. IV., c. 18, c. 27; 4 Geo. IV., c. 51; 5 Geo. IV., c. 54; 6 Geo. IV., c. 58; 6 Geo. IV., c. 81; 7 & 8 Geo. IV., c. 52; 9 Geo. IV., c. 61; 9 Geo. IV., c. 68; 1 W. IV., c. 51, and c. 64; and see general powers of officers and regulations in 7 & 8 Geo. IV., c. 53, *ante*.]

For the duties on ale and beer made in Great Britain, see 43 Geo. III., c. 69; 55 Geo. III., c. 30; 56 Geo. III., c. 113; and 3 Geo. IV. c. 31. But by 1 Will. IV., c. 51, s. 1 & 2, it is provided, that from the 10th day of October, 1830, the duties and drawbacks on cyder and beer, except the hereditary duties, shall cease, and that during His Majesty's life the here-

Duties and drawbacks.



1. Ale, Beer, and Brewers.

ditary duties on ale, beer, and cyder, brewed or made for sale in Great Britain, shall not be collected, nor the laws for collecting and securing such duties enforced; and that after the 10th day of October, 1830, brewers shall pay the licence duty in proportion to the quantity of malt which they shall use in brewing. See the regulations, *post*, 333, 4, 5.

For the drawbacks on the same, see 59 Geo. III., c. 53; 3 Geo. IV., c. 18 & 31, and 1 Will. IV., c. 51, s. 9, *post*, 335.

For the duties, allowances, and drawbacks on ale and beer made in Scotland or Ireland, see stat. 6 Geo. IV., c. 58.

It will be important to keep in view, that besides many of the regulations stated under this head, most of the general provisions contained in the 7 & 8 Geo. IV., c. 53, *ante*, 229 to 306, are applicable, and the reader must refer to them. The recent important provisions in 1 Will. IV., c. 51, 64, s. 17, must also be observed. See *post*, 333 to 352.

Former duties on licences repealed.

By 6 Geo. IV., c. 81, s. 1, *ante*, 246, (and which is still applicable: see the regulations in 1 Will. IV., c. 51.) from the 5th July, 1825, all the duties on Excise licences granted by any act of parliament in force at the passing of the act are *repealed*; except in all cases relating to arrears of duty, or any fine or penalty incurred before the 5th day of July, 1825, and remaining unpaid; and also except as to any Excise licence or licences theretofore granted, and any bond or bonds given by any Excise trader before the said 5th day of July, 1825, and then in force and unexpired. And

Duties on licences for brewers of beer.

By sect. 2. From the 5th day of July, 1825, every *brewer* of table or other beer, in Great Britain and Ireland, for sale, shall annually take out an Excise licence for that purpose, and shall for every such licence pay the annual sums following; that is to say, (a)

Every *brewer of table-beer only for sale*, if the quantity of beer brewed by such brewer within the year ending the 10th day of October, previous to taking out such licence, shall not exceed 20 barrels, 10s.; if exceeding 20, and not exceeding 50 barrels, 1l.; if exceeding 50, and not exceeding 100 barrels, 1l. 10s.; if exceeding 100 barrels, 2l. (a)

Duty on licence of person first becoming brewer.

And every *brewer of beer (other than table-beer only) for sale*, if the quantity of beer brewed by such brewer within the year ending the 10th day of October, previous to taking out such licence, shall not exceed 20 barrels, 10s.; if exceeding 20, and not exceeding 50 barrels, 1l.; if exceeding 50, and not exceeding 100 barrels, 1l. 10s.; if exceeding 100, and not exceeding 1000 barrels, 2l.; if exceeding 1000, and not exceeding 2000 barrels, 3l.; if exceeding 2000, and not exceeding 5000 barrels, 7l. 10s.; if exceeding 5000, and not exceeding 7500 barrels, 11l. 5s.; if exceeding 7500, and not exceeding 10,000 barrels, 15l.; if exceeding 10,000, and not exceeding 20,000 barrels, 30l.; if exceeding 20,000, and not exceeding 30,000 barrels, 45l.; if exceeding 30,000, and not exceeding 40,000 barrels, 60l.; or, if exceeding 40,000 barrels, 75l. That every person who shall first become a brewer of beer for sale, on taking out such licence as aforesaid, for that purpose, shall pay the sum of 10s., and within ten days after 10th October next, after taking out such licence, pay such further additional sum as with the said 10s. shall amount to the duty hereinbefore mentioned, according to the number of barrels of beer brewed within the preceding year, or period for which such licence was granted.

Every brewer of beer for sale, who shall retail such beer to be consumed elsewhere than on his, her, or their premises, 5l. 5s.

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(a) By the recent act, 1 W. IV. c. 51, s. 7, after the 10th of October, 1830, brewers are to pay their licence duty in proportion to the quantity of malt which they shall use in brewing, and shall be deemed to have brewed one barrel of beer for every two bushels of malt used by such brewer in brewing. See the act, *post*, 335.

Every person, not being a brewer of beer, who shall sell strong beer only, in casks containing not less than  $4\frac{1}{2}$  gallons imperial standard gallon measure, or in not less than 2 dozen reputed quart bottles at one time, to be drank or consumed elsewhere than on his, her, or their premises, *3l. 3s.*

Every person who shall be duly authorized by justices of the peace to keep a common inn, alehouse, or victualling-house, and who shall sell beer, cyder, or perry by retail, to be drank or consumed in his, her, or their house or premises, if the dwelling-house in which such person shall reside or retail beer, cyder, or perry as aforesaid, at the time of taking out such licence, shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated, under the authority of any act or acts of parliament for granting duties on inhabited houses, at a rent of 20*l.* per annum or upwards, or shall not be rented or valued at such rent or annual value, or upwards, *1*l.* 1*s.**

And if rated, rented, or valued as aforesaid at 20*l.* per annum or upwards, *3l. 3s.*

The said duties to be under the collection and management of the commissioners of Excise.

Sect. 3. Reciting "that the duty imposed by this act, on every licence to be taken out by any brewer or brewers of beer for sale, is rated according to the quantity of beer brewed by the person or persons taking out such licence; and that no account is taken or kept by the officers of Excise in Ireland of the quantity of beer brewed there for sale, but of the malt only used and employed by all and every brewer or brewers there for that purpose;" it is enacted, "that all and every brewer or brewers of beer for sale in Ireland shall, for the purpose of fixing and regulating the rate and amount of duty to be paid by such brewer or brewers for the licence to be taken out by him, her, or them, under this act, be deemed to have brewed one barrel of beer for every two bushels of malt used or employed by such brewer or brewers in brewing; and shall, for every licence to be taken out by him, her, or them, under this act, for brewing beer for sale, pay such amount of duty, according to the rate by this act imposed, as shall be correspondent to the quantity of beer which he, she, or they shall be deemed to have brewed as aforesaid."

Sect. 5. Reciting that "the duty upon certain licences authorized and required to be taken out by this act is imposed at and according to the rent at which the premises used for the purpose or purposes mentioned in such licence are rated to the duty on inhabited houses;" and that "many houses or premises in different parts of the united kingdom, for or in respect of which such licences may be required, may not be so rated;" it is enacted, "that in all cases, and in any part of the united kingdom, in which any such house or premises shall not be so rated as aforesaid, it shall and may be lawful, in order to ascertain the rent or annual value of such house or premises, for the person or persons, being the tenant or occupier thereof, who shall apply for any such licence upon which the duty is so imposed as aforesaid, to produce to the person or persons authorized to grant such licence as aforesaid, a certificate, signed by himself and the owner or landlord of the said house and premises, stating the true rent paid by or for which such house or premises is or are let to such tenant or occupier; or if the true rent, by reason of the payment of any premium, or performance of any condition or otherwise, shall not be reserved and payable to the owner or landlord by the tenant or occupier of such house or premises, then and in such case stating the estimated rent or true annual value of such house or premises, and the rate of duty payable by such tenant or occupier for such licence shall be paid, taken, and received, according to the rent or value so certified. Provided always,

*1. Ale, Beer, and Brewers.*

Brewers in Ireland to be deemed, for the purposes of this act, to have brewed one barrel of beer for every two bushels of malt employed in brewing. (a)

Where the house and premises shall not be rated, the rent or annual value is to be certified by the tenant and landlord; and if such certificate be unsatisfactory, the commissioners of Excise shall adopt other means for ascertaining the true rent or value thereof, which shall be conclusive.

(a) After the 10th of October, 1830, this applies also to brewers in England, by 1 W. IV., c. 51, s. 7, *post*, 335.

1. *Ale, Beer, and Brewers.*

Licences to be granted within the limits of the chief office of Excise in London by the commissioners of Excise, or such person as they may employ for that purpose, and within the limits of the cities of Edinburgh and Dublin respectively by the commissioners or assistant commissioners there, or such persons as they may employ for that purpose, and elsewhere by the collectors and supervisors of the respective Excise collections, on payment of the duties. (a)

that if the person or persons authorized to grant such licence shall be dissatisfied with the rent or value so certified, he or they shall and is and are hereby authorized and required to adopt such other means as the commissioners of Excise shall think fit, and shall from time to time direct, to ascertain the true rent or annual value of such house or premises; and that thereupon the rate of duty payable for and upon such licence shall be paid, taken, and received, according to the rent or annual value of the house and premises so ascertained as last aforesaid; any thing herein or in any other act or acts of parliament to the contrary thereof notwithstanding."

Sect. 6. "Every Excise licence which is authorized or required to be taken out by this act shall be granted, and the duty thereupon imposed shall be paid in and throughout the united kingdom in manner and form following; that is to say, if any such licence shall be taken out within the limits of the head or chief office of Excise in London, then such licence shall be granted under the hands and seals of two or more of H. M.'s commissioners of Excise, or of such person or persons as such commissioners shall from time to time employ for that purpose, and the duty thereupon imposed as aforesaid shall be paid at such head or chief office at the time of granting the licence; or if such licence shall be taken out within the limits of the cities of Edinburgh or of Dublin respectively, such licence shall be granted under the hands and seals of H. M.'s commissioner or commissioners and assistant commissioners of Excise acting in and for Scotland or Ireland respectively for the time being, or of any two of them respectively, or of such person or persons as such commissioner or commissioners and assistant commissioners shall from time to time employ for that purpose, and the duty thereupon imposed shall be paid at the chief office of Excise in Edinburgh or Dublin respectively, at the time of granting the licence; or if such licence shall be taken out in any other part of the united kingdom without such respective limits as in that behalf respectively aforesaid, then and in every such case the same shall be granted under the hands and seals of the collector, or other person having charge of the collection, and supervisor of Excise within the collection and district in which such licence is taken out, and the duty thereupon imposed shall be paid to such collector or other person as aforesaid at the time of granting the licence; and such respective commissioners of Excise in England, and commissioner or commissioners and assistant commissioners of Excise acting in and for Scotland and Ireland respectively, and the person or persons by them respectively employed as aforesaid, and every collector or other person having charge of the collection, and supervisor as aforesaid, is and are hereby respectively authorized and required to grant and deliver every such licence to the person or persons who shall apply for and be legally entitled to receive the same, forthwith upon payment of the duty or sum of money thereupon imposed, free from all poundage, fee, gratuity, or any other payment whatsoever."

The 7th section regulates the contents of licence, and enacts, that "partners need not take out more than one licence, except," &c. See *ante*, 250.

The 9th section enacts that "no person or persons taking out licence shall give bond, except brewers of beer for sale in Ireland, and auctioneers whose bonds shall bear date with that of the licence, and be binding upon them from that day." But by 1 W. IV. c. 51, s. 8, it is enacted "that no bond shall be required of brewers taking out a licence." See the act, *post*, 335.

The 6 Geo. IV. c. 81, s. 10, *ante*, 252, enacts that "no one licence shall

(a) And now a retail licence may also be taken out by any inhabitant paying 2l. 2s. *Vide* 1 W. IV., c. 64, *post*, 341.

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authorize any person, except auctioneers and maltsters, subject to the lowest rate of duty, to carry on his trade in more than one separate and distinct set of premises."

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The 6 Geo. IV. c. 81, s. 11, *ante*, 252, then enacts "that nothing therein contained should extend to selling beer, cyder, or perry by publicans being licensed beer retailers, or spirits, wine, or sweets, by the licensed retailers thereof, at fairs or races;" and provides "removal of the licence in case of fire or accident."

The 6 Geo. IV., c. 81, s. 13, provided that "no licence should be granted for selling beer or cyder by retail, to be drank on the premises, without a justice's licence." *Ante*, 253. And the 9 Geo. IV., c. 61, s. 17, enacted that "No licence for the sale of any *exciseable liquors* (which include ale and beer, see s. 37,) by retail, to be drank or consumed on the premises of the person licensed, shall be granted by the commissioners of Excise, or by any officer of Excise, to any person whatsoever, unless such person shall have previously obtained from the *justices* a licence under this act, and which said licence of such justices shall be retained by such person after being produced to the commissioners or officers of Excise; and every licence granted by the commissioners of Excise, or by any officer of Excise, contrary to this provision, shall be null and void to all intents and purposes."

No Excise licence was to be granted except to a person licensed by justices.

But the new regulations in 1 W. IV. c. 64, at the end of this title, have now enabled inhabitants to sell ale, beer, or cyder, on taking out a two-guinea licence, although they have no justice's licence. See *post*, 341.

By 6 Geo. IV., c. 81, s. 16, (*ante*, 254), it was enacted, that "licences taken out by brewers and distillers, and by publicans, as retailers of beer, spirits, or foreign wine, or sweets or made wines, or mead or metheglin, should expire on the 10th of October in each year, and all other licences on the 5th day of July, to be renewed yearly, and notice for renewal given by the trader 21 days at least before the expiration of his current licence, every such licence to bear date from the expiration of the former licence when regularly renewed, and when afterwards or otherwise granted, from the date of the application."

But this now altered by 1 W. IV. c. 64.

The 6 Geo. IV., c. 81, s. 17, provides that "licences may be granted to new beginners, in any trade or business, for a proportional part of the year, who shall pay duty accordingly, according to the quarter of the year in which the licence shall be taken out." See *ante*, 254.

But s. 18 provides, that persons who were before licensed, taking out a new licence, shall not be considered beginners, unless the old licence expired two years before such new licence is taken out. See *ante*, 255.

Then s. 18 enacts, that "licences taken out by any brewers, distillers, or publicans, as retailers of beer, spirits, or foreign wine, or sweets or made wines, or mead or metheglin, under any former acts, which shall expire between the period herein mentioned, shall be renewed for a proportional part of the year, upon payment of duty accordingly, according to the quarter of the year in which taken out."

The sect. 21 provides that "licences may be transferred to the executors, wife, child, or assignee of the person licensed; but, in the case of retailing beer to be consumed upon the premises, not without certificate of a magistrate." *Ante*, 257; but see 1 W. IV., c. 64, *post*, 342.

Sect. 22 enacts, that "persons disabled by conviction from keeping a common inn, &c. shall not be allowed to retail beer under any Excise licence; and clerk of the peace neglecting to deliver a copy of conviction shall forfeit 10*l*." *Ante*, 258.

And sect. 23 enacts, that "where the retail beer licence shall become void by conviction as aforesaid, the retail spirit licence shall become void also." *Ante*, 258.

And sect. 24 enacts, that "upon the expiration of the magistrate's authority to keep a public house within the year (no conviction having

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taken place) a proportional part of the duties on the Excise licences shall be returned." *Ante*, 258.

Then sect. 25 enacts, that "parties licensed shall put up over their premises their names and trades. Penalty for not so doing, or unlicensed persons doing the same, 20*l*." *Ante*, 259.

The 6 Geo. IV., c. 81, s. 26, then prescribes the penalties on brewers and sellers of beer, cyder, and perry, for not taking out licences. (a) See *ante*, 259, 260.

The 27th sect. enacts that "the occupiers of premises where goods are retailed without licence by persons unknown shall be deemed to be the retailers thereof, if privy or consenting thereto." *Ante*, 260, 1.

The 28th prescribes a "penalty on licensed persons not producing their licence on demand of officer, 20*l*." *Ante*, 261.

Sect. 29. The "informer against an unlicensed trader is to be paid such sum as the commissioners shall direct, not exceeding 10*l*. if the penalty cannot be recovered."

The 30, 31, 32, 33, and 34, then provided, "Nothing in the act contained shall prejudice the universities, the vintners' companies, or the borough of St. Alban's;" and that "former regulations should be put in force in execution of this act, except where repealed or altered by this act;" and that "penalties and forfeitures should be recovered and applied as other Excise penalties, unless otherwise by that act provided;" and that "former regulations which are inconsistent with this act shall be deemed repealed;" and that "Irish licences of 1825 shall be charged and paid according to the rates imposed by that act." *Ante*, 261, 2.

By 5 Geo. IV., c. 54, s. 7, it is enacted, "that where the entered premises for brewing of any brewer shall be situated out of a city or market town, and such brewer shall by reason thereof not retail beer, or be licensed to retail beer from such brewery, or make entry of any part of such premises for that purpose, it shall be lawful for any such brewer to make entry of some one place, room, storehouse, cellar, shop, house, or outhouse, for the retail of beer in any one adjoining city or market town, and to take out a licence for and retail therefrom the strong beer brewed by him, her, or them at such brewery as aforesaid, to be drank or consumed elsewhere, subject nevertheless to the several provisions and penalties in this act contained, relating to brewers retailing beer from the premises where brewed. Provided always, that no retail brewer, not being duly licensed to sell beer as a keeper of a common inn, alehouse, or victualling-house, shall deal in or sell any table-beer, or any beer except the strong beer which he or they shall brew, and be charged with the duty thereon, or shall at any one time use, employ, or consume any less quantity than 16 bushels of malt at any one brewing, upon pain of forfeiting for each and every such offence the sum of 100*l*."

Sect. 11. "That no licensed brewer of beer for sale, who shall also be duly licensed to retail such beer under this act, shall sell, deliver, or send out, at or from his, her, or their brewery, or the premises belonging thereto or entered as aforesaid, or to any of his, her, or their customers, any beer in any quantity less than a whole barrel, except between the hours of six of the clock in the morning and nine of the clock in the evening, or shall sell, deliver, or send out any beer during the usual hours of divine service on Sundays, upon pain of forfeiting for each and every such offence the sum of 20*l*."

Brewers whose premises are out of a market town, &c. may make entry of a place within some town to retail their beer. (b)

Penalty on brewers not licensed as victuallers selling table-beer, or using less than 16 bushels of malt at a brewing, 100*l*.

Retail brewers not to retail beer, except at hours herein mentioned, or during divine service on Sundays.

(a) The information and conviction must not be in the alternative; and therefore an information on 48 Geo. III., c. 143, for selling "beer or ale" without an Excise licence, was held bad, and a

conviction thereon, showing that the defendant had sold ale only, was quashed. *King v. North*, 6 Dowl. & Ry. 143.

(b) See form of a brewer's entry, *ante*, 265.

By 9 Geo. IV., c. 68, s. 1, after reciting the said 11th sect. of 5 Geo. IV., c. 54, enacts "that it shall be lawful for any such brewer, as in the said act is in that behalf mentioned, to sell beer by retail as aforesaid, at or from his, her, or their brewery, or other premises entered by such brewer for that purpose as in the said act is provided, between the hours of four of the clock in the morning and ten of the clock in the evening, subject nevertheless in all other respects to the several rules, regulations, and restrictions by and in the said act enacted and contained."

By 42 Geo. III., c. 38, s. 18, "No person, not being a common brewer, shall retail beer at any higher price than 1½d. the quart, without entering into a recognizance and obtaining a licence as a common alehouse keeper, under pain of forfeiting for each offence 50*l.* over and above any penalty imposed upon selling beer or ale without a licence."

By 3 Geo. IV., c. 18, s. 11. "All beer and ale above the price of 16*s.* the barrel (exclusive of the duties) shall be deemed to be strong beer or ale; and all beer of the price of 16*s.* the barrel or under (exclusive of the duties) shall be deemed to be table-beer within the meaning of the several acts in force relating to beer or ale."

By 15 Car. II., c. 11, s. 1. "No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall, without first giving notice at the next office of Excise, or to the commissioners or sub-commissioners, or one of them, erect, alter, or enlarge any tun, fat, back, cooler, or copper, and make use thereof for brewing or making any beer, ale, or worts, on pain of 50*l.* And every other person, in whose occupation any house, outhouse, or other place shall be, where any such private tun, &c. shall be found, shall also forfeit 50*l.* And the same, together with all beer, ale, or worts therein, shall be taken up, seized, and forfeited, to be sold to the use of the poor."

By 5 Geo. III., c. 43, s. 25. "If any common brewer shall alter the position of any tun, batch, float, cooler, or copper after the same hath been set up and fixed, without first giving notice thereof in writing to the officer; or shall place any boards, stone, wood, or any other materials at, in, or upon the dipping-place thereof; or shall, by any other means, prevent or hinder the officer from taking true dips and gauges of such beer, ale, or worts, he shall forfeit 20*l.*"

And by 7 and 8 W. III. c. 30, s. 27. "The officer of Excise in the daytime, and in the presence of a constable, where he shall have just suspicion that any private back, tun, or other concealed vessel or receptacle is used by any brewer, distiller, or maker of exciseable liquors, on request first made and cause declared, may break open the door, or any part of such brewhouse, warehouse, or other room in his possession, and enter and break up the ground in such house or room, or ground near adjoining, in his possession, to search for such back, tun, or other vessel, or any pipe or conveyance leading thereto; and if he find any private pipe or other conveyance, he may search after and follow the same, and if it shall lead into any ground, house, or place in the possession of any other person, on like request and with a constable, he may enter the same, and break open the ground or any part of the house, if occasion shall be, to follow such private pipe, in order to find out such concealed back, tun, or other vessel, making good the ground or house so broken up, or giving reasonable satisfaction to the owner; and if any person shall oppose such officer, he shall forfeit 20*l.*"

By 8 and 9 W. III. c. 19, s. 4; and 42 Geo. III. c. 38, s. 15. "No common brewer shall keep any pipe or other private conveyance from any copper in his brewhouse, except the regular discharge-pipes leading directly to his mash-tun, hopback, or coolers; nor shall keep any fixed or other pipe or conveyance leading from any underback, hopback, back, or

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Brewers licensed under the recited act may sell beer between the hours of four in the morning, and ten in the evening.

Retailing beer at more than 1½*d.* per quart, without licence, penalty 50*l.*

When beer shall be accounted strong, and when table.

Notice of erecting and altering tuns, &c. for brewing beer or ale.

No tun, batch, &c. to be altered without notice.

Officer may enter and examine suspected places. (a)

Private pipes or conveyances.

(a) See general powers, 7 & 8 Geo. IV., c. 53, s. 22, &c. *ante*, 266.

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cooler, except such as, without any private or concealed stopcock therein or thereon, shall have a direct communication with the entered coppers, backs, coolers, or working tuns only, on pain of 200*l.* for every such pipe or conveyance."

Power of officers to search for private pipes or conveyances.

And by 8 and 9 W. III. c. 19, s. 5. "The Excise officer in the day-time, and in the presence of a constable, on request made and cause declared, may break up the ground in any common brewhouse or the ground near adjoining, or any wall, partition, or other place, to search for any such private pipe or other conveyance, and, upon finding, may follow the same, and break up the ground, house, wall, partition, or other place, through or into which the same shall lead; and break up or cut such pipe or other conveyance, and may turn any cock to try whether it can convey as aforesaid."

Sect. 6. "And if on search no such pipe or other private conveyance shall be found, the officer shall make good the ground, wall, or other place so broken up, or make satisfaction to the owner; and if any person shall oppose such officer, he shall forfeit 50*l.*"

Sect. 7. "But any common brewer may use any pipes, stopcocks, or other conveyances above ground, which are public and in open view, for letting his worts out of his copper into his public backs or coolers, and out of the same into his tuns, batches, or floats; or out of the tun into his cask."

Private cellar.

And by 15 Car. II. c. 11, s. 1; and 1 W. III. st. 1. c. 24, s. 11. "No common brewer, innkeeper, victualler, or other retailer of beer or ale, shall use or keep any private storehouse, cellar, or other place for laying off any beer, or ale, or worts in cask, on pain of 50*l.*; and every other person, in whose occupation any such place shall be, shall also forfeit 50*l.*"

Utensils forfeited.

By 49 Geo. III. c. 81, s. 8. "Where any vessels would, if found, be liable to forfeiture for want of entry, or being private or concealed, all the utensils employed or fit to be employed in the manufacture of any exciseable commodity, in any private or concealed room or place where any such vessel shall be found, shall be forfeited, or may be seized by any officer of Excise."

Private person suffering liquors to be brewed in his house. (a)

By 22 and 23 Car. II. c. 5, s. 10. "If any person inhabiting in a market town, city, or town corporate, or parts adjoining to a city or town corporate, where there is a common brewhouse, having and lawfully using any private brewing-vessels for making beer or ale to be consumed in his own private family, shall permit any beer, ale, or worts to be brewed in his house, outhouse, or other place thereunto adjoining, other than for his own family, servants, labourers, or for others, by way of charity, hospitality, or free gift; or shall lend out any of his brewing-vessels, other than those which are moveable and unfixed, he shall forfeit 50*l.*"

Repeal of 22 & 23 C. 2., c. 5, s. 10, prohibiting the loan of brewing utensils.

The 5 Geo. IV. c. 54, s. 18, recites that "by 22 and 23 Car. II. c. 5, it was, amongst other things, enacted, that if any person or persons inhabiting in any market town, or in any city or town corporate, or parts adjoining to any city or town corporate, where there is or shall be a common brewhouse, having and lawfully using any private brewing-vessels for the brewing and making of beer or ale to be spent and consumed in his or their private families, shall lend out any of their brewing-vessels to be made use of by any other person or persons, not being of his or their family, for the brewing of beer or ale for the use of any other person or persons, then such person or persons shall forfeit for every such offence the sum of 50*l.*; and that it was expedient to repeal so much of the said act as was hereinbefore recited; and it is enacted, that from the passing of this act, viz. 4th June, 1824, the same shall be and is repealed."

(a) See 1 W. IV., c. 51 and 64, *post.* 333 to 352.

By 12 Car. II. c. 24, s. 33. "The gauger shall at all times in the day (and in the night with a constable) be permitted, upon his request, to enter the brewhouse and all other houses and places belonging to or used by any person brewing of beer, or by any retailer of beer, ale, wort, perry, cyder, or metheglin; and to gauge all coppers, vats, and vessels in the same; and to take an account of all such liquors brewed or made therein; and thereof shall make return in writing to the commissioners, leaving a true copy of such return under his hand with such brewer, maker, or retailer; which return shall be a charge upon such brewers, makers, or retailers."

Sect. 33. "And if any such common brewer, maker, or retailer shall refuse to permit such gauger to enter his brewhouse or other place aforesaid, or to gauge or take account of his vessels or liquor aforesaid, he shall be forthwith forbidden by the gauger to sell, carry out, or deliver to any of his customers, any beer, ale, or other the liquors aforesaid; and if he shall, after such warning given, sell, carry, or deliver out the same, or any part thereof, not having paid the duty of Excise, he shall, besides the forfeiture of double value, forfeit also the sum of 10*l*."

By 7 & 8 W. III., c. 30, s. 22. "If any common brewer, innkeeper, or victualler shall, on request or demand made by the gauger in the daytime, or in the night in presence of a constable, refuse to permit him to come into his house, brewhouse, or other place used by him; or, being entered, shall refuse him to stay in the brewhouse whilst his guile is brewing, and quietly gauge and take an account of the several worts as they are brewed off, and let into his backs and tuns, and to see their strong and small [and table-beer by 42 Geo. III., c. 33, s. 7,] drink cleansed and carried out without mixture, and to take an account of the goods in the mesh-tun, or the quantity of malt from which such worts are made, he shall forfeit 20*l*., and the prosecutor shall not be obliged to prove that the party carried out any part of such guile before he paid the duties."

By 15 Car. II., c. 11, s. 16. "If any brewer shall bribe the gauger to make a false return, or to omit the executing of his employment, he shall forfeit 10*l*.; and the officer taking the bribe shall also forfeit 10*l*. upon conviction, on the oaths of two witnesses before two justices of the peace, or the chief magistrate of the place, to be levied by distress; and, for want of distress, the offender to be committed to the common gaol for three months."

Sect. 7. "As often as there shall be occasion, two able artists shall be appointed, one of them by the commissioners or subcommissioners, and the other by the brewers of any city or place, who shall be sworn before a justice to take and compute the just contents and gauge of all coppers, fats, tuns, backs, and coolers, and all other brewing-vessels of that nature, and to deliver under their hands one copy of the contents to the commissioners, and another to each respective brewer."

By 8 & 9 Will. III., c. 19, s. 2. "Every common brewer who shall make any guile of beer or ale shall declare to the gauger how much strong beer or strong ale he intends to make of such guile, and how much small, [or table-beer by 42 Geo. III., c. 38, s. 7,] before any part of the guile is cleansed or removed out of his tuns; and if such brewer or his servants shall refuse to make such declaration, the gauger shall return the whole as strong, and the brewer pay the duties, and shall also forfeit for every barrel in such guile [100*l*. by 42 Geo. III. c. 38, s. 16, the penalty of 20*s*. by 8 & 9 Will. being found insufficient to prevent the fraud.] If such brewer or his servants, after such declaration, shall make any increase of the strong beer or ale, or if the gauger shall find any beer, ale, or worts of the same guile laid off, over and above the quantity so declared, he shall forfeit for every barrel so increased, laid off, or found over and above such quantity, 5*l*., and the servant assisting therein 20*s*. for every such barrel, and in default of payment be imprisoned three months; and if, on an information against the brewer for the said penalties, it appear by his evidence that the

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Gauger to enter and take account.

If there be refusal to permit the gauger, he may forbid sale of the liquor.

Penalty on the brewer for refusal.

Offering or taking bribes.

Indifferent gaugers may be sworn.

Brewer to declare how much he intends to make.



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and Brewers.**

Mixing drink  
of a former  
brewing.

Brewers to enter  
in a book de-  
livered by officer  
the quantity of malt  
to be used in next  
brewing, &c.

Mashed malt  
not to be re-  
moved till  
gauged, &c. by  
officer.

Penalty 200l.  
Not incurred  
for removing  
malt after worts  
drawn off, if of-  
ficer neglect to  
attend within  
an hour after  
specified time.

Samples of wort  
may be taken  
after it is drawn  
from mash-tun.

strong beer or ale so declared was increased by adding to or mixing with it any beer or ale that was left in the brewhouse of a former guile, he shall nevertheless incur the penalties, except it be also proved upon the oath of one witness that the strong beer or ale so added to such guile was added in the sight and view of the gauger."

Sect. 3. "Whereas many brewers, having strong beer or ale remaining in the brewhouse from the time it was brewed until the next guile or brewing, the quality of which they frequently alter by mixing with the same new small beer or old returned drink, and then add the beer and ale so altered to the next guile; if it shall appear to the gauger that the quality of such strong beer or ale so remaining in the brewhouse of a former guile, and added to a guile of new drink, hath been so altered since it was brewed, he shall return all such beer and ale so altered and added to a guile of new drink, as if the same were then originally brewed, and had never been charged before; and the duties shall be paid accordingly."

By 1 & 2 Geo. IV., c. 22, s. 1. "Every brewer of beer for sale shall enter, or cause to be entered, in a book or paper, to be delivered to him by the officer of Excise, and at all times kept by such brewer in some public and open part of his entered premises ready for the inspection of the officers of Excise, the quantity of malt which he or she shall intend to use in his or her next brewing, together with the day when such brewing is intended to be made; and such entry shall be so made before any part of such malt shall be mashed, or any water or other liquor put thereto or mixed therewith; and every such brewer shall, at the time of making such entry, write or cause to be written, in such book or paper, opposite such entry, the date when such entry was so made; and if any such brewer shall refuse or neglect to make such entry as aforesaid, or shall cancel, obliterate, or alter, or cause, or suffer, or permit to be cancelled, obliterated, or altered, any such entry, or shall make any untrue entry therein, or shall not at all times keep such book or paper in some public and open part of his entered premises, ready for the inspection of the officers of Excise, or shall mash, or put to, or mix any malt with water or other liquor before such entry shall be made, he or she shall, for every such offence, forfeit the sum of 200l."

Sect. 2. "No such brewer shall remove or cause to be removed his or her malt which has been mashed, or any part thereof, from the tun or vessel in which the same has been mashed, until the proper officer shall have gauged and taken an account of the quantity of such malt; or use, cause, permit, or suffer to be used any means whatever to prevent or hinder such officer or officers of Excise from taking an accurate gauge and account thereof: and if any person or persons shall remove, or cause, suffer, or permit to be removed any part of such malt, before such officer shall have gauged and taken an account of the same, or shall use any means as aforesaid, or obstruct, hinder, molest, or prevent any such officer or officers in or from so doing, or in execution of any of the powers and authorities given or granted to him or them by this act, every such person or persons shall severally forfeit for every such offence the sum of 200l. Provided, that no such brewer or other person shall incur the penalty aforesaid, for removing any such malt after all the worts have been drawn off from such malt, without any officer having gauged and taken an account thereof, if such brewer shall, at the time of making such entry, have specified in such book or paper and entry as aforesaid the time for such officer to attend to take such gauge and account, and such officer or officers shall not attend for that purpose within an hour after the time so specified."

Sect. 3. "It shall be lawful for any officer of Excise to take a sample or samples, not exceeding one pint at each time, of any wort or worts at or on the entered premises of any such brewer, at any time after the same shall have been drawn from the mash-tun, as often as may be necessary for the

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purpose of ascertaining the specific gravity thereof; returning such sample to such brewer after the specific gravity thereof has been ascertained, or paying him or her for the same at and after the rate of the current price of beer made from such wort; and no such brewer shall ferment or mix, or cause, permit, or suffer to be fermented or mixed, any wort with any yeast or other matter or thing for or occasioning fermentation, until the proper officer has taken such sample; and if any such brewer shall ferment or mix, or cause, permit, or suffer to be fermented or mixed, any of his or her wort with any yeast or other matter or thing for or occasioning fermentation, until such officer has taken such sample, he or she shall forfeit for every such offence the sum of 200*l*. Provided that no such brewer shall incur the penalty last aforesaid, for fermenting or mixing any of his or her wort with yeast, or any other matter or thing occasioning fermentation, after the expiration of one hour after such wort has been run or drawn off from the copper in which the same has been boiled with hops, without any sample being thereof taken as aforesaid, if such brewer shall at the time of making such entry have specified in such book and paper and entry the time for such officer to attend to take and draw such sample, and such officer shall not attend for that purpose within an hour after the time so specified."

Sect. 4. "There shall be delivered by the proper officer of Excise to every such brewer, and to every dealer in beer or ale, a book or books to be prepared with proper printed forms and titles for the purpose herein-after mentioned, and kept by every such brewer and dealer in some public and open part of his or her entered premises; and no beer or ale shall be sold, sent out, or delivered by the brewer thereof, or by any dealer therein, to any brewer, victualler, dealer in or retailer of beer or ale, or other person or persons, without a certificate filled up and cut out progressively from the printed forms for such certificates contained in such book as aforesaid, to be left therewith, signed by such brewer or dealer selling, sending out, or delivering the same, or some person on his behalf, certifying the date, quantity, and quality of such beer or ale, to whom sold, and that the duty has been duly charged thereon, and at what place, at what rate, and upon what person such charge was made; and the brewer or dealer selling, sending out, or delivering any such beer or ale as aforesaid, shall at the same time make a correspondent entry thereof, containing the same particulars, in such book as aforesaid; and such book, with such entries so made therein as aforesaid, shall at all times be open and exposed in the entered premises of such brewer or dealer as aforesaid, to the perusal of any officer of Excise surveying the said premises, and shall be delivered by such brewer or dealer to any officer of Excise upon demand; and if any such brewer or dealer shall at any time sell, send out, or deliver any beer or ale to any brewer, victualler, dealer in or retailer of beer, or other person, without delivering such certificate, or making such entry in such book, or shall convey away or conceal any such book or books, or cancel, obliterate, destroy, or tear out any leaf therefrom, or entry therein, or shall make any false entry therein, or shall oppose, molest, obstruct, or hinder any officer of Excise in inspecting any such book, or entry therein, or shall at any time neglect or refuse, when required, to give up to any officer such book or books, every such brewer or dealer so offending shall for every such offence severally forfeit the sum of 200*l*."

Sect. 5. "If any officer of Excise shall discover and find any increase in the stock of any brewer, victualler, dealer, or retailer, over and above the quantity of beer or ale which the officer found in such brewer, victualler, dealer, or retailer's custody, at the time of the last preceding survey upon such brewer, victualler, dealer, or retailer; and which increase such brewer, victualler, dealer, or retailer, shall not thereupon satisfactorily account for, as arising from beer duly received with such certificate as aforesaid, or brewed by himself, and on which the duty has been duly charged; such increase, or a quantity of beer or ale equal thereto, shall

### 1. *Ale, Beer, and Brewers.*

Worts not to be fermented till samples taken, on penalty of 200*l*.

Not to be incurred if officer neglect to attend within an hour after specified time.

Books to be delivered to brewers containing forms of certificates, and no beer to be sent out without certificate taken therefrom, certifying date, quantity, and quality.

Similar entry to be made in book, to be open for inspection of officer.

Penalty for non-compliance, &c. 200*l*.

Increase in the stock beyond preceding survey, not accounted for, forfeited, and brewer forfeits 200*l*.

1. *Ale, Beer, and Brewers.*

Removing drink  
before the whole  
brewed off.

Gauger may  
charge for worts  
missing.

Gauge may be  
taken in warm  
worts.

Mixing strong  
beer or worts  
with table-beer  
or worts. (a)

Mixing small  
beer with strong.

be deemed and taken to be beer or ale brewed without payment of duty, and shall be forfeited; and a quantity equal to the increased quantity shall be seized and taken by the officer of Excise who shall discover the same, from and out of such stock; and the person in whose stock such increase shall be discovered and found shall for each and every such offence forfeit the sum of 200*l*."

By 7 & 8 W. III., c. 30, s. 21. "If any common brewer, innkeeper, or victualler, shall cleanse or remove out of his brewhouse any part of his guile or brewing of beer, ale, or worts, before the whole of such guile is brewed off, and until the gauger shall or might have taken an account of the same, without first giving notice to the supervisor or gauger, at what time, what quantity, and to what place he intends to remove, he shall, for every barrel, forfeit 40*s*."

By 1 W. III., *sess.* 1, c. 24, s. 6. "Where it shall appear to the gauger that any worts are missing or not fairly let down into the tun, and the gauger cannot find the same, he may charge for so much beer or ale as such worts so missing would reasonably make."

Sect. 7. "Gaugers may take their gauges, and make their returns and charges upon warm worts in the backs, coolers, or other vessels; and, in such case, make allowance of one tenth part thereof for wash and waste; which worts shall not be afterwards charged when made into beer or ale."

By 42 Geo. III., c. 38, s. 12. "If any common brewer shall mix any strong beer or strong worts with any table-beer or table-beer worts, or with water in any guile-tun, working-tun, or fermenting-tun, after such declaration of the quantity of the guile; or shall mix the same in any vat, cask, tub, measure, or other vessel or utensil, not being an entered guile-tun, working-tun, or fermenting-tun, he shall forfeit 200*l*."

By 15 C. II., c. 11, s. 12; and 1 W. III., *sess.* 1, c. 24, s. 11. "If any common brewer, innkeeper, victualler, or other retailer of beer or ale, shall, after an account hath been taken by the gauger, convert any small beer or small worts so taken account of into strong beer or ale, by mingling, letting down, or striking over the same, and shall sell, deliver out, or retail the same, without giving notice to the same gauger of the quantity so mingled and converted, or if any such brewer or retailer shall, after the said time, conceal or convey any beer, ale, or worts not gauged from the sight of the gauger, whereby the king may be defrauded of the duty, he shall forfeit 20*s*. a barrel."

By 2 Geo. III. c. 14, s. 2. "If any common or other brewer, innkeeper, victualler, or retailer of beer or ale shall mix, or cause or suffer to be mixed in any vessel, tub, measure, or otherwise however, any strong beer, ale, or strong worts, with any small beer or small worts, or with water, after the gauge shall have been taken, he shall forfeit 50*l*."

(a) A count on the 42 Geo. III., c. 38, s. 12, stating that the defendant, between the 21st day of October, 1819, and on each and every of divers, to wit, twenty other days, between that day and the day of exhibiting the information, did mix a large quantity, to wit, twelve gallons of strong beer, with a large quantity, to wit, twelve gallons of table-beer, in each and every of divers, to wit, five other casks, whereby, &c. the defendant had for each of the said offences forfeited the sum of 200*l*., amounting in the whole to 21,000*l*., was held to be a good count against the objections that it was cumulative and multifarious, being a single count for many penalties,—that

the divers other days on which, &c. ought to have been specified and stated, that the charge was uncertain and unintelligible, or repugnant, and that from the calculation of the amount of the sums alleged to be forfeited, it appeared that the defendant was charged with five offences on each day, whereas he could not in point of law be considered to have committed more than one offence on each particular day. In penal informations filed in the Court of Exchequer by the attorney-general, ancient precedents are considered good authority for the form of particular counts. *Attorney-General v. Freer*, 11 Price, 183; and 4 Price, 122, S. P.

## II. PARTICULAR LAWS, &c. (1.) *Ale, Beer, and Brewers.*

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By 42 Geo. III. c. 38, s. 20, "which recites, that whereas many persons, under pretence of recovering stale beer, or making or preparing beer-finings, or colouring for beer, or under other pretences, have fabricated from divers ingredients, injurious to the health of H. M.'s subjects, liquor to resemble beer or ale brewed entirely from malt and hops, or to be mixed with beer or ale so brewed, to the great injury of H. M.'s subjects, of the fair trader, and of H. M.'s revenue, it is enacted, that from the 1st of May, 1802, no person shall mix, fabricate, or prepare, or suffer to be mixed, &c. from beer-grounds, stale beer, sugar-water, distiller's spent-wash, sugar-melasses, vitriol, quassia, cocculus indicæ, grains of paradise, guinea pepper, opium, or any other material whatever (except malt and hops), any liquor to imitate, resemble, or to be mixed with or used as beer or ale brewed from malt and hops; nor shall sell or dispose of, or cause to be sold, &c. to any brewer of, dealer in, seller, or retailer of beer or ale, or to any other person whatever, any liquor so mixed or prepared, on pain of 200*l.* for every offence; and all liquor so mixed or prepared, and also all beer-grounds, stale beer, &c. &c. other than malt and hops, in the custody or possession of such person, together with every copper, cooler, back, tun, vat, or other vessel or utensil whatsoever, in which any such liquor or material shall be contained, or which shall have been used in the mixing, preparing, or keeping any such liquor; and all such liquor and materials, together with every such copper, &c. as aforesaid, shall be forfeited, and may be seized by any officer of Excise."

Sect. 21. "No brewer of, or dealer in, or seller of beer or ale, shall receive into his custody or possession any stale beer, or beer-grounds, or shall mix with any beer or ale any liquor fabricated or prepared from beer-grounds, stale beer, or any of the ingredients aforesaid (except malt and hops), or in the preparation whereof any of the said ingredients is or shall be mixed or made use of, nor shall receive into his custody or possession any liquor compounded or prepared as aforesaid, on pain of forfeiting 100*l.*"

Sect. 22. "No brewer, or dealer in or seller of beer or ale, shall be subject to the said penalty of 100*l.* for receiving any stale beer returned to him for being disliked by any person to whom he had sold such beer, or of taking back any beer-grounds in the bottom of any cask returned to him by any person to whom he had sent the same, filled with the beer from whence such grounds were produced; also, no dealer in or seller of beer or ale, not being a brewer of beer or ale, shall be liable to the said penalty for having or taking into his custody or possession any liquor compounded or prepared from stale beer-grounds, stale beer, or any of the ingredients aforesaid, or in the fabrication or preparation whereof any materials or ingredients as aforesaid, other than malt and hops, have been mixed or made use of, if at the trial or hearing for recovery of the said penalty such dealer or seller shall prove to the satisfaction of the Court and jury, or of the commissioners of Excise, or justices before whom such hearing shall be had, that such liquor was bought and received by such dealer or seller in the fair and usual course of trade, of some regular brewer of beer or ale, and that such dealer or seller had no knowledge of such liquor being compounded or prepared contrary to this act."

Sect. 23. "Every Excise officer may, whenever it seems to him expedient, take samples of any liquor which he shall suspect to be liquor so mixed or prepared as aforesaid, to resemble or be mixed with or used as beer or ale brewed from malt and hops, such sample not exceeding three gallons at any one time, on paying after the rate of 1*s.* 6*d.* by the gallon."

Sect. 24. "If any officer of Excise shall have cause to suspect that any person does in any place mix or prepare from any such ingredients as aforesaid any liquor to resemble, be mixed with, or used as beer or ale brewed from malt and hops, or to be disposed of to any brewer of or dealer in beer or ale, or to any other person, or that such liquor so mixed

### 1. *Ale, Beer, and Brewers.*

Penalty for mixing liquor to imitate or be mixed with beer made from malt and hops, or selling such liquor, 200*l.* and forfeiture of liquor and utensils.

100*l.* penalty on brewer receiving stale beer-grounds, or mixing any liquor with beer except malt and hops.

Not to extend to brewer receiving returned beer from his customers, nor to any dealer not being a brewer, if he can exculpate himself.

Excise officers may take samples of suspected liquors; and

may search suspected places; and

1. *Ale, Beer, and Brewers.*

or prepared has been disposed of to any brewer or dealer in, seller or retailer of beer or ale, or to any other person, and that the same is deposited in any place whatsoever, then if such place be within the limits of the chief office of Excise in London, upon oath by such officer before any two of the commissioners, &c., or if such place be in any other part of Great Britain, upon oath before a justice for the county, &c. or place, where such suspected place shall be situate, setting forth the ground of his suspicion, it shall be lawful for the said two commissioners, or the justice respectively, as the case may require, if they or he shall judge it reasonable, by special warrant under hand and seal, to empower such officer by day or night, but if in the night, then in the presence of a constable or other lawful officer of the peace, to enter into every such place where he shall so suspect any person to mix or prepare from beer-grounds, stale beer, and the ingredients aforesaid, any liquor to resemble or be used as beer or ale brewed from malt and hops, or to be mixed with beer or ale, or sold or disposed of to any brewer, dealer, seller, or retailer, as aforesaid, or to any other person, or where such officer shall suspect any such liquor so mixed or prepared, or sold or disposed of to any brewer, &c. or any other person, is lodged or deposited, and to seize as forfeited all such liquor there found, and every other material or ingredient whatsoever as aforesaid (other than malt and hops), and every copper, cooler, back, tun, vat, and other vessel and utensil which he shall there find, in which any such liquor or ingredient shall be contained, or which shall have been made use of in the mixing, preparing, or keeping any such liquor; and the person in whose custody or possession the same respectively shall be found shall forfeit 100*l*.

may seize the liquor, materials, and utensils.

Penalty of 100*l*.  
Proof to lie on the owner.

No preparation of the description mentioned in act shall be in the possession of any brewer or dealer, or used in colouring of beer. (a)

Sect. 25. "And if any question thereof arise, the proof of such liquor not being liquor mixed or prepared from other ingredients than malt and hops shall lie on the owner or claimer thereof."

By 56 Geo. III. c. 58, (by which 51 Geo. III. c. 87, was repealed) s. 2. "No brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, shall receive or take into or have in his, her, or their custody or possession, or make, or use, or mix with, or put into any worts or beer,

(a) The provisions that have been made by the legislature to preserve the purity of beer are liberally construed in our courts of justice in advancement of the objects for which they were enacted. Where a druggist, after the passing of the stat. 42 Geo. III., c. 38, sold a quantity of drugs, consisting of Spanish juice, isinglass, ginger, and other articles, to a brewer, knowing they were to be used in a brewery, it was holden that he could not recover the price (*Langton v. Hughes*, 1 M. & S. 593.); and a remedy was also provided for this particular case by the stat. 51 Geo. III., c. 87, s. 17. which also provided, that brewers should not receive or take into their possession certain ingredients, as grains of paradise, &c. (51 Geo. III., c. 87, s. 16. Penalty 200*l*., and forfeiture of goods); these articles having been found to be frequently employed to an unlawful purpose: and it is no defence to a person charged with an offence against this statute, that he also

exercised the trade of a distiller at a place distinct from his brewery, and that the noxious ingredients were found at that place. (*Attorney-General v. King, and others*, 5 Price, 195.) But an information on such statute, charging a receiving and taking into possession, has been holden not to be maintainable, where it was proved that the act of receiving was antecedent to the statute, although the possession had continued ever since. (*Ibid.*) It was held that a record of condemnation in the Court of Exchequer was conclusive evidence against the defendant in an action for the penalty; but it was not evidence of immaterial averments, which are stated in it under a scilicet; and a condemnation for an act of forfeiture created by one statute is not evidence on a charge of an offence against the same party, with respect to the same goods, created by another statute. (*Attorney-General v. King*, 5 Price, 195.

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any liquor, extract, calx, or other material or preparation for the purpose of darkening the colour of worts or beer, or any liquor, extract, calx, or other material or preparation, such as has been heretofore or as shall hereafter be made use of for or in the darkening of the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing; or shall receive or take into or have in his, her, or their custody or possession, or use or mix with or put into any worts or beer, any melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, or opium, or any extract or preparation of melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, or opium, or any article or preparation whatsoever, for or as a substitute for malt or hops; and if any such brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, shall receive or take into or have in his, her, or their custody or possession, or make or use in brewing, or mix with or put into any worts or beer, any liquor, extract, calx, or other material or preparation for the purpose of darkening the colour of worts or beer, or any liquor, extract, calx, or other material or preparation such as has been heretofore or as shall hereafter be made use of for or in the darkening of the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing, or shall receive or take into or have in his, her, or their custody or possession, or shall use or mix with or put into any worts or beer, any melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, or any extract or preparation of melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, or opium respectively, or any article or preparation whatsoever, for or as a substitute for malt or hops; all such liquor, extract, calx, melasses, honey, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, opium, extract, article, and preparation as aforesaid, and also the said worts and beer respectively, shall be forfeited, together with the casks, vessels, or other packages containing the same, and shall and may be seized by any officer or officers of Excise; and such brewer or brewers of, dealer or dealers in, or retailer or retailers of beer so offending as aforesaid, shall for each and every such offence forfeit and lose the sum of 200*l.*"

### 1. *Ale, Beer, and Brewers.*

Penalty.

Sect. 3. "No druggist or druggists, or vender or venders of, or dealer or dealers in drugs, or chemist or chemists, or other person or persons whatever, shall sell, send, or deliver, or cause, procure, permit, or suffer to be sold, sent, or delivered to any licensed brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, knowing him, her, or them to be so licensed or to be reputed to be so licensed, or shall sell, send, or deliver, or cause or procure to be sold, sent, or delivered to any other person or persons for or on account of, or in trust for, or for the use of any such brewer or brewers, dealer or dealers, or retailer or retailers, any liquor called or known by the name or description of or sold as colouring, from whatever materials the same may have been made, or any other material or preparation other than unground brown malt, for the purpose of darkening the colour of worts or beer, or any liquor or preparation such as has been heretofore or shall hereafter be made use of for or in the darkening of the colour of worts or beer, or any melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, or opium, or any article or preparation to be used in worts or beer, for or as a substitute for malt or hops respectively; and if any druggist or druggists, or vender or venders of, or dealer or dealers in drugs, or any chemist or chemists, or any other person or persons whatever, shall sell, send, or deliver, or cause, or procure, permit, or suffer to be sold, sent, or delivered to any licensed brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, knowing him, her, or them to be so licensed,

No druggist shall sell such colouring to any brewer or dealer. (b)

(b) See note (a) in last page.

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and Brewers.

Penalty.

or to be reputed to be so licensed, or shall sell, send, or deliver, or cause or procure to be sold, sent, or delivered to any other person or persons for or on account of, or in trust for, or for the use of any such brewer or brewers, or dealer or dealers, or retailer or retailers of beer, any liquor called or known by the name or description of or sold as colouring, from whatever materials the same may have been made, or any other material or preparation, other than unground brown malt, for the purpose of darkening the colour of worts or beer, or any liquor or preparation such as has been heretofore used or as shall hereafter be made use of for or in the darkening the colour of worts or beer, except as aforesaid, or any melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, or any extract or preparation of melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, opium, or any article or preparation to be used in worts or beer for or as a substitute for malt or hops respectively; all such liquor called or known by the name or description of or sold as colouring, and material or preparation for the purpose aforesaid, and liquor and preparation used, or which shall hereafter be used for or in the darkening the colour of worts or beer, melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, extract or preparation of melasses, honey, liquorice, vitriol, quassia, cocculus indiæ, grains of paradise, guinea pepper, opium, and article or preparation to be used for or as a substitute for malt or hops, respectively, shall be forfeited, and the same respectively shall and may be seized by any officer or officers of Excise, and the druggist or druggists, vender or venders of, or dealer or dealers in drugs, or chemist or chemists, or other person or persons whatever so offending, shall, for each and every such offence, forfeit and lose the sum of 500*l*."

Mixing after  
delivered out.

By 7 & 8 W. III. c. 30, s. 23. "If any common brewer or innkeeper shall, on carrying out his drink, or after it is carried out, mix any small beer or small worts with any strong beer or strong ale on his dray, or in any victualler's cellar or other place, he shall forfeit 5*l*.; and the gauger may taste the drink upon the dray, and also, upon request, may enter the cellar or other room in the possession of any innkeeper or victualler that shall receive any drink from a common brewer, and taste the drink in the same, and if the innkeeper or victualler shall refuse him to enter into his cellar or other rooms, or to taste the drink in the same, he shall forfeit 5*l*."

Mixing by the  
retailer.

By 22 and 23 Car. II. c. 5, s. 11. "No retailer of beer or ale shall, after the receipt thereof from the common brewer, mix any beer, ale, or worts of extraordinary strength with any small beer, ale, or worts, in any vessel or tub containing three gallons or more, on pain to forfeit for every barrel so mixed double the duty of Excise for strong beer or ale, and so proportionably for any greater quantity."

Measure of the  
barrel of beer  
or ale.

And by 43 Geo. III. c. 69, s. 12, "reciting that it is expedient that the quantities to be returned as and for a barrel of beer or ale brewed by the common brewer, and the allowances for waste, should be in all places the same, it is enacted, that after the 5th day of July, 1803, every 36 gallons of beer or ale brewed by the common brewers in Great Britain, whether within the weekly bills of mortality, or without the same, taken according to the standard of the ale quart, four thereof to the gallon, in the Exchequer, shall be reckoned and returned by the gauger or other officer of Excise for a barrel of beer or ale."

By the 5 Geo. IV. c. 54, s. 17. "Whereas it is expedient that the duties on beer should be charged throughout Great Britain by the same measure, every 36 gallons of beer taken either by gauge or measure shall, throughout Great Britain, be reckoned and returned by the officers of Excise for a barrel of beer, and the several rates of duty imposed in respect of beer shall be charged thereon accordingly, and so in proportion for any less quantity; and no beer shall be sold by any brewer, dealer, or retailer, at any other rate or quantity per barrel than the

## II. PARTICULAR LAWS, &c. (1.) *Ale, Beer, and Brewers.*

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above quantity of 36 gallons, any law or usage to the contrary notwithstanding."

And by 6 Geo. IV. c. 58, s. 6, "it is enacted, that after 5th January, 1826, in every act of parliament relating to the revenue of Excise, whenever and for whatever purpose any gallon measure is mentioned, it shall be deemed and taken to be a gallon imperial standard gallon measure; and that all duties, &c. under any law or laws of Excise, shall thenceforth be made and kept according to such imperial standard gallon measure only, or some multiple part or proportion thereof."

By 43 Geo. III. c. 69, s. 12. "The allowances to be made in Great Britain to the common brewer not selling beer, ale, or worts in any less quantity than a whole cask containing  $4\frac{1}{2}$  gallons, whether within or without the said limits, for waste by fillings and leakage, or otherwise, out of the returns by the gaugers or other officers, shall be three barrels upon every thirty-six barrels, both of strong beer or table-beer and ale, and after that rate for any greater or less quantity."

Sect. 13. "The said allowance to the common brewer of three upon every thirty-six barrels of beer or ale shall be in full compensation for all waste or other losses whatsoever."

Sect. 14. "And no beer or ale brewed by the common brewers in Great Britain shall be sold by them at any other rate or quantity for the barrel than as aforesaid; provided that nothing herein shall extend to alter the quantity returned as and for a barrel of beer or ale brewed by any victualler or retailer, or other person than the common brewer who sells or takes out beer or ale publicly or privately."

By 12 Car. II. c. 24, s. 37. "If any common brewer shall wittingly and willingly make a false entry, and be convicted thereof, he shall, over and above other penalties, forfeit the allowance for six months then next ensuing."

But by 25 Geo. III. c. 73, s. 1. "Common brewers who shall sell beer, ale, or worts in a less quantity, at one time, than a whole cask containing  $4\frac{1}{2}$  gallons, shall be deemed to sell by retail, and shall not be entitled to any allowance whatsoever."

By 32 Geo. III. c. 8, s. 1. "Every common brewer who shall sell beer, ale, or worts in any less quantity, at one time, than in a whole cask containing  $4\frac{1}{2}$  gallons, shall forfeit 50*l.* for every such offence."

And by 42 Geo. III., c. 38, s. 18. "If any person, not being a common brewer, shall retail beer at a higher price than after the rate of one penny halfpenny the quart, alehouse measure, without obtaining a licence as a common alehouse-keeper, he shall forfeit 50*l.* over and above any other penalty for selling beer or ale without such licence."

By 7 & 8 W. III., c. 30, s. 46. "Notes of every gauge, signed by the gaugers, containing the inches and tenths of the backs, and wants of the tuns, and quality of the liquors, shall be left by them with the common brewers of ale or beer, or some servant (if demanded), at the time of taking the gauges, on pain of 40*s.*"

And by s. 25. "The gauger shall, within three days after the end of every week, deliver to or leave with the brewer or retailer, or their servants, a true copy under his hand of each respective charge by him made, containing the quantity and quality of the liquors by him charged in such week; and if he shall neglect or refuse (after demand in writing, 12 Geo. III. c. 28, s. 30) to leave such copy, or shall charge such person more than such copy contains, he shall forfeit 10*l.*"

By 42 Geo. III., c. 38, s. 14. "Upon complaint made before the commissioners of Excise or justices of the peace on the behalf of any common brewer on account of any overcharge made on him by any officer of Excise, in respect of any table-beer charged and returned by such officer as strong beer, it shall not be lawful for such commissioners or justices to discharge such brewer of such charge, or any part thereof, unless proof be made

### 1. *Ale, Beer, and Brewers.*

When gallon mentioned in any act, it shall be taken to mean a gallon imperial standard gallon measure.

Allowance for leakage, &c.

No beer or ale to be sold at any other rate by the common brewer; but not to extend to other brewers.

Not to be sold in less quantities than  $4\frac{1}{2}$  gallons.

Nor at a higher price than 1*d.* per quart, without licence, on penalty of 50*l.*

Notes of the gauge, and charges, to be left.

Overcharge of Excise officer, how dischargeable.



1. *Ale, Beer, and Brewers.*

Entry and payment of duties.

before them on oath by a credible witness to their satisfaction that the whole quantity of the table-beer made in the guild or brewing to which such complaint refers, or at least the greater part thereof, was actually sold at a price not exceeding 16s. the barrel, exclusive of the duty, nor unless the names and residences of the party to whom such beer, or the greater part thereof, was sold and delivered, and the days of delivery, be given on the oath of such witness or witnesses." (See stat. 3 Geo. IV., c. 18, s. 11, *ante*.)

By 12 Car. II., c. 24, s. 29. "All common brewers of beer and ale shall once in every week, and all innkeepers, alehouse-keepers, victuallers, and other retailers of beer, ale, cyder, perry, or metheglin, brewing, making, or retailing the same, shall once in every month make entries at the Excise office of all such liquors brewed, made, or retailed in that week and month respectively."

Sect. 30. "All such common brewers who do not once a week make due entries shall forfeit 10*l*.; and every such innkeeper who doth not make true entries once a month shall forfeit 5*l*.; and every alehouse-keeper, victualler, or other retailer, who does not once a month make due entries, shall forfeit 20*s*."

Sect. 31. "Every common brewer who shall not pay within a week after he made his entry, or ought to have made his entry, shall pay double value of the duty; and every innkeeper, alehouse-keeper, victualler, or other retailer who shall not pay within a month after he made his entry, or ought to have made his entry, shall pay double value of the duty." (M.)

Sect. 32. "Provided that no such person shall be compelled to travel for making the said entries, or payment of the said duties, or other cause whatsoever touching the same, if he live in a market-town, out of the said town; if he live out of a market-town, then to no other place than to the next market-town to his habitation in the same county, on the market-day."

But by 15 Car. II., c. 11, s. 6. "No common brewer shall be prosecuted for any forfeiture for any mis-entry or short entry, if he shall in one week after the delivery of the copy of the return made by the gauger rectify his entry according to the said return, or otherwise discharge himself."

But by 1 W. & M. sess. 1, c. 24, s. 10. "No brewer shall have any benefit of this proviso, on any information to be brought against him for non-entry, false entry, or non-payment, if it shall appear by the evidence that he did not *bonâ fide* show to the gauger all the beer, ale, and worts of each respective guild for such time for which such copy of the return was made; or if any apparent fraud was acted, to defraud the king of his duty, for any part of the drink brewed in the time for which such copy of the return is made or given by the gauger."

By 42 Geo. III., c. 38, s. 17. "Every dealer in and seller of table-beer, selling, delivering, or disposing of more than one gallon at one time, shall make entry at the Excise of all places for storing, laying, keeping, or selling such beer, and shall be subject to the laws of Excise as victuallers and retailers of ale are; and if any such shall not make such entry, he shall forfeit 50*l*."

Sect. 13. "And if any common brewer shall sell, or permit to be sold, any beer made as and for table-beer, and charged with duty as such, at any higher price than 16s. the barrel (exclusive of the duties), either as to the price of the beer, or under pretence of carriage, credit, or interest of money, or other pretence, he shall for each offence forfeit 100*l*."

Sect. 9. "When such table-beer shall be cleansed into casks, such brewer shall mark each cask on the most conspicuous part with the letter T. of the length of four inches at least, to denote that the beer therein is such table-beer as aforesaid; and in case of neglect, or if any common brewer shall not continue such mark, or cause the same to remain and continue visible and distinct on every such cask, during the whole time the same shall remain in his possession, and until the same shall be delivered into the pos-

Penalty for selling table-beer at more than the barrel price, exclusive of duty.

When table-beer is cleansed into casks, the same to be marked,

## II. PARTICULAR LAWS, &c. (1.) *Ale, Beer, and Brewers.*

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session of the person to whom the same shall be sold or delivered for consumption or otherwise, he shall forfeit 50*l.* for every such cask on which such mark shall not be put and continued."

Sect. 10. "Every such cask shall be kept in a separate place from all other casks of beer or ale, on pain of forfeiting 50*l.*"

Sect. 11. "No table-beer shall be put into or tunneled, cleansed, or stored in any cask, vat, or other vessel, exceeding the content or size of a butt or pipe of three barrels, on forfeiture, for each offence, of 100*l.* Provided, that nothing herein shall prevent any common brewer, upon twenty-four hours' notice thereof in writing to the proper officer of Excise, from putting into any vessel of a larger size or content a sufficient quantity of table-beer, not exceeding two barrels for every 100 barrels of the full content of such tun or vessel, to preserve such vessel in a proper condition for receiving or storing strong beer; and provided also that no strong beer shall be put into any such large vessel until all such table-beer shall have been taken out of the same, in presence of and to the satisfaction of the proper officer of Excise."

But by 12 C. II., c. 24, s. 39. "If any person shall brew and sell by retail any small quantities of beer or ale in any fair, who is not otherwise a common brewer or retailer thereof, and shall, before such selling and retailing, pay the Excise for the same, he shall be freed from all penalties relating to such entries and the like."

By 42 Geo. III., c. 38, s. 19. "No entered dealer in beer, being an exporter of beer or ale, shall have or keep any table-beer in any cellar, or other place entered for laying or keeping strong beer; and if any such dealer shall have or keep any table-beer in any such cellar or other place, the person so offending shall for every offence forfeit 50*l.*"

Sect. 40. "The commissioners and sub-commissioners may compound with innkeepers and others for the duties."

But by 15 C. II., c. 11, s. 14. "No person who hath compounded shall, during the term of such composition, suffer any beer or ale to be brewed within his brewhouse for any other common brewer, without first giving notice to the commissioners or sub-commissioners, and forthwith paying down the Excise thereof; upon pain that as well the brewer who shall brew the same, as the brewer for whom it shall be brewed, shall forfeit 5*l.* for every barrel."

By 15 C. II., c. 11, s. 13, and 28 Geo. III., c. 37, s. 21. "All brewing-vessels and utensils for brewing, into whose hands soever they shall come, and by what conveyance or title soever they be claimed, shall be subject to all the debts and duties of Excise in arrear for any beer or ale made in the said brewhouse, and shall also be subject to all penalties and forfeitures against the laws of Excise; and it shall be lawful to levy debts and penalties, and use such proceedings against the utensils therein contained, as it may be lawful to do in case the debtor or offender using the said utensils had been the real owner thereof."

All fines, penalties, and forfeitures, shall be sued for, recovered, or mitigated as directed by 7 & 8 Geo. IV., c. 53, s. 57, *et seq.* (see *ante*, 227 to 310.) and the other statutes before then in force; and for the general powers of justices (see *ante*, p. 286 to 297.)

By 1 W. & M. sess. 1, c. 24, s. 16; 12 & 13 W. & M. c. 11, s. 17. "No information shall be brought against any common brewer or ale-housekeeper or cyder-maker, for any mis-entry or offence, but within three months after the offence committed; and notice thereof shall be given to him in writing, or left at his dwelling-house, within a week after laying and entering the information."

By 4 Geo. IV., c. 51, s. 12. "Every person who shall make or shall be

### 1. *Ale, Beer, and Brewers.*

and kept separate.

No table-beer to be put into a vessel of more than three barrels, on penalty of 100*l.* except to keep the vessel in a state to receive strong beer.

Exception of selling in fairs.

No exporter to keep table-beer in any entered place for strong beer.

Penalty.

Compounding.

Utensils liable to the penalties and duties. (a)

Recovery of penalties.

Limitations.

In the entry of premises, places and utensils shall be distin-

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guished by letters and numbers. (a)

Buildings used and not entered, or distinguished as above, offender to forfeit 200*l*.

No houses for the brewing or sale of beer under this act shall be used within a certain distance of any house or premises used for brewing or selling any other beer, and vice versa.

by law required to make entry (a) of any building, place, or utensil for the brewing or sale of beer or ale under the provisions of this act, or for the purpose of carrying on any trade or business subject to the survey of the officers of Excise, shall in every such entry distinguish and describe every such building, place, and utensil, by a particular letter or number, and shall paint such respective letter or number in a large and distinct character upon some convenient and conspicuous part of the walls or doors of every such building or place, and upon some convenient and conspicuous part of every such utensil, and keep and continue the same so painted, and from time to time, when occasion may require, or when requested by the supervisors of Excise of the district where situated, renew the same so long as the entry thereof remains uncanceled, so that such letter or number so painted may be easily and readily known by the officers of Excise attending to survey the same. And wherever any such person or persons shall use or employ in his or their entered buildings or places any fixed pipe or pipes, he or they shall, at the time of making his or their entry of the places and utensils as aforesaid, deliver with such entry, and as part thereof, a drawing or description, distinctly showing the course, direction, construction, and use of all and every such pipe and pipes, and of all and every branch and branches thereof, and of every cock and cocks thereon, together with the place or places, and utensil or utensils respectively from and to or with which the same lead or communicate; and if any building, place, or utensil shall at any time be found to be used by any person for any such purpose, without being so entered, described, or distinguished, or without such letter or number being so distinctly painted and continued thereon, or any pipe or pipes be found without being so shown in such drawing, or so described as aforesaid, or different from or disagreeing with such drawing or description, every such person or persons using the same shall for every such offence forfeit, over and above all other penalties, the sum of 200*l*. Provided always, that no person or persons whatsoever shall newly erect, set up, enter, or shall make use of any house or place whatsoever in Great Britain for the brewing of beer or ale under the provisions of this act, within the distance of 100 yards in a direct line from any house or place which for three months immediately preceding shall have been and shall be at that time licensed, entered, and used for the purpose of brewing any other beer, ale, or porter for sale, under the provisions of any other act; nor shall any person or persons whatsoever newly erect, set up, enter, or make use of any place or house whatsoever in Great Britain for brewing or making any other beer, ale, or porter for sale, within the distance of 200 yards in a direct line from any house or place which for three months immediately preceding shall have been and shall at that time be licensed, entered, and used for the purpose of brewing beer or ale under the provisions of this act; nor shall any person or persons newly erect, set up, enter, or make use of any place, room, storehouse, cellar, shop, house, or outhouse within Great Britain for selling or retailing any beer or ale brewed under the provisions of this act, within the distance of 20 yards in a direct line from any house or premises which for three months immediately preceding shall have been and shall at that time be licensed, entered, and used for selling or retailing any other beer, ale, or porter; nor shall any person or persons newly erect, set up, enter, or make use of any house or premises for selling or retailing any other beer, ale, or porter, within the distance of 20 yards of any place, room, storehouse, cellar, shop, house, or outhouse, which for three months immediately preceding shall have been and shall at that time be licensed, entered, and used for the sale and retail of beer or ale brewed under the provisions of this act; on pain of the person or persons so offending forfeiting, in each and every such case, the sum of 50*l*. for every week that such house or place shall be erected, set up,

(a) See form of brewer's entry, *ante*, 265.

## II. PARTICULAR LAWS, &c. (1.) *Ale, Beer, and Brewers.*

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entered, or used respectively as aforesaid, contrary to this act; and all and every entries or entry of any such house or premises so entered and made use of contrary to the true intent and meaning of this act shall be null and void."

Sect. 13. "Every person who shall make entry of any buildings or premises for brewing beer or ale under the provisions of this act shall specify in such entry the room, storehouse, or place, rooms, storehouses, or places, in which he shall intend to store the malt for such brewing, and shall, when and so often as he shall receive any malt, store, lodge, and place the same in one or more of such entered rooms, storehouses, or other places, and shall use or employ no other malt, ground or unground, for brewing beer or ale under this act, than such as shall be taken by him from one or more of such entered rooms, storehouses, or places for that purpose, and of which entry shall on the same day be made in the book hereinafter mentioned; and if any such person shall not make such entry as aforesaid, or specify and distinguish every such room, storehouse, or place as aforesaid, or shall receive or take into or have in his possession any malt, ground or unground, for brewing, without such malt, ground or unground, being lodged, put, or placed by him, her, or them, in one or more of such rooms, storehouses, or places, entered for that purpose, and entered in such book as hereinafter mentioned, or shall use any malt, ground or unground, in or for such brewing as aforesaid, without taking the same from one or more of such entered rooms, storehouses, or other places, and making entry thereof in such book as is hereinafter mentioned, every such person or persons so offending as aforesaid shall forfeit for every such offence the sum of 200*l*."

Sect. 14. "Every brewer of beer or ale under this act shall keep a book to be delivered to him by the proper officer of Excise, which book shall be prepared with distinct columns for entering accounts of all the malt which shall be received by any such brewer, to be used, and which shall be used by him, in the brewing of such beer or ale; and every such brewer shall, under the date and on the same day on which he shall receive any malt into his possession for brewing, write and enter or cause to be written and entered in such book, and in the proper columns, a true and particular account of the number of bushels of malt, distinguishing the same whether ground or unground, which he shall receive into his possession for brewing as aforesaid; and shall also write and enter the christian and surnames and places of abode of the persons of whom such malt was purchased, or from whom such malt was received; and shall also write and enter an account of the quantity of such malt in bushels, and distinguishing whether ground or unground, which shall from time to time be used at such brewery in the brewing or making of such beer or ale, and make every such last-mentioned entry in such book, under the date and on the same day in which such malt was so used; and if any such brewer shall neglect or refuse to make or cause to be made any such entry or entries, or shall cancel, obliterate, or alter, or cause or suffer to be cancelled, obliterated, or altered, any such entry or entries, or shall make any untrue entry or entries therein, or shall at any time withhold, conceal, or make away with any such book or any part thereof, every such brewer or brewers so offending shall, for every such offence, forfeit the sum of 100*l*."

Sect. 15. "All such books shall at all times be produced to and left open to the free inspection of the proper officers of Excise, who shall be permitted to examine and cast up and make copies or extracts from the entries contained therein, and to insert therein the time of such inspection, and sign their names thereto, and to take away any such book and deliver any such trader a new book of a similar kind; and if any person shall by any act, matter, or thing, or by any art or contrivance, obstruct or hinder, or cause or permit or suffer to be obstructed or hindered, any officer of Excise therein, or in the performance and execution of any of the powers

### 1. *Ale, Beer, and Brewers.*

Penalty, 5*ol*. for every week such houses shall be used.

Brewer to enter places for keeping malt.

Penalty on receiving into or taking malt from places not entered, 200*l*.

The different quantities of malt received and used by such brewers to be entered in a book kept by them.

Neglect of entry, &c. 100*l*.

Books to be open to inspection of officers.

Obstruction to officers, 200*l*.

1. *Ale, Beer, and Brewers.*

Malt in stock to be laid regularly and even, to enable the officers to gauge the same.

Penalty 200l.

Book to be filled up before cast up by officer.

Brewer may require malt in stock to be measured, if he disputes the accuracy of the officer's gauge.

Beer not to be cleansed, kept, or stored, in any cask exceeding a butt, or before the same shall have been entered, inched, and gauged by the officer.

Penalty 100l. &c.

Brewers sending out such beer in quantities of 4 gallons or upwards, to send out same in a cask marked with the name of the trader, the brewery, and the figure 5.

and authorities by this act given, or of his duty in respect thereof, every person and persons so offending shall for every such offence forfeit the sum of 200l."

Sect. 16. "Every such brewer shall, when and so often as thereto required by any officer of Excise, cast or place all the malt in his possession in such regular form as may enable the officer of Excise conveniently to gauge and ascertain the true quantity thereof; and if upon such admeasurement the quantity of malt then in stock shall be found to disagree with the quantity which such brewer ought to have in his possession, according to the true balance drawn from casting up and adjusting such book and the entries therein, and allowing for so much as shall in and by the aforesaid book and the entries therein appear to have been used for the purpose of brewing such beer as aforesaid, then every such brewer, the quantity of whose malt then in stock shall be found so to disagree, or who, upon being thereunto required as aforesaid, shall neglect or refuse to cast or place such malt as aforesaid in his, her, or their custody or possession, in or unto such regular form as aforesaid, shall for every such offence forfeit the sum of 200l."

Sect. 17. "Every brewer shall, before the officers take any such account of malt as aforesaid, be required by the proper officer, and be permitted to make due entries in such book of all malt which he may have received into his possession, or may have used in the brewing of beer in the course of the day in which such account is proposed or intended to be taken; and if any dispute shall arise between any such brewer and the officer of Excise respecting the true quantity of malt in stock so taken an account of as aforesaid, such brewer shall have the option of and be allowed immediately to measure the same in the presence of such officer by a just *Winchester* bushel measure, to be provided by such brewer, and the quantity ascertained by such admeasurement shall be taken to be the true quantity of the malt in stock in the possession of such brewer."

Sect. 18. "On every brewing by any brewer under the provisions of this act, the whole of the worts made on and by such brewing shall be collected and mixed together by such brewer, and made of one and the same quality, before the same or any part thereof shall be cleansed, removed, or run from the fermenting-tun; and no such beer or ale shall be put into or tunned, cleansed, kept, or stored in any cask, vat, or other vessel exceeding the content or size of a butt or pipe of three barrels; and before any such cask, vat, or other vessel shall be used for any such purpose, the same shall be entered at the proper office of Excise, and be truly gauged and inched to the satisfaction of the proper officer or officers of Excise; and if any such brewer shall on any brewing not collect and mix together the whole of the worts made on and by such brewing, and make the same of one and the same quality, before the same or any part thereof is cleansed, removed, or run from the fermenting-tun, or shall put into, or tun, cleanse, keep, or store any such beer or ale in any cask, vat, or other vessel exceeding such size as aforesaid, or shall make use of the same for any such purpose before the same have been entered, gauged, and inched as aforesaid, or afterwards alter by enlarging or diminishing the same without notice thereof to the proper officer, he shall for every such offence forfeit the sum of 100l.; and every cask, vat, or other vessel which shall have been so used as aforesaid, with all the beer contained therein, shall be forfeited, and may be seized by any officer of Excise."

Sect. 19. "When and as often as any beer or ale brewed under the provisions of this act shall be sold and sent out or delivered for consumption or otherwise in any quantity of four gallons or upwards, such beer shall be sent out by the brewer in a cask on which shall be branded and permanently marked, in large and legible letters, the name of such brewer, and of the place or brewery where such beer was brewed, as well as the numeral figure five, of the length of four inches at the least, to denote the quality of such beer; and if any such brewer shall neglect or refuse

to distinguish all such beer when sold and sent out, or delivered in any such quantity or quantities as aforesaid, in a cask which shall be so branded and marked, every such brewer or brewers shall for every such offence forfeit 50*l*. Provided always, that no such brewer shall be subject to any such penalty in any case where such beer shall be taken away by the person to whom the same may be sold, in any cask produced by him, and then filled for such purpose."

Sect. 20. "From and after the passing of this act, every brewer of beer or ale brewed under the provisions of this act, and every brewer of any other beer, ale, porter, or table-beer for sale, shall, before he shall cleanse or remove or run any wort or beer from the fermenting-tuns, or into any cask or vessel other than a known tun, cask, or vessel for fermenting beer, and specially entered by such brewer for that purpose, make in writing, in the same book or paper in which every brewer of beer for sale is now by law required to give notice of every intended brewing, and of the quantity of malt by him intended to be used in such intended brewing, and opposite the entry of such notice, and the quantity of malt therein mentioned, a declaration of the whole length or quantity or quality of all the beer brewed by any such brewer at every such brewing, such declaration, when so made, being at the time signed by such brewer, or by his principal servant, the proper handwriting of such person being affixed and subscribed thereto; and if any such brewer shall refuse or neglect to make and enter such declaration in writing, or shall cancel, obliterate, or alter, or cause or suffer or permit to be cancelled, obliterated, or altered, any such declaration or entry, or if any such brewer or their or any of their servants shall make any untrue declaration or entry, or shall not at all times keep such book or paper in some public and open part of his entered premises, ready for the inspection of the officers of Excise, or shall, before such declaration or entry is so made, cleanse, remove, or run away any of the beer brewed at such brewing from the fermenting-tuns, or into any cask or vessel other than a known tun, cask, or vessel for fermenting beer, and specially entered by such brewer, every brewer so offending shall for every such offence forfeit the sum of 200*l*."

Sect. 21. "All fines, penalties, and forfeitures imposed by this act shall be sued for or mitigated by such ways as any fine, &c. may be sued for or mitigated by any law of Excise, or by action of debt, bill, plaint, or information, in any of His Majesty's Courts of Record at Westminster, or in the Court of Exchequer in Scotland; and one moiety of every such fine, &c. shall be to His Majesty, and the other moiety to him or them who shall discover or sue for the same."

By 1 W. IV. c. 51, (a) intituled *An act to repeal certain of the duties on cyder in the United Kingdom, and on beer and ale in Great Britain, and to make other provisions in relation thereto*. "That from and after the 10th day of October, 1830, all the rates and duties and drawbacks payable on cyder in the United Kingdom, and all the rates, duties, allowances, drawbacks, and bounties now payable on beer or ale brewed or made in Great Britain (except the said hereditary duties of Excise on cyder, beer, and ale granted to His said Majesty King Charles the Second, and hereinafter more particularly specified) shall be repealed, cease and determine, and be no longer levied or collected, paid or payable."

Sect. 2. "That the hereditary duties on beer and ale and cyder brewed or made for sale in Great Britain, granted by the said first-recited act to His said Majesty King Charles the Second, his heirs and successors, (that is to say) for and upon every barrel of beer or ale above 6*s*. the barrel, brewed by the common brewer or any other person or persons who doth or shall sell or tap out beer or ale publicly or privately, to be paid by the common brewer or by such other person or persons respectively, and so

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Penalty 50*l*.  
Casks produced by persons to whom beer is sold may be used.

Brewers of this and all other beer to make declaration in writing of the strength and quality of beer brewed, after every brewing.

Penalty 200*l*.

Recovery and application of penalties.

From 10th October, 1830, the duties and drawbacks on cyder and beer, except the hereditary duties, to cease.

During His Majesty's life the hereditary duties on cyder and beer not to be collected;

(a) See *ante*, vol. 1, *tit. Alehouses*.

1. *Ale, Beer, and Brewers.*

nor the laws  
for collecting  
and securing the  
duties enforced.

The acts 56 Geo.  
3. c. 58, and  
1 & 2 Geo. 4.,  
c. 22, continued  
in force, except  
so much as re-  
lates to certi-  
ficates and in-  
creases in stock.

On the demise  
of His present  
Majesty, the  
hereditary duties  
on cyder and  
beer to revive  
and be col-  
lected.

In lieu of the  
hereditary duties  
on cyder and

proportionably for a greater or lesser quantity, a duty of 1s. 3d.: for every barrel of 6s. beer or ale, or under, brewed by the common brewer or any other person or persons who doth or shall sell or tap out such beer or ale publicly or privately, to be paid by the said common brewer or such other person or persons respectively as aforesaid, and so proportionably for a greater or lesser quantity, 3d.: for all cyder and perry made and sold by retail, upon every hogshead, to be paid by the retailer thereof, and so proportionably for a greater or lesser measure, 1s. 3d.: shall from and after the said 10th day of October, 1830, cease to be collected and paid, and shall not during the life of His present Majesty be levied, collected, or demanded, or be paid or payable; and the several acts, enactments, clauses, provisions, and regulations in the said recited act of the reign of His said Majesty King Charles the Second, or in any other act or acts contained for securing, levying, or collecting the duties on beer and ale and cyder, save and except the acts hereinafter continued in force, shall not, from and after the said 10th day of October, 1830, and during the life of his present Majesty, be enforced or executed, save and except for the purpose of recovering any duties incurred or charged before the said 10th day of October, 1830, or any arrears thereof, or any fine, penalty, or forfeiture for the breach of any of the said clauses, enactments, provisions, or regulations, committed previous to the said 10th day of October, 1830; but all such duties and arrears, penalties, fines, and forfeitures, shall and may be recovered, levied, enforced, and applied in the same manner, and by the same means, powers, and authorities, as if this act had not been passed."

SECT. 3. "Provided always, that an act passed in the fifty-sixth year of the reign of His late Majesty King George the Third, intituled *An act to repeal an act made in the fifty-first year of his present Majesty, for allowing the manufacture and use of a liquor prepared from sugar for colouring porter*, and an act passed in the first and second years of the reign of His late Majesty King George the Fourth, intituled *An act for securing the payment of the duties on ale and beer brewed in Great Britain*, except so much thereof as relates to certificates and increases in stock, shall be and remain in full force and effect; and all brewers of beer or ale for sale, and all and every person who shall be licensed under any act as a brewer, dealer in, or retailer of beer, shall continue subject to the provisions, enactments, and regulations in the said last-mentioned acts contained; and the said provisions, enactments, and regulations shall continue to be respectively executed and put in force by the commissioners and officers of Excise in Great Britain, as fully and effectually as if this act had not been passed."

SECT. 4. "Provided always, that on and immediately after the demise of His Majesty, whom God long preserve, the said hereditary duties of Excise on beer and ale and cyder granted by the said first-recited act to his said Majesty King Charles the Second, his heirs and successors, shall revive and be again payable, collected, and paid in Great Britain; and it shall and may be lawful for the commissioners of Excise for the time being, and they are hereby required, on and immediately after the demise of his present Majesty, to cause the said hereditary duties to be again charged, levied, collected, and paid in and throughout Great Britain, to and for the use of his Majesty's successors, and to cause all the laws, clauses, enactments, provisions, powers, authorities, and regulations for raising, levying, securing, and collecting the duties on beer and ale and cyder to be again put in force and execution for levying and collecting the said hereditary duties in the same manner as if this act had not been passed; and the said commissioners of Excise shall and they are hereby required to keep true and particular accounts of all the said duties so raised, levied, and collected by them for the use of His Majesty's successors."

SECT. 5. "And whereas the said hereditary duties of Excise on beer, ale, and cyder, granted by the said first-recited act of the reign of King

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Charles the Second are now vested in his present Majesty, and are subject to certain charges thereon, and it is necessary to make provision for supplying the deficiency which will occur by the said hereditary duties on beer and ale, and cyder, not being collected during His Majesty's life: and whereas by a medium of ten years, computed from the 5th day of January, 1820, to the 5th day of January, 1830, the sum of 348,000*l.* is taken to be the medium of the annual produce of the said hereditary duties on beer and ale and on cyder in England, and the sum of 6,500*l.* the medium of the annual produce of the said hereditary duties of Excise on beer and ale and on cyder in Scotland: to the end, therefore, that neither His Majesty, nor any other person or persons, may receive any prejudice by the nonpayment of the said hereditary duties, be it enacted, that from and after the 10th day of October, 1830, there shall be paid to His Majesty, during his natural life, which God long preserve, the clear yearly sums of 348,000*l.*, out of the revenues of Excise arising in England, and 6500*l.* out of the revenues of Excise arising in that part of Great Britain called Scotland, for and in lieu of what has annually been the amount of the said hereditary duties."

Sect. 6. "That the said sums of 348,000*l.*, and 6500*l.* shall be paid by four quarterly payments, on the 5th day of January, the 5th day of April, the 5th day of July, and the 10th day of October, in each year, out of the revenues of Excise arising in England and Scotland respectively, in preference to all other payments, charges of management excepted, and shall be paid over to the account of and for the use of His Majesty; and the said sums of money respectively shall be, and the same are hereby declared to be subject and liable to, and to be charged with all such charges and sums of money as the hereditary duties, in lieu of which such payments shall be made, are subject and liable to and are charged with.

Sect. 7. "And whereas the duty imposed by law on every licence to be taken out by any brewer or brewers of beer for sale is rated according to the quantity of beer brewed by the person or persons taking out the licence; and whereas, when the duties on beer shall cease to be collected in Great Britain, no account will be taken by the officers of Excise of the quantity of beer brewed for sale, but of the malt only used and employed by every brewer or brewers for that purpose; be it therefore enacted, that all and every brewer and brewers of beer for sale in Great Britain and Ireland shall, for the purpose of fixing and regulating the rate and amount of duty to be paid by such brewer or brewers for the licence to be taken out by him, her, or them, under an act passed in the sixth year of His late Majesty's reign, intituled *An act to repeal several Duties on Excise Licences in Great Britain and Ireland, and to impose other Duties in lieu thereof, and to amend the Laws for granting Excise Licences*, be deemed to have brewed one barrel of beer for every two bushels of malt used or employed by such brewer or brewers in brewing; and shall for every licence to be taken out by him, her, or them, for brewing beer for sale, pay such amount of duty, according to the rate by the said act imposed on brewers of other than table-beer, as shall be correspondent to the quantity of beer which he, she, or they shall be deemed to have brewed as aforesaid."

Sect. 8. "That it shall and may be lawful for any person or persons in Great Britain or Ireland to take out a licence to brew beer for sale under the provisions of the said recited act of the sixth year of His late Majesty's reign, without giving or being required to give any bond or other security as a brewer or brewers of beer; any thing in the said recited act or any other act to the contrary notwithstanding."

Sect. 9. "That from and after the said 10th day of October, 1830, there shall be granted and paid for and upon every barrel of thirty-six gallons, and so in proportion for any greater quantity of beer brewed or made by any entered brewer of beer for sale in the united kingdom, and

### 1. *Ale, Beer, and Brewers.*

beer, the sums of 348,000*l.* in England, and 6,500*l.* in Scotland, to be annually paid to His Majesty.

The sums to be paid by quarterly payments, and subjected to the same charges as the hereditary duties on cyder and beer were subject to.

After 10th October, 1830, brewers to pay their licence duty in proportion to the quantity of malt which they shall use in brewing.

6 Geo. 4., c. 81.

Bond not to be required of brewers on taking out licence.

Drawback of 5*s.* on every barrel of beer exported.



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Shipping notice to be given on exporting beer.

56 Geo. 3., c. 104.

Oath to be made on debenture for obtaining drawback.

Collector of Excise, on debenture being produced to him, to pay the amount.

which shall be duly exported from any part of the united kingdom to foreign parts as merchandise, a drawback of 5s."

Sect. 10. "That it shall and may be lawful for any person or persons to export and ship as merchandise, from any port in the united kingdom to foreign parts, any beer or ale brewed or made by any entered and licensed brewer of beer for sale in the united kingdom, such beer or ale being in casks of not less than thirty-six gallons, and in the brewing whereof not less than two bushels of malt shall have been used to every thirty-six gallons of such beer or ale; and all and every person intending to export such beer or ale from any part of the united kingdom shall give to the Excise port surveyor, or officer of Excise acting as port surveyor, at the port of shipment, notice thereof, in manner directed and required by an act passed in the fifty-sixth year of the reign of His Majesty King George the Third, intituled *An act for the making more effectual provision for the prevention of smuggling, and rewarding officers and persons making seizures and capturing smuggling-vessels, for licensing luggers employed in the North Sea fishery, and obliging exporters of exciseable goods on drawbacks to give notice of shipment*; and the said export surveyor, or other officer of Excise acting as export surveyor, having examined or caused to be examined the beer or ale so intended to be shipped, and of the shipping whereof such notice shall have been given, or otherwise satisfied himself with respect to the same, shall sign his name to the said notice as having received the same, and shall transmit the said notice so signed to the proper officer of Customs in whose presence such beer or ale is to be shipped, and the said officer of Customs, having seen the said beer or ale duly shipped in his presence in and on board of the ship or vessel specified in the notice, shall certify the due shipment thereof and the day when the same was shipped on the said notice, and shall return the said notice, with such certificate of shipment thereon, to the Excise export surveyor, or officer of Excise acting as export surveyor; and the said export surveyor or officer of Excise having received such notice, with such certificate of shipment thereon, shall, at the expiration of one calendar month from the date of such shipment, make out and deliver to the exporter, or his clerk or manager, a debenture, expressing the quantity of beer so shipped, and the amount of drawback payable in respect thereof."

Sect. 11. "That before any such debenture shall be paid, the exporter of the beer or ale therein mentioned, or his principal clerk or manager, together with the brewer thereof, or his foreman or manager, shall make oath on the said debenture before the said export surveyor, or officer of Excise acting as such, that the said quantity of beer or ale was put on board the ship, and exported therein as merchandise to be spent beyond the seas, and no part thereof for the ship's use, and that according to the best of his and their knowledge and belief the same has been brewed wholly from malt which has been charged with and paid the duty of 2s. 7d. for every bushel thereof, and shall also specify in such oath the time when and the place where, and the brewer, being an entered and licensed brewer for sale, by whom such beer or ale was brewed, and that the quantity of malt employed in the brewing of such beer was in the proportion of not less than two bushels imperial standard bushel measure for every thirty-six gallons thereof; and if any such oath shall be found to be false or untrue in any particular or respect, the person making the false or untrue statement shall forfeit and lose the sum of 200*l.*, and the debenture on which the same shall be made shall be and become null and void, and if unpaid, payment thereof shall be withheld, or if paid, the amount thereof shall and may be recovered back, in the same manner and by the same means and methods as any duty of Excise or penalty may be sued for and recovered under any law or laws of Excise."

Sect. 12. "That every such debenture, together with the said oath thereon, being produced to the collector of Excise within whose collection such beer or ale shall have been exported, the said collector shall forth-

with, out of the monies in his hands, pay the amount thereof to the person or persons who shall appear by the said debenture to be entitled to the same."

Sect. 13. "Provided always, that where by any law or laws of Excise in force a certificate of the due landing of any goods or commodities at the place to which the same shall have been exported on drawback as merchandise shall be required, such certificate of the due landing of any ale or beer exported to any such place shall be produced to the collector of Excise before any such debenture shall be made out or paid."

Sect. 14. "That all the laws, clauses, enactments, powers, authorities, rules, regulations, fines, penalties, and forfeitures in force in Great Britain before the passing of this act, relating to the export of any exciseable goods or commodities on drawbacks, shall, as far as the same shall be applicable, extend to and be deemed and construed to extend to the exportation of beer and ale under the authority of this act from any part of the united kingdom, and shall be observed, enforced, and put in execution with respect to such exportation, and the payment of the drawback hereby granted, as fully and effectually as if the same were repeated and re-enacted in this act."

Sect. 15. "That every brewer of beer for sale in Great Britain shall make a true and particular entry in writing of every store, building, room, and place, and of every mash-tun, by him or her intended to be used in or for the brewing or keeping of worts or beer, at the nearest office of Excise, specifying in such entry the particular use or purpose for which such store, building, room, or place shall be intended to be used, and shall also specify and distinguish in such entry every building or place in which he or she shall intend to store and keep the malt and the hops to be used by him or her in the brewing of beer, and shall store and deposit all such malt and all such hops in one or more of such entered buildings so specified to be used for keeping malt or for keeping hops respectively, and shall not use or employ any malt or hops which shall not have been so stored and deposited in and taken from one or more of such buildings or places so specified and distinguished; and if any such brewer shall use any store, building, room, or place, or mash-tun, without having made such entry thereof as aforesaid, in or for the brewing or keeping of worts or beer, or shall store or keep any malt or hops to be used by him or her in the brewing of beer in any building or place which shall not have been specified and distinguished in such entry as aforesaid, or shall use or employ any malt or hops in the brewing of beer which shall not have been stored and deposited in and taken from an entered building or place so specified and distinguished as aforesaid, every such brewer so offending shall for every such offence forfeit and lose the sum of 200*l.*; and all worts or beer which shall be found in any store, building, room, or place, or mash-tun, not specified and distinguished in such entry as aforesaid, and the casks containing the same, and all malt or hops which shall be found in any store, building, room, or place entered or used for the brewing of beer, other than malt taken from one or more of such buildings or places so specified and distinguished, for the purpose of being employed in the brewing of beer, shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 16. "That it shall be lawful for any officer of Excise, and every person in aid and assistance of such officer, at any time, to enter into and remain so long as such officer may think fit, for the purposes hereinafter mentioned, in any building or place belonging to or used by any such brewer, or by any dealer in or retailer of beer, for the brewing or keeping of worts or beer, or for the storing or keeping of malt or hops; and it shall be lawful for such officer of Excise, and any person in aid and assistance of such officer, to inspect any such building or place, and to take such account as such officer shall deem necessary of all worts, beer, and malt and hops therein, and of all other matters and things, and of all vessels,

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Where a landing certificate is required, it shall be produced before payment of debenture.

All laws in force in Great Britain relating to the export of exciseable commodities on drawbacks to apply to the export of beer.

Brewers to make entry of all premises and utensils used for brewing or storing of beer and malt.

Penalty 200*l.* and forfeiture of utensils, &c.

Officers may enter any buildings or places used by brewers for the purpose of inspecting account of beer or malt therein.

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Penalty on obstructing officers, &c., 100*l*.

No brewer to have raw or unmalted grain in his brewery premises.

For allowing beer, not intended to be sent into consumption until after 10th day of October, 1830, to be brewed free of duty.

utensils, goods, and materials belonging to or in anywise appertaining to the trade or business of such brewer or dealer in or retailer of beer; and if any such brewer or dealer or retailer shall oppose, molest, obstruct, or hinder any officer of Excise, or any person acting in the aid or assistance of such officer, in entering into or remaining in any such building or place as aforesaid, or in inspecting the same, or taking any account as aforesaid, or in the due execution of the duty of such officer, every such brewer or dealer or retailer so offending shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 17. "That it shall not be lawful for any brewer of beer for sale in the united kingdom to have in his or her brewery, or in any part of the entered premises, or in any mill connected with such brewery or entered premises, any raw or unmalted corn or grain whatsoever, either whole or unground, or ground or bruised; and that all raw and unmalted corn or grain, whether whole or unground, or ground or bruised, which shall be found in such brewery or premises or mill, and all malted corn or grain, whether whole or unground, or ground or bruised, with which such raw unmalted corn or grain may have been or shall be mixed, shall be forfeited and may be seized by any officer of Excise, together with all sacks, casks, vessels, or packages in which such raw or unmalted corn or grain shall and may be contained, or in which such raw and unmalted corn or grain, and the malted corn or grain with which the same may or shall have been mixed, shall or may be contained; and every brewer shall for every such offence forfeit the sum of 200*l*."

Sect. 18. "And whereas it may occur that between the passing of this act and the said 10th day of October, 1830, when the duties on beer are to cease and determine, persons other than brewers now licensed to brew beer for sale may brew quantities of beer without the payment of any duty thereon, and after the said 10th day of October, 1830, may bring forward such beer for sale, and sell the same for consumption; and persons who are now entered and licensed as brewers of beer, and are thereby subject to the payment of duty on all beer brewed by them prior to the said 10th day of October, 1830, may be thereby greatly injured and damaged, unless provision is made for allowing them to brew beer, not to be sold or consumed until after the said 10th day of October, 1830, free of duty; be it therefore enacted, that it shall and may be lawful for any brewer of beer, from time to time, twenty-four hours before commencing to brew any guile of beer, to give notice in writing to the proper officer of Excise, that the particular guile of beer then about to be brewed is for beer not intended to be sold or sent into consumption until after the 10th day of October, 1830, and that he is desirous to brew the same without payment of duty, in which said notice shall be specified the particular vats or casks into which such beer is intended to be tunned and kept; and all such beer shall be brewed under all the same laws and regulations as are now in force, and an account taken thereof in the same manner as if the duty thereon was to be paid, levied, and collected; and when and as soon as such beer shall be brewed and made, the same shall be run into the particular vats or casks specified in the notice, and the officer of Excise shall forthwith take an account of all such beer, and of the duty which would be payable thereon; and all the beer so brewed under such notice shall be stored and deposited in a separate store-room or cellar, to be approved of by the commissioners of Excise, and under the locks and keys of the officer of Excise, or otherwise secured in such manner as the commissioners of Excise shall direct, and to their satisfaction; and when and as often as any other brewing of beer shall be made by any such brewer, to be stored or secured duty-free, the officer of Excise shall take an account of all the quantity which shall have been previously so stored or secured; and all beer so brewed without payment of duty shall be kept so stored, and shall not be sold or sent into consumption, or any part thereof tapped or drawn off, until the 11th day of October, 1830; and on the 10th day

of October, 1830, the proper officers of Excise shall take an account of all the said beer which shall have been so brewed duty-free, and stored or secured as aforesaid, and if upon such account the whole quantity of such beer shall be found in the stock of the brewer who shall have brewed the same, deposited or secured as aforesaid, and the officers of Excise shall be satisfied that it is the same beer which was so brewed, and that no part thereof has been sent into consumption, or any addition made thereto, or any alteration therein, it shall and may be lawful for the commissioners of Excise, and they are hereby authorized and empowered, to forego and remit the charge of duty thereon, and to allow the same to be sold without the payment of such duty."

Sect. 19. "Provided always, that if any beer which shall be brewed under the regulations aforesaid, as not to be sent into consumption until after the said 10th day of October, 1830, shall not at any time previous thereto be so stored in such separate store or cellar, or otherwise secured according to the directions of the commissioners of Excise, and to their satisfaction, or if any brewer shall tap any vat or cask in which the same shall be tunned or kept, or shall sell or send out any part thereof, or shall make any addition to or alteration therein by putting any other beer in any such vat or cask, or if on the said 10th day of October, 1830, or at any time previous thereto, the officers of Excise shall not find all such beer in the stock of such brewer so stored, or secured and unaltered, or if any such brewer shall use or practise any art or device to deceive the officer of Excise in taking an account of his stock, or to remove any of the said beer, or to evade any part of the duty on beer with which previous to the said 10th day of October, 1830, he might or would be chargeable, then, and in any such case, it shall and may be lawful for the commissioners of Excise, and they are hereby authorized and required, to demand and collect the duties charged on all the beer brewed by such brewer previous to the said 10th day of October, 1830; and the said brewer shall be liable to the payment of all such duties, and the same shall and may be levied, collected, and enforced under the laws, provisions, and regulations now in force for collecting and securing the duties on beer."

Sect. 20. "And whereas it is expedient to provide for continuing the drawback now payable on beer or ale exported, until the 5th day of April, 1831, on such beer as shall have been brewed in Great Britain, and charged with duty, and on which duty has been paid, and which may be exported before the said day; be it therefore enacted, that until the 5th day of April, 1831, the drawback of fourteen shillings and two-pence, now payable on the exportation of every barrel of beer, shall be paid and payable on the exportation of all beer and ale which shall have been brewed and charged with duty before the 14th day of April, 1830, and which any brewer of beer shall have declared to be intended for exportation, and of which an account shall have been taken under any orders or directions of the lords commissioners of His Majesty's treasury, or of the commissioners of Excise, issued for that purpose, and which shall have been kept stored in vats or casks of not less than eighteen hundred gallons imperial standard gallon measure content, and according to the rules and regulations contained in such orders or directions. Provided always, that such drawback shall not be allowed on any beer which shall not have been kept and stored in casks of the full size of eighteen hundred gallons, nor in any case where the rules and regulations contained in any such orders or directions shall not have been in every respect observed and fulfilled."

Sect. 21. "That all such beer shall be exported, and the drawbacks thereon paid, under the laws, enactments, and regulations relating to the exportation of beer in force before the passing of this act. Provided always, that every exporter of such beer intending to claim the said drawback of fourteen shillings and two-pence shall, on every exportation thereof after the 10th day of October, 1830, in addition to the other oaths now required to be taken by the exporter or shipper of beer, make oath that

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If any beer brewed as duty-free shall be sent into consumption prior to 10th of October, 1830, or the regulations not complied with, brewer to be charged and pay duty on all the beer brewed by him.

Beer brewed and exported before the 14th of April, 1830, to be entitled to drawback on exportation until 5th of April, 1831.

Regulations as to the exportation of such beer.

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Nothing in the act 1 W. 4., c. 64., to affect the licences required by law to be taken out by brewers and dealers in beer, and by publicans.

Nothing in this act to interfere with the rights of magistrates, trustees, &c., in cities, burghs, and places in Scotland, to collect their local duties on beer and ale.

Brewers in such places to make monthly returns of the beer brewed by them.

the beer about to be exported is beer brewed before the 14th day of April, 1830, and which was declared for exportation as allowed under the order or directions of the lords commissioners of the treasury or commissioner of Excise."

Sect. 22. "And whereas an act was passed in this present session of parliament, intituled *An act to permit the General Sale of Beer and Cyder by Retail in England*, whereby the commissioners of Excise are authorized and empowered to grant licences to persons to retail ale or beer or cyder without such persons obtaining or producing a certificate or authority granted to such persons by justices of the peace or magistrates; be it further enacted, that nothing in the said act or in this or any other act contained shall extend or be deemed or construed to extend in any manner to interfere with the licences now required by law to be taken out and renewed by brewers of and dealers in beer, and persons keeping common inns, alehouses, and victualling houses, and selling beer, ale, and cyder, and wines and spirituous liquors, by retail, to be drank or consumed on the premises, but that all and every brewers and brewer of and dealer in beer shall take out such licences as are now by law required to be taken out by such brewers and dealers respectively; and every person who shall sell any beer or ale in quantities not less than four gallons and a half or two dozen reputed quart bottles, to be drank or consumed elsewhere than on the premises where sold, shall be deemed a dealer in beer; and every person who shall keep a common inn, alehouse, or victualling house, and sell beer, ale, and cyder, and wines and spirituous liquors, by retail, to be drank and consumed on the premises, shall take out the several licences now by law required, under the same rules, regulations, restrictions, powers, authorities, provisions, penalties, and forfeitures as such licences are now granted and issued under."

Sect. 23. "And whereas in the city of Edinburgh, and in other cities, towns, burghs, and places in that part of Great Britain called Scotland, by several statutes heretofore passed, certain rates, impositions, and duties are imposed and collected on beer and ale, to and for the use of the said cities, towns, burghs, and places, and are appropriated and applied to certain purposes specified in the several statutes imposing the same, for the levying and collecting of which said rates, impositions, and duties the charges made by His Majesty's officers for levying and collecting such revenue of Excise, or an abstract thereof under the hands of the officers of Excise, have been available to the magistrates of the city of Edinburgh, and the other cities, towns, burghs, and other places aforesaid, for levying and collecting the said rates, impositions, and duties: and whereas by reason of the duties on beer and ale payable to His Majesty ceasing to be collected under the provisions of this act, the magistrates of the said cities, towns, burghs, and other places will be deprived of the means heretofore used for raising, collecting, and levying the said rates, impositions, and duties; and it is therefore expedient, in order to prevent any injury or loss to any of the said cities, towns, burghs, or places in which such rates, impositions, or duties are payable, to provide means for the due collection and payment thereof; be it therefore enacted, that nothing in this act contained shall affect or be deemed or construed to affect, alter, or in any manner interfere with the right or title of the magistrates of the city of Edinburgh, or of any other city, town, burgh, or place in Scotland, or of any trustees or body corporate, or other person or persons having right by any of the statutes aforesaid to collect, receive, raise, and recover any rates, impositions, or duties now payable on beer or ale within the same; and that in order to the due collection, raising, levying, and recovering thereof, every brewer of beer or ale, liable to the payment of any such rates, impositions, and duties in the city of Edinburgh, or in any other city, town, burgh, or place, shall, from and after the 10th day of October, 1830, at the end of every month make a true and particular entry or return to the magistrates, or the trustees, body corporate, or other person or persons having the right

to collect such rates, impositions, and duties within the city, town, burgh, or place in which such brewer shall reside or carry on his brewery, or to such person or persons as the magistrates, trustees, body corporate, or other person or persons having such right shall appoint, of all beer or ale which such brewer shall have brewed or made in that month preceding; and such brewer shall also at the end of every month make a true and particular entry or return to the magistrates or the trustees or body corporate or person or persons having right as aforesaid, or to such other person or persons as shall be appointed in that behalf as aforesaid, of all beer or ale which such brewer shall have sold without the limits of the city, town, burgh, or place in which such brewer shall reside or carry on his brewery, or within which such votes, duties, and impositions shall be payable; and every such entry or return shall, if required by the magistrate or other person or persons aforesaid, be verified on the oath or affirmation (which oath or affirmation any one of the magistrates of the city, town, burgh, or place is hereby authorized and empowered to administer) of the said brewer, or his principal workman or servant; and it shall and may be lawful for the magistrates, trustees, body corporate, or other person or persons having such right as aforesaid, within every city, town, burgh, and place respectively, to collect, recover, levy, raise, and enforce the payment of the said rates, impositions, and duties payable within such city, town, burgh, and place respectively, according to the quantity of beer or ale mentioned in such two several entries or returns, in the manner and by the same means, powers, penalties and forfeitures, and authorities, as they are now empowered to raise, levy, collect, and enforce the same, or as any other rates, impositions, and duties payable within any such city, town, burgh, or place may be raised, levied, collected, and enforced, or by ordinary action in any competent court. Provided always, that all and every brewer and other person and persons shall remain entitled to and shall receive all such allowances and drawbacks, in respect to such rates, impositions, and duties, as they are now entitled to."

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Sect. 24. "That if any brewer of beer or ale shall neglect or refuse to make any such entry or return, or to verify the same when required so to do, or shall make any false or untrue entry or return, every such brewer shall forfeit and pay the sum of twenty pounds, to be recovered and applied in the same manner and under the same powers, provisions, and authorities as any other penalty or forfeiture may be recovered or applied under any act or acts of parliament granting the rates, impositions, and duties on beer and ale in the city, town, burgh, or place in which such refusal or neglect shall occur, or such false or untrue entry be made."

Penalty on brewers neglecting or refusing to make returns, or making false returns.

By 1 W. IV. c. 64, s. 1, (a) intituled *An Act to permit the General Sale of Beer and Cyder by retail in England*, "That from and after the 10th day of October, 1830, it shall and may be lawful for any and every person, who shall obtain a licence for that purpose under the provisions of this act, to sell beer, ale, and porter by retail in any part of England, in any house or premises specified in such licence; any thing in any act or acts heretofore made, or in force at the time of the passing of this act, to the contrary in anywise notwithstanding."

All persons licensed under this act may sell beer by retail.

Sect. 2. "That it shall be lawful for every and any person, being a householder (other than and except such persons as are hereinafter specially excepted), who shall be desirous of selling beer, ale, and porter by retail under the provisions of this act, to apply for and to obtain an Excise licence for that purpose; and in every application for such licence there shall be specified, set forth, and inserted the christian name and surname of the party applying for such licence, and a description of the house or premises in which beer, ale, and porter is intended to be sold by retail by such person, together with the christian names and surnames

Parties desirous of retailing beer shall take out a licence.

(a) See *ante*, Vol. I., title, *Alshouses*.

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In London, licences shall be granted by the commissioners of Excise, &c.; elsewhere in England, by the collectors and supervisors of Excise.

Licence duty.

No licence be granted to a sheriff's officer or non-householder.

Register of licences.

Licences shall be produced for the inspection of magistrates.

Licence duty shall be under the management of the commissioners of Excise, and carried to the consolidated fund.

and the occupation and residence of the person or persons who shall be proposed as surety or sureties for the party so to be licensed; and any and every such licence which shall be taken out within the limits of the chief office of Excise in London shall be granted under the hands and seals of two or more of the commissioners of Excise for the time being, or of such persons as they the said commissioners of Excise, or the major part of them, for the time being, shall from time to time authorize, employ, or direct for that purpose; and any and every such licence which shall be taken out in any part of England not within the said limits shall be granted under the respective hands and seals of the several collectors and supervisors of Excise within their respective collections and districts; and it shall be lawful for the said commissioners of Excise, or any two or more of them respectively, and for the person to be authorized, employed, or directed by the said commissioners or the major part of them, and also for all such collectors and supervisors, and they are hereby respectively authorized and required, within ten days after the application shall have been made for the same, and upon execution by the party and his surety or sureties of the bond hereinafter mentioned, and any time after upon the execution of such bond, to grant such licence to the persons who shall apply for the same, the person so applying first paying for such licence a duty of 2*l.* 2*s.*, to be applied and accounted for as hereinafter directed; and every such licence shall be dated on the day when the same shall be granted, and shall expire at the end of twelve calendar months after the day on which such licence shall be dated; and every such licence shall be according to the form in the schedule annexed to this act, and shall be duly registered in the proper department of the Excise. Provided always, that no such licence shall authorize or entitle the party licensed to receive any licence to sell or retail wine or spirits, any thing in any act or acts of parliament to the contrary thereof notwithstanding; and that no such licence shall be granted to any person being a sheriff's officer, or officer executing the legal process of any court of justice, nor to any person not being a householder assessed to the poor-rates in the parish or place in which he shall be licensed to sell beer by retail, and that any licence granted to any such person shall be void to all intents and purposes; and a list or register of every licence so granted, specifying the name and place of abode of every person licensed, and of his sureties respectively, and the name and description of the house mentioned in such licence, shall be kept at the Excise office with respect to all licences granted by the commissioners of Excise, or any person authorized by them, and at the office or dwelling-house of every collector and supervisor of Excise in their and his respective collections and districts; and such list or register shall at all times be produced to and shall be open to the inspection and perusal of any magistrate of the county or place where such licence shall be granted, and where such house shall be situate; and a copy of such list or register shall once in every calendar month be transmitted by every such collector or supervisor to the clerk of the magistrates for the district in which such licence shall be granted; and any copy of or extract from such list or register, which shall or may be at any time required by the clerk to the magistrates, shall be given to him by such collector or supervisor whenever thereto required."

Sect. 3. "That the duty by this act imposed on licences to sell beer by retail shall be under the management of the commissioners of Excise for the time being, and shall and may be respectively raised, levied, collected, answered, paid, and recovered in such and the like manner, and in or by any or either of the general or special means, ways, or methods by which any other duties of Excise on licences are or may be raised, levied, collected, answered, paid, or recovered; and all the moneys arising by the duties by this act imposed and made payable as aforesaid, the necessary charges of raising and accounting for the same excepted, shall from time

to time be paid into the receipt of His Majesty's Exchequer at Westminster, and the said money so paid into the receipt of the Exchequer as aforesaid shall be carried to and made part of the consolidated fund of the united kingdom of Great Britain and Ireland."

**Sect. 4.** "Provided always, that it shall not be lawful for the commissioners of Excise or any person authorized by them, nor for any collector or supervisor of Excise, to grant or deliver any such licence to any person applying for the same, unless such person shall, before receiving such licence, or at the time of receiving the same, enter into a bond to the commissioners of Excise with one sufficient surety in the penalty of 20*l.* or with two sufficient sureties in the penalty of 10*l.* each, such surety or sureties being the person or persons named in the application of the party requiring the licence, or some other person or persons approved of by the said commissioners or by the person authorized to grant such licences; and such bond shall be executed by such person and his surety or sureties, conditioned for the payment by such person, or his surety or sureties, of any penalty or sum of money not exceeding the amount of such 20*l.* or 10*l.* respectively, which shall be incurred for any offence against this act by the party to whom such licence shall be granted, or for the payment of such sum of 20*l.* or 10*l.* respectively, in case any penalty incurred by such party licensed shall exceed such 20*l.* or 10*l.* respectively; and it shall be lawful for the said commissioners, or the person so authorized by them, or for such collector or supervisor of Excise respectively, to judge of and determine upon the sufficiency of any such surety or sureties. Provided always, that such bond shall not be subject or liable to the payment of any stamp duty whatever; any thing in any act or acts to the contrary notwithstanding."

**1. Ale, Beer, and Brewers.**

Party requiring licence shall enter into a bond, with sureties, for payment of penalties.

**Sect. 5.** "Provided always, that no person licensed to sell beer by retail under the provisions of this act, and that no person not being a householder assessed to and paying the poor's rates within the parish in which the person licensed shall be resident, shall be deemed competent to be or shall be accepted as a surety in any such bond as aforesaid."

No person licensed to sell beer shall be competent to be a surety.

**Sect. 6.** "That every person who shall be licensed to sell beer, ale, and porter by retail under the provisions of this act shall cause to be painted, in letters three inches at least in length, in white upon a black ground, or in black upon a white ground, publicly visible and legible, upon a board to be placed over the door of the house or premises in which such person shall be licensed to sell beer by retail, the christian and surname of the persons mentioned in such licence, at full length, together with the words 'licensed to sell beer by retail;' and every such person shall preserve and keep up such name and words so painted as aforesaid during all the time that such person shall continue so licensed, upon pain that every person in any respect making default herein shall forfeit and pay for every such offence the sum of 10*l.*"

Persons licensed to retail beer shall put up descriptive boards.

**Sect. 7.** "That no person shall sell any beer by retail under the provisions of this act at any time after the expiration of any licence granted under this act, nor in any house or place not specified in such licence. Provided always, that it shall be lawful for any person so licensed to take out a fresh retail licence for the selling beer by retail before the expiration of any former retail licence, and so from year to year; and if any person, not being duly licensed to sell beer as the keeper of a common inn, ale-house, or victualling-house, shall sell any beer by retail without having an Excise retail licence in force authorizing such person so to do, or after the expiration of any such licence, or without renewing such licence in manner aforesaid, or in any house or place not specified in such licence, or if any such person so licensed shall deal in or retail any wine or spirits, every such person so offending shall for every such offence forfeit and lose the sum of 20*l.*"

No person shall sell beer after expiration of his licence. Licence may be renewed yearly. Penalty on selling without licence, 20*l.*

**Sect. 8.** "That the said last-mentioned fine, penalty, or forfeiture of 20*l.* shall and may be sued for, recovered, levied, mitigated, and distri-

Such penalty may be recovered as other Excise penalties.



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Powers of Excise act 7 & 8 Geo. 4., c. 53, &c. extended to this act.

Proviso for partners.

Licence shall not extend to any other house.

Houses to be closed by order of justices in cases of riot, &c.

Standard measures to be used.

Penalty on retailers permitting drunken-

buted by such ways, means, and methods as any fine, penalty, or forfeiture may be sued for, recovered, levied, mitigated, or distributed by any law or laws of Excise; and that one moiety of every such fine, penalty, or forfeiture shall be to His Majesty, his heirs and successors, and the other moiety to him or them who shall inform, discover, or sue for the same."

Sect. 9. "That all the powers and authorities, directions, rules, regulations, methods, penalties, forfeitures, clauses, matters, and things, which in and by an act made in the eighth year of the reign of His late Majesty King George the Fourth, intituled *An act to consolidate and amend the Laws relating to the Collection and Management of the Revenue of Excise throughout Great Britain and Ireland*, or by any other law now in force relating to His Majesty's revenue of Excise, are provided and established for enforcing, regulating, managing, raising, levying, collecting, paying, mitigating, recovering, adjudging, or distributing the penalties thereby imposed, and all matters and things therein relating to Excise licences (except where otherwise provided by this act, or repugnant thereto), shall and may be exercised, practised, applied, used, and put in execution in and for the enforcing, regulating, managing, raising, levying, collecting, paying, mitigating, recovering, adjudging, or distributing the said penalty of twenty pounds, and all matters and things relating to the said licences hereby authorized and required to be granted as aforesaid, as fully and effectually to all intents and purposes as if all and every the said powers, authorities, directions, rules, regulations, methods, penalties, forfeitures, clauses, matters, and things were particularly repeated and re-enacted in this present act; any thing hereinafter contained to the contrary thereof in anywise notwithstanding."

Sect. 10. "Provided always, that persons trading in partnership, and in one house or premises only, shall not be obliged to take out more than one licence in any one year, for selling any beer by retail under the provisions of this act: provided also, that no one licence which shall be granted by virtue of this act shall authorize or empower any person or persons to sell any beer, ale, or porter, under the provisions of this act, in any house or place other than the house or place mentioned in such licence for selling beer, ale, and porter by retail under the provisions of this act, and in respect whereof such licence shall be granted."

Sect. 11. "That it shall be lawful for any one justice acting for any county or place where any riot or tumult shall happen, or for any two or more justices where any riot or tumult may be expected to take place, to order or direct that every person licensed under this act, and keeping any house, situate within their respective jurisdictions, in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house at any time which such justice or justices shall order or direct; and every such person who shall keep open his house at or after any hour at which such justices shall have so ordered or directed such house to be closed shall be taken and deemed to have not maintained good order and rule therein, and to be guilty of an offence against the tenor of the licence granted to such person."

Sect. 12. "That every person under this act licensed to sell beer by retail shall sell or otherwise dispose of all such beer by retail (except in quantities less than a half pint) by the gallon, quart, pint, or half pint measure sized according to the standard, and shall also retail the same in a vessel sized according to such standard; and in default thereof he shall for every such offence forfeit the illegal measure, and pay a sum not exceeding forty shillings, together with the costs of the conviction, to be recovered, within thirty days next after that on which such offence was committed, before two justices; and such penalty shall be over and above all penalties to which the offender may be liable under any other act."

Sect. 13. "That every seller of beer, ale, and porter by retail, having a licence under the provisions of this act, who shall permit any person or

persons to be guilty of drunkenness or disorderly conduct in the house or premises mentioned in such licence, shall for every such offence forfeit the respective sums following; and every person who shall in any way transgress or neglect, or shall be a party in transgressing or neglecting, the conditions and provisions specified in such licence, or shall allow such conditions or provisions to be in any way transgressed or neglected, in the house or premises so licensed, shall be deemed guilty of disorderly conduct; and every person so licensed who shall permit any such disorderly conduct shall for the first offence forfeit any such sum not less than forty shillings nor more than five pounds, as the justices before whom such retailer shall be convicted of such offence shall adjudge; and for the second such offence, any sum not less than five pounds nor more than ten pounds; and for the third such offence, any sum not less than twenty pounds nor more than fifty pounds; and it shall be lawful for the justices before whom any such conviction for such third offence shall take place to adjudge, if they shall so think fit, that such offender shall be disqualified from selling beer by retail for the space of two years next ensuing such conviction, and also (if they shall so think fit) to adjudge that no beer shall be sold by retail by any person in the house or premises mentioned in the licence of such offender; and if any person so licensed as aforesaid shall knowingly sell any beer, ale, or porter made otherwise than from malt and hops, or shall mix or cause to be mixed any drugs or other pernicious ingredients with any beer sold in his house or premises, or shall fraudulently dilute or in any way adulterate any such beer, such offender shall for the first offence forfeit any sum not less than ten pounds nor more than twenty pounds, as the justices before whom such offender shall be convicted of such offence shall adjudge; and for the second such offence such offender shall be adjudged to be disqualified from selling beer, ale, or porter by retail for the term of two years, or to forfeit any sum of money not less than twenty pounds nor more than fifty pounds, at the discretion of the justices before whom such offender shall be adjudged guilty of such second offence; and if any offender convicted of such offence as last aforesaid shall during such term of two years sell any beer, ale, or porter by retail, either in the house and premises mentioned in the licence of such offender, or in any other place, he shall forfeit any sum not less than twenty-five pounds nor more than fifty pounds, and shall be subject to a like penalty at any and every house or place where he shall commit such offence; and if any person shall at any time, during any term in which it shall not be lawful for beer to be sold by retail on the premises of any offender, sell any beer by retail on such premises, knowing that it was not lawful to be sold, such offender shall forfeit any sum not less than ten pounds nor more than twenty pounds, as the convicting justices shall adjudge."

Sect. 14. "That no person licensed to sell beer by retail under this act shall have or keep his house open for the sale of beer, nor shall sell or retail beer, nor shall suffer any beer to be drank or consumed, in or at such house, at any time before the hour of four of the clock in the morning nor after ten of the clock in the evening of any day in the week, nor at any time between the hours of ten of the clock in the forenoon and one of the clock in the afternoon, nor at any time between the hours of three and five of the clock in the afternoon, on any *Sunday, Good Friday, Christmas Day*, or any day appointed for a public fast or thanksgiving; and if any such person shall keep his house open for selling beer, or shall sell or retail beer, at any time after the hour of ten of the clock in the evening or before the hour of four of the clock in the morning of any day, or between the hours of ten of the clock in the forenoon and one of the clock in the afternoon, or between the hours of three and five of the clock in the afternoon, on any *Sunday, Good Friday, Christmas Day*, or any day appointed for a public fast or thanksgiving, such person shall forfeit the

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ness, &c. in their houses.

First offence.

Second offence.

Third offence.

Penalty on mixing drugs in beer, or adulterating beer.

First offence.

Second offence.

Penalty on selling after conviction of second offence.

Retailers' houses shall not be open before four in the morning nor after ten in the evening; nor on Sundays between ten and one, or three and five, in the day.

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Penalties recoverable before two justices in petty sessions, within three months after offence committed.

sum of forty shillings for every offence; and every separate sale shall be deemed a separate offence."

Sect. 15. "That all penalties under this act, save and except the penalty hereinbefore mentioned for selling beer by any person not duly licensed, shall and may be recovered upon the information of any person whomsoever before two justices acting in petty sessions; and that every such penalty shall be prosecuted and proceeded for within three calendar months next after the commission of the offence in respect of which such penalty shall be incurred; and every person licensed under this act who shall be convicted, before two justices so acting in and for the division or place in which shall be situate the house kept or theretofore kept by such person, of any offence against the tenor of the licence to him granted under this act, or of any offence for which any penalty is imposed by this act, shall, unless proof be adduced to the satisfaction of such justices that such person had been theretofore convicted before two justices within the space of twelve calendar months next preceding of some offence against the tenor of his licence or against this act, be adjudged by such justices to be guilty of a first offence against the provisions of this act, and to forfeit and pay any penalty by this act imposed for such offence, or if no specific penalty be imposed for such offence, then any sum not exceeding 5*l.*, together with the costs of the conviction; and if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices within the space of twelve calendar months next preceding of one such offence only, such person shall be adjudged by such justices to be guilty of a second offence against the provisions of this act, and to forfeit and pay any penalty by this act imposed for such offence, or if no specific penalty be so imposed, then any sum not exceeding 10*l.*, together with the costs of the conviction; and if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices within the space of the eighteen calendar months next preceding of two such separate offences, and if proof shall be adduced to the satisfaction of the justices that such person so charged is guilty of the offence charged against him, such person shall be adjudged to be guilty of a third offence against the provisions of this act, and to forfeit and pay any penalty imposed by this act in respect of such offence; or if no such specific penalty shall be imposed, then to forfeit and pay the sum of 50*l.*, together with the costs of the conviction."

Appeal to the quarter sessions.

Sect. 16. "Provided always, that it shall and may be lawful for the party convicted of any such third offence to appeal to the general sessions or quarter sessions of the peace then next ensuing, unless such sessions shall be held within twelve days next after such conviction, and in that case to the then next subsequent sessions; and in such case the party so convicted shall before such justices so convicting forthwith enter into a recognizance, with two sufficient sureties, personally to appear at the said general session or quarter session, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; which recognizances such justices are hereby authorized to require and take; or, in failure of the party convicted entering into such recognizance, such conviction shall remain good and valid to all intents and purposes; and the said justices who shall take such recognizance from the party convicted are also hereby required to bind the person who shall make such charge in a recognizance to appear at such general or quarter sessions as aforesaid, then and there to give evidence against the person so charged, and in like manner to bind any other person who shall have any knowledge of the circumstances of such offence; and it shall be lawful for the said Court of general session or quarter session to adjudge such person to be guilty of any such third offence against the provisions of this act, as the case may be, and such adjudication shall be final to all intents and purposes; and it shall be lawful for such Court of general session or quarter session to

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punish such offender by fine not exceeding the sum of 100*l.*, together with the costs of such appeal, or to adjudge the licence granted to and held by or on behalf of such offender to be forfeited and void, or to adjudge that no beer shall be sold by retail in the house or premises mentioned in the licence of such offender for the term of two years from the date of such adjudication, or to punish such offender by such fine as aforesaid, and to adjudge such premises to be disqualified for the sale of beer as aforesaid, and such licence to be forfeited and void; and if such licence shall be adjudged to be forfeited and void, it shall thenceforth be void accordingly; and whenever in such case or in any other case the licence of such offender shall be adjudged to be void, such offender shall from and after such adjudication be deemed and taken to be incapable of selling beer, ale, or porter by retail, in any house kept by him, for the space of two years, to be computed from the time of such adjudication; and any licence granted to such person during such term shall be void to all intents and purposes."

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Sect. 17. "That whenever it shall happen that any appeal respecting which any recognizance shall be entered into in pursuance of this act shall be dismissed, or that the conviction appealed against shall be affirmed, or that such appeal shall be abandoned, it shall be lawful for the Court to whom such appeal shall have been made or intended to be made, and such Court is hereby required, to adjudge and order that the party so having appealed or having entered into such recognizance shall pay to the justices before whom such recognizance shall have been entered into, or to whomsoever they shall appoint, such sum by way of costs as shall in the opinion of such Court be sufficient to indemnify such justices from all costs and charges whatsoever to which such justices may have been put in consequence of the intention or declared intention of such party to appeal; and if such party shall refuse or neglect to pay forthwith such sum, it shall be lawful for the said Court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid, or for any time not exceeding six calendar months, unless such sum be sooner paid; and in every case in which the conviction so appealed against shall be reversed, it shall be lawful for such Court (if it shall think fit) to adjudge and order that the treasurer of the county or place in and for which such justices whose judgment shall have been so reversed shall have acted on the occasion when they shall have given such judgment, shall pay to such justices, or whomsoever they shall appoint, such sum as shall in the opinion of such Court be sufficient to indemnify such justices from all costs and charges whatsoever to which such justices may have been so put; and the said treasurer is hereby authorized to pay the same, which shall be allowed to him in his accounts."

Court to adjudge costs of appeal in certain cases.

Sect. 18. "That in every case in which any appeal shall be made, by any person convicted of any offence under the provisions of this act, to the general session or quarter session, it shall be lawful for the convicting justices, if no other fit and proper person shall appear to prosecute such charge and to carry on such proceedings as may be necessary to obtain at such session an adjudication thereon, to order that the constable or other peace officer of the parish or place in which shall be situate the house kept by the person charged shall carry on all proceedings necessary to obtain such adjudication as aforesaid, and to bind such constable or other peace officer in a sufficient recognizance so to do; and it shall be lawful for the justices before whom such offender shall have been convicted to order the treasurer of the county or place in and for which such justices shall then act to pay to such constable or other peace officer, and to the witness or witnesses on his behalf, such sum or sums of money as to the Court shall appear to be sufficient to reimburse such constable or other peace officer, and such witness or witnesses respectively, the expenses that he or they shall have been severally put to in and about such prosecution, which order the clerk of the peace is hereby directed and required forth-

Proceedings at the session in certain cases to be carried on by the petty constable.

Expenses of prosecution to be charged on county rates.

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In default of payment of penalties, proceedings may be had against the sureties.

Penalty on witnesses not attending.

Penalties may be levied by distress.

If offender has not sufficient goods whereon to levy, justices may commit him.

Proviso for offenders paying penalties, &c, to gaoler.

with to make out and to deliver to such constable or other peace officer, or to such witness or witnesses; and the said treasurer is hereby authorized and required, upon sight of such order, forthwith to pay to such constable or other peace officer, or other person authorized to receive the same, such money as aforesaid, and the said treasurer shall be allowed the same in his accounts."

Sect. 19. "That in case any person licensed under this act shall be convicted of any offence against this act, and shall not pay the penalty incurred by such conviction, it shall be lawful for the justices convicting such offender, after the expiration of one calendar month next after such conviction, to summon any surety or sureties named in the bond entered into and executed by such person and his surety or sureties at the time of obtaining his licence, to appear before the said justices, and show cause why the penalty mentioned in such bond should not be paid by such surety or sureties, or so much thereof as shall be sufficient to pay any penalty incurred by the party licensed, or to satisfy so much of such penalty so incurred as shall remain unpaid; and in case any such surety shall not show any sufficient cause to the contrary, it shall be lawful for such justices to adjudge that such penalty, if not paid, or so much thereof as aforesaid, shall be paid by such surety within fourteen days; and in case such penalty, or so much thereof as aforesaid, shall not be paid within fourteen days, it shall be lawful for such justices, if they shall think fit, to issue their warrant, and to levy the amount of such penalty, or so much thereof as aforesaid, by distress and sale of the goods and chattels of such surety, together with the costs of such distress and sale; and the certificate of the commissioners of Excise, or their officer, or other persons by this act authorized to grant any licence, of the date of such bond, and the names and descriptions of the surety or sureties in such bond, shall be sufficient evidence of such bond, and of the contents and execution thereof, against any surety or sureties, in any proceedings under this act."

Sect. 20. "That any person summoned as a witness to give evidence before any justices or sessions touching any of the matters aforesaid, either on the part of the complainant or of the person accused, who shall neglect or refuse to appear at the time and place for that purpose appointed, and who shall not make such reasonable excuse for such neglect or refusal as shall be admitted and allowed by such justices or sessions, or who appearing shall refuse to be examined on oath or affirmation and give evidence, shall on conviction before such justices forfeit and pay for every such offence any sum not exceeding 10*l*."

Sect. 21. "That in every case in which under the authority of this act any justices shall adjudge that any offender shall pay or cause to be paid any penalty, and such offender shall refuse or neglect, within seven days after his conviction, to pay such penalty, and any costs which shall have been duly assessed and ascertained by such justices, it shall be lawful for such justices, if they shall think fit, to issue their warrant, and to levy the amount of such penalty and costs by distress and sale of the goods and chattels of such offender, together with the costs of such distress and sale; and in every such case such offender, if in custody at the time that such warrant shall be so issued, shall be forthwith discharged; but if it shall appear to such justices that the goods and chattels of such offender are not sufficient whereon to levy such distress, together with the costs of such distress and sale, it shall be lawful for such justices to commit the offender to the common gaol or to the house of correction of the county or place for which such justices shall be then acting, for any term not exceeding one calendar month if the penalty shall not be above 5*l*., for any term not exceeding three calendar months if the penalty shall be above 5*l*. and shall not be more than 10*l*., and for any term not exceeding six calendar months if the penalty shall be above 10*l*. Provided nevertheless, that whenever such offender shall have been committed to the common gaol or house of correction in consequence of his not having duly paid such

penalty and costs, if such offender shall pay or cause to be paid to the gaoler or keeper of the house of correction, or to whomsoever such justices shall have appointed, the penalty imposed, and costs, together with all the costs of the apprehension of him and of the conveyance of him to the said gaol or house of correction, at any time previous to the expiration of the time for which such offender shall so have been committed, such offender shall be forthwith discharged."

Sect. 22. "That any justices before whom any penalty shall be recovered under the provisions of this act shall award, if they shall think fit, any portion of the same, not in any case exceeding one moiety thereof, to the use of the prosecutor; and the remainder, or in case no part of such penalty shall be awarded to the prosecutor, then the whole of such penalty, shall be awarded to be paid and shall be paid to the treasurer of the county within which such offence shall be committed, to be applied by the said treasurer towards defraying the expenses of such county, and in aid of the county rates of such county."

Sect. 23. "That whenever at any session for any liberty, county of a city, county of a town, city or town corporate, there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a town, city or town corporate, it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city or town corporate, to act within such liberty or place, and with the justice or justices thereof who shall be present at any such sessions as aforesaid, for the purpose of hearing complaints as to offences against this act; any law, custom, or usage to the contrary notwithstanding."

Sect. 24. "Provided always, that nothing herein contained shall extend to give the justices of the county or any division thereof any power or authority for the putting of the provisions of this act in execution within any of the cinque ports or either of the two ancient towns, or any of the corporate or other members or liberties of the cinque ports or two ancient towns; but that it shall be lawful for the justices of and for each of the principal cinque ports and two ancient towns, and the liberties thereof, and for the justices of and for the liberties thereof, and the corporate members, to act within the same respectively as they have been accustomed, and for them or any of them to act within each of the corporate members immediately belonging or subordinate to such principal cinque port or ancient town, with the justice or justices of each such corporate member, for the purpose of hearing complaints as to offences against this act in all such cases in which the justices of the county are hereinbefore empowered or authorized to act with the justice or justices of any liberty, county of a city, county of a town, city or town corporate."

Sect. 25. "And in order to prevent frivolous and vexatious appeals, be it further enacted, that a conviction in the form or to the effect following, *mutatis mutandis*, as the case may be, shall be good and effectual to all intents and purposes whatsoever, without stating the case or the facts or evidence in any more particular manner; (that is to say,)

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, A. B. of \_\_\_\_\_ was duly convicted before us, C. D. and E. F., two of His Majesty's justices of the peace in petty sessions for the \_\_\_\_\_ of \_\_\_\_\_, for that [here state the offence, and the time and place when committed], whereby the said A. B. has forfeited the sum of \_\_\_\_\_, this being adjudged to be the first [or second, or third] offence [as the case shall happen to be] against the provisions of an act to permit the general sale of beer and cyder by retail in England, besides the costs of this conviction, which we the said justices do hereby assess at the sum of \_\_\_\_\_, pursuant to the statute in such case made and provided. Given under our hands and seals, the day and year above written."

Sect. 26. "That the justices before whom any such conviction shall have

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Application of penalties.

If justices of liberties, &c. do not attend at sessions, the county justices may act.

Powers hereby given to justices of counties not to extend to the cinque ports.

Form of conviction.

Convictions to be returned to

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the quarter sessions, and filed of record.

Writ of certiorari not to be allowed.

Actions against justices, &c.

Act not to affect the two universities, nor the vintners' company in London;

nor to prohibit the sale of beer at fairs as heretofore.

Licences to retail cyder may be granted under the regulations of this act, on payment of 1*l.* 1*s.* duty.

Provisions and penalties of this act with respect to the sale of beer to apply to the sale of cyder.

been made shall return the same, or cause the same to be returned, to the next general session or quarter session of the peace holden for the county or place wherein the offence shall have been committed, and such conviction shall be then and there delivered to the clerk of the peace or other person acting as such, to be by him filed or enrolled amongst the records of the said Court; and the certificate of the clerk of the peace of such conviction, which he is hereby required to grant, on demand, upon payment of 1*s.*, shall be legal evidence of every such conviction."

Sect. 27. "That no conviction under this act, nor any adjudication made upon appeal therefrom, shall be quashed for want of form, nor shall be removed by writ of certiorari or otherwise into any of His Majesty's superior Courts of Record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and that there be a good and valid conviction to sustain the same."

Sect. 28. "That every action against any justice, constable, or other person, for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this act, shall be commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards; and if any person shall be sued for any matter or thing which he shall have done in the execution of this act, he may plead the general issue and give the special matter in evidence."

Sect. 29. "Provided always, that nothing in this act contained shall extend to alter or in any manner to affect any of the rights or privileges of the universities of Oxford or Cambridge, or any of the powers and authorities vested by charter or otherwise in the chancellors, masters, and scholars of the said universities, and their successors, or in the master, wardens, freemen, and commonalty of the vintners of the city of London, but not to extend to those freemen of the said company of vintners who have obtained the same by redemption only; nor in any way to affect any licence to the keeper of any inn, alehouse, or victualling house, unless in so far as relates to the sale of beer by retail; nor to prohibit any person from selling beer in booths or other places at the time and within the limits of the ground or place in or upon which is holden any lawful fair, in like manner as such person was authorized to do before the passing of this act."

Sect. 30. "And whereas it is expedient that the sale of cyder and perry by retail should be licensed in like manner, and should be subject to the like regulations as the sale of beer; be it therefore enacted, that from and after the 10th day of October, 1830, it shall be lawful for any person desirous of selling cyder and perry by retail to apply for and to obtain an Excise licence for that purpose, under the same regulations in all respects (except as hereinafter is otherwise provided) as are in this act prescribed and contained with respect to persons desirous of selling beer, ale, and porter by retail, and of being licensed for that purpose; and that all the clauses, regulations, and provisions in this act contained relating to the sale of beer by retail, and to the licences for selling the same, and to the sureties for the parties licensed, and to the conduct of the parties licensed, and to all other matters whatever respecting the selling of beer by retail, and the retailers thereof, and the licences for the same, and the houses where the same are sold, and the penalties against the parties licensed, shall be taken and deemed to be applicable to the sale of cyder and perry by retail, and to licences for the same, and to the sellers of cyder and perry by retail, as if cyder and perry, and the retailers thereof, were expressly mentioned and specified in and throughout this act. Provided always, that the person receiving a licence for selling cyder or perry by retail shall pay for such licence a duty of 1*l.* 1*s.* and no more, instead of the duty of 2*l.* 2*s.* hereinbefore mentioned, and which said duty of 1*l.* 1*s.* shall be applied in like manner as the said duty of 2*l.* 2*s.* is hereinbefore directed

to be applied; and every such licence shall be according to the form in the schedule annexed to this act. Provided also, that any person licensed under this act to sell beer by retail may sell also cyder and perry by retail without receiving a separate licence for that purpose; but that no person licensed to sell cyder and perry by retail, and paying for such licence, as herein provided, the sum of 1*l.* 1*s.*, shall be at liberty to sell beer by retail."

Sect. 31. "Provided always, that any and every covenant or clause of restriction contained in any lease or contract between any landlord and tenant, whereby the trade or business of a victualler or publican is prohibited from being carried on in any house, building, or place mentioned or comprised in such lease or contract, or whereby any such house, building, or place is prohibited from being used as a public house or ale-house, shall apply and extend, and shall be construed to apply and extend, to every person who shall be licensed to sell beer, ale, or porter, or cyder or perry, under the provisions of this act, and to any and every house specified and mentioned in the licence granted to such person."

Sect. 32. "And in order to remove doubts as to the meaning of certain words in this act, be it enacted, that the word 'justice' shall be deemed to mean justice of the peace; and that the word 'person,' and the word 'party,' shall be deemed to include any number of persons and parties; and that the word 'licence,' and the word 'day,' and the word 'time,' and the word 'house,' and the word 'place,' shall each be deemed to include any number of licences, days, times, houses, or places; and that the word 'beer' shall in all cases be deemed to include beer, ale, and porter; and that the word 'cyder,' shall in all cases be deemed to include cyder and perry; and that the word 'county,' and the words 'county or place,' shall be deemed severally to include any county, riding, division of the county of Lincoln, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words 'division or place,' shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and that the words 'parish or place' shall be deemed to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining, its own poor; and that the word 'penalty' shall be deemed to include any fine, penalty, or forfeiture of a pecuniary nature; and that the meaning of the several words in this act shall not be restricted, although the same may be subsequently referred to in the singular number or masculine gender only."

1. *Ale, Beer, and Brewers.*

Persons licensed to retail beer may also retail cyder.

Covenants against houses, &c. being used as public houses, to extend to persons licensed under this act.

Rules for the interpretation of this act.

"FORM OF LICENCE.

"We the undersigned, being \_\_\_\_\_ of the commissioners of the Excise [or I the undersigned, being a person authorized and employed by the commissioners of Excise to grant licences for selling beer [or cyder and perry, as the case may require,] by retail, or being a collector or supervisor of Excise for the collection or district of \_\_\_\_\_], do hereby authorize and empower A. L., now being a householder, and dwelling at \_\_\_\_\_, in the parish of \_\_\_\_\_, within the limits of the chief office of Excise [or within the limits of the said collection or district], to sell beer, ale, and porter [or cyder and perry] by retail in the dwelling-house of the said A. L. and in the premises thereunto belonging, the said A. L. having duly entered into a bond, with D. S. of \_\_\_\_\_ and E. S. of \_\_\_\_\_ as his surety [or sureties], pursuant to the act in such case made: provided, and upon condition, that he or she [does not sell any beer, ale, or porter made otherwise than from malt and hops] [omit these words in licences to retail cyder and perry]; nor mix or cause to be mixed any drugs or other pernicious ingredients in any beer, ale, or porter [or in any cyder or perry]; nor fraudulently dilute, deteriorate, or adulterate any beer, ale, or porter [or any cyder or perry]; nor sell any beer, ale, or porter [or any cyder or perry], knowing the same to have been fraudulently diluted, deteriorated, or adulterated; nor use, in selling any beer, ale, or porter [or any cyder or perry], any measures which are not of the legal standard; nor wilfully or knowingly per-

Schedule to which this act refers.



1. *Ale, Beer, and Brewers.*

mit any drunkenness or any violent or quarrelsome or other disorderly conduct in his [or her] house or premises; nor knowingly suffer any unlawful games or any gaming whatsoever therein; nor knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein; nor permit or suffer any beer, ale, or porter [or any cyder or perry] to be drank or consumed in or upon or to be conveyed from or out of his [or her] premises between the hours of ten of the clock in the forenoon and one of the clock in the afternoon, nor between the hours of three and five of the clock in the afternoon, on Sundays, Christmas Day, and Good Friday, or any day appointed for a public fast or thanksgiving, nor at any time before the hour of four of the clock in the morning, or after the hour of ten of the clock in the evening, of any day; but do maintain good order and rule therein; and all provisions for billeting officers and soldiers in victualling houses, contained in any act for punishing mutiny and desertion, and for the better payment of the army and their quarters, are to extend and apply to the house and premises mentioned in this licence: and this licence shall continue in force from the day of next until the day of then next ensuing, and no longer; provided, and upon condition, that the said A. L. shall not in the meantime become a sheriff's officer, or officer for executing the process of any court of justice, nor shall in the meantime cease to be a householder; and this licence shall cease and determine, and shall become void, in case any of the conditions or regulations contained therein shall be transgressed, or shall not be observed by the said A. L. Given under our hands and seals [or my hand and seal], this day of , one thousand eight hundred and , at

By 11 Geo. IV., c. 17, certain regulations respecting malt and as to brewers in Ireland were enacted, and which will be found under title *Malt*, post, —.

## (2.) Auctions and Auctioneers.

## (2.) Things sold by Auction, (a)

[17 Geo. III., c. 50;	41 Geo. III., U.K. c. 42;	59 Geo. III., c. 32; c. 54;
19 Geo. III., c. 56;	42 Geo. III., c. 93;	3 Geo. IV., c. 27;
28 Geo. III., c. 37;	43 Geo. III., c. 69;	5 Geo. IV., c. 75;
29 Geo. III., c. 63;	43 Geo. III., c. 130;	6 Geo. IV., c. 16, s. 98;
30 Geo. III., c. 26;	45 Geo. III., c. 30;	c. 81;
32 Geo. III., c. 11; c. 41;	47 Geo. III., c. 65, s. 2;	7 & 8 Geo. IV., c. 53;
38 Geo. III., c. 54;	51 Geo. III., c. 47; c. 95;	<i>ante</i> , 226 to 310.]
41 Geo. III., c. 91;	55 Geo. III., c. 30; c. 142;	

By 17 Geo. III., c. 50, several duties were imposed on estates and goods sold by auction; which act was repealed by 19 Geo. III., c. 56, so far as concerned the *licensing* of auctioneers, and collecting and managing the duties; and

Duties on Excise licences to cease.

By 6 Geo. IV., c. 81, s. 1, (b) "From 5th July, 1825, all the duties on *Excise licences* granted by any act of parliament, in force at the passing of this act, are repealed; except in all cases relating to arrears of duty, or any fine or penalty incurred before 5th July, 1825, and remaining unpaid; and also except as to any Excise licence or licences theretofore granted, and any bond or bonds given by any Excise trader before said 5th July, 1825, and then in force and unexpired."

Duty on auctioneers' licences.

Sect. 2. "Every person exercising or carrying on the business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments by auction, shall annually take out an Excise licence for that purpose, and pay for the same the sum of 5*l.*" (c)

(a) See *tit. Hatmakers and Bed-lars*, post, —; and *Chitty's Col. Stat.* Vol. I. p. 433, and notes; and see *Sugden's Law of Vendor and Purchaser*, 8th ed.

The selling goods by auction within the city of London by an auctioneer who has paid the duty of 20*s.* for a licence, required by 17 Geo. III., c. 50,

but who has not been admitted as a broker by the court of the mayor and aldermen, does not make him liable to the penalty of the 6 Anne, c. 16, for acting as a broker without being so admitted.—2 *H. B.* 555; 6 *East*, 392.

(b) See the whole of this act, *ante*, 245.

(c) *Ante*, 246.

## II. PARTICULAR LAWS, &c. (2.) *Auctions and Auctioneers.*

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By sect. 8. "Every auctioneer selling by auction any goods or commodities, for the selling of which an Excise licence is specially required, shall take out such licence, over and above his auctioneer's licence, except where the goods are the property of a licensed person, and sold on his behalf on his entered premises." *Ante*, 251.

By sect. 26. "Penalty 100*l.* for selling without licences." *Ante*, 259.

The 35th section provides, "that nothing in this act contained shall extend to repeal the Excise duties on licences for selling plate, and on hawkers," &c. *Ante*, 262.

*Note*.—The several regulations respecting the duties, licences, penalties, &c. contained in this statute, are stated, *ante*, 245 to 262.

By 42 Geo. III., c. 93, s. 14, and 43 Geo. III., c. 130, s. 1. "Every person who shall exercise the trade of an auctioneer or seller by commission within the limits of the chief office in London, shall, when he receives his licence, give bond to the king, with two sureties, himself in 1000*l.* and his sureties in 200*l.* each (out of the bills the bond to be in 50*l.* penalty), that he will account for sales and pay the duty as hereinafter directed."

"And every person exercising the said trade in any part of Great Britain without the said limits shall give security by bond as aforesaid; himself in 500*l.*, and two securities in 50*l.* each." 19 Geo. III., c. 56, s. 8. 42 Geo. III., c. 93, s. 15.

By 6 Geo. IV., c. 81, s. 9. (*Ante*, 251.) "Auctioneers continue liable to give this security, although other persons need not."

By 43 Geo. III., c. 69, 45 Geo. III., c. 30, and 55 Geo. III., c. 142, duties are imposed upon the proceeds of sales by auction, viz.:

45 Geo. III., c. 142. "For every 20*s.* of the purchase-money £. s. d. arising or payable by virtue of any sale at auction in Great Britain, for the benefit of the growers or first purchasers respectively, of any sheep's wool, the growth or produce of any part of the united kingdom . . . 0 0 2"

43 Geo. III., c. 69. 6*d.*—45 Geo. III., c. 30. 1*d.*—"For every 20*s.* of the purchase-money arising or payable by virtue of any sale at auction in Great Britain, of any interest, in pos-

2. *Auctions and Auctioneers.*

Auctioneer to give bond to account, &c. (a)

Duties payable on sales by auction. (b)

(a) If the bond be forfeited under 19 Geo. III., c. 57, s. 7, the penalty is a debt, and not merely a security to compel an account, *R. v. Christy*, 2 *Anstr.* 586; and the Court of Exchequer refused to release on terms, *id. ibid.*; and the king is not affected by 4 Anne, c. 16, as to admit of a plea of payment after the day, *R. v. Ellis*, 1 *Price*, 23.

(b) *What is a sale or not.* Although the words in 43 Geo. III., c. 69, and 45 Geo. III., c. 30, impose the duty on every 20*s.* of the purchase-money, "arising or payable by virtue of any sale, &c.," yet as the 19 Geo. III., c. 56, s. 6, declares that the duties shall be a charge upon the auctioneer "immediately upon knocking down the hammer, or other closing of the bidding." There are many cases in which the duty may attach, although the sale cannot, or may not, be afterwards enforced. Thus, where a drunken man or an insolvent was declared the bidder, or a person refused to sign a contract sufficient to take the case out of the statute against frauds, the auctioneer is nevertheless liable to pay the duty. This was to prevent fraud and

connivance. For as to any question between seller and buyer, it was determined, *Payne v. Cave*, 3 *Term. R.* 148, that a bidder at an auction under the usual conditions, that the highest bidder shall be the purchaser, may retract his bidding any time before the hammer is down; and see 1 *Bla. R.* 601; *Cook v. Oxley*, 3 *T. R.* 653; 4 *Bing.* 658; 16 *East*, 45.

Where an auctioneer knocked down a lot to a bidder, but did not write down his name as the purchaser, and such person afterwards refused to complete the purchase, and it could not be enforced against him, it was held, that the auctioneer could not recover the duty which he had paid to government on the sale from such bidder, which, by the conditions, was to be paid by the purchaser, 1 *M'Clel. Rep.* 25; and *semble* he could not recover the duty from the vendor, *ib.* The acts apply to every mode of sale whereby the highest bidder is to be deemed the purchaser. See several instances, *Sugden. V. & P.*, 8th ed., 16, 17, 18.

2. Auctions and Auctioneers.

session or reversion, in any freehold, customary, copyhold, or leasehold lands, tenements, houses, or hereditaments, and any share or shares in the capital or joint stock of any corporation or chartered company, and of any annuities or sums of money charged thereon, and of any ships and vessels, and of any reversionary interest in the public funds, and of any plate or jewels, and so in proportion for any greater or less sum of such purchase-money (a)

43 Geo. III., c. 69. 10*d.*—45 Geo. III., c. 30. 2*d.*—"For every 20*s.* of the purchase-money arising, or payable, by virtue of any sale at auction in Great Britain, of furniture, fixtures, pictures, books, horses and carriages, and all other goods and chattels whatsoever, and so in proportion of any greater or less sum of such purchase-money . . . 0 0 7"

"The duties to be paid by the auctioneer, agent, factor, or seller by commission."

Articles excepted from auction-duty.  
Piece goods.

By 29 Geo. III., c. 63, s. 1, 2. "No duty shall be paid for *piece goods* sold by auction wove or fabricated in this kingdom, which shall be sold entire in the piece or quantity as taken from the loom, and in lots of the price of 20*l.* or upwards; and so as the same be sold in no other than entered places, and openly shown and exposed at such sale."

Sect. 3. "And the auctioneer shall, besides the bond given on receiving his licence, give a further bond in 5000*l.*, with two sureties, that he will, within 14 days after every such sale, deliver an account thereof at the next Excise-office, and will not sell by auction any goods woven out of this kingdom, or woven in this kingdom, which shall not be sold in the entire piece, without payment of the proper duty."

By 41 Geo. III., U. K., c. 91, s. 8. "All corn and grain of every sort, flour and meal, and all *beef, pork, hams, bacon, cheese, and butter* imported into Great Britain shall be free of the duty on the first sale thereof by auction on account of the importer; so as the same be entered at some

(a) See *Sugden. V. & P.* 8th ed., 13. The sale by auction of assignments of dock rates, being a charge upon the docks, is the sale of an interest in land, and liable only to the duty of 7*d.* in the pound. Trustees under an act of parliament are liable to the duty, *R. v. Warmesley*, 8 *Price, R.* 180. The same point ruled as to sale by auctions of bonds, for securing money borrowed on parish rates, *The King v. Boote*, 3 *Price*, 341.

Where an agent of the owner at an auction for the sale of an estate put it up in so many lots at certain prices, and no person bidding for the same, he put it up again in fewer lots at other certain prices; and still no person bidding, he put it up altogether in one lot at a certain price, and on no person's bidding the estate was withdrawn from sale; it was held that this was not a bidding of the owner by an agent, so as to subject the party to the auction duty for want of a notice in writing to the auctioneer (previous to the auction) of such agency as required by the above statutes, in order to excuse the owner from the payment of the auction duty. *Cruce v. Cripe*, 3 *East*, 337. *Note*.—This decision was

on 19 Geo. III., c. 56, s. 12; and the 42 Geo. III., c. 93, was not adverted to.

But notwithstanding this case, it has been doubted whether, under such circumstances, the mention of an upset price, as it is termed, and then withdrawing the property from sale, does not make the vender a buyer in of the property, although there is not another bidder. *Walker's case*, 1 *Dow. Rep.* 114. Where property was put up at a certain price, and the agent who attended at the sale, finding that no bidder presented himself, stated to the persons assembled, that he was ready to treat for the disposal of the estate by private contract, and went into a private room with several of the company, and several offers being made, he engaged that the highest should be accepted, which was accepted accordingly; it was determined that a sale by auction had taken place within the meaning of the statute. *Id. ibid.* And where a female auctioneer sold an estate, and was silent all the time, but rewarded each bidder with a glass of brandy, and the person who had the last glass had the property, this was held a sale by auction. *Id. ibid.* See *Sugden. V. & P.*, 8th ed., 18, &c.

customhouse at the port of importation, and the sale thereof be within twelve months, and by a licensed auctioneer."

By 30 Geo. III., c. 26. "All goods imported by way of merchandise from Yucatan, and by 32 Geo. III., c. 41, all whale-oil (and by 41 Geo. III., U. K., c. 42, all elephant-oil produced from sea-cows or sea-elephants, and commonly called 'elephants' oil,') whale-bone, ambergris, and head-matter, and all skins of seals, and other animals living in the sea, and also elephants' teeth, palm-oil, dyeing-wood, drugs, and other articles for dyers' use, and all mahogany and other unmanufactured wood for the use of cabinet-makers and other manufacturers, imported in British ships from Africa, and (by 42 Geo. III., c. 93, s. 3,) America, or any British settlement abroad, (a) shall be free of the Excise-duty on the first sale thereof at auction, by or for the account of the original importer to whom the same were consigned, and by whom they were entered at the customhouse, so as such sale be made within twelve months after such goods are imported, and the same be sold by a licensed auctioneer."

By 19 Geo. III., c. 56, s. 13. "Nothing in this act shall extend to any sale by auction of estates or chattels made by order of the Court of Chancery or Exchequer, or courts of great sessions in Wales;

"Any sale made by the East India or Hudson's Bay companies;

"By order of the commissioners of Customs or Excise;

"By order of the board of ordnance;

"By order of the commissioners of the navy or victualling offices;"

Sect. 15, to "any such sales made by the sheriff, for the benefit of creditors, in execution of judgment;

"To sales of goods distrained for rent;

"To sales for non-payment of tithes;"

Sect. 15. "To sales of effects of bankrupts sold by assignees; (b)

"To goods imported by way of merchandise from any British colony in America, the same being of the growth, produce, or manufacture of such colony, on the first sale thereof, on account of the original importer to whom they were consigned, and by whom they were entered at the customhouse, so as such sale be made within twelve months after importation;" (see 59 Geo. III., c. 54, s. 3, *post*.)

"To any ships or their cargoes condemned as prize, and sold for the benefit of the captor;

"To any ships or goods wrecked or stranded, sold for the benefit of the insurers or proprietors;

"To the sale of any goods damaged by fire, and sold for the benefit of the insurers;"

Sect. 14. "To any auction to be held on the account of the lord or lady of the manor for granting any copyhold or customary messuages, lands, or tenements, for the term of a life or lives, or any number of years;"

(a) See the acts relating principally to plantation produce on its first sale after importation, 17 Geo. III., c. 50, s. 12; 42 Geo. III., c. 93, s. 3; 47 Geo. III., scs. 2, c. 65; 52 Geo. III., c. 53, s. 1; 28 Geo. III., c. 37, s. 12; 30 Geo. III., c. 26, s. 1; c. 29, s. 2; 32 Geo. III., c. 41; 41 Geo. III., c. 42.

(b) By the 6 Geo. IV., c. 16, s. 98, "and all sales of any real or personal estate of any bankrupt or bankrupts shall not be liable to any auction-duty." In the case of *The King v. Winstanley*, in *Exchequer*, 2 *Young & J.* 126, a sale by auction by assignees of a bankrupt, of the absolute interest on an estate in fee which was in mortgage, was held

not liable to the auction-duty, overruling *Coare v. Creed*, 2 *Esp. R.* 699; and the *King v. Abbott*, 3 *Price*, R. 178; but upon a writ of error in the Exchequer chamber, the chief justices *Lds. Tenterden and Best* differed in opinion, and the Lord Chancellor affirmed the judgment of the Court of Exchequer *pro forma*, in order that the question might be ultimately disposed of by the highest tribunal of the country. See *R. v. Winstanley*, 3 *Y. & J.* 126, A. D. 1829, a writ of error was brought in the House of Lords; and see the note in 3 *Young & J.* 128, extracted from *Sugden's Law of Vender and Purchaser*, 8th edit. 14, 15, with valuable suggestions.

**2. Auctions and Auctioneers.**

Goods from Yucatan, whale and other oils, wood, &c.

Further exceptions.

2. Auctions and Auctioneers.

Sect. 14. "To any auction to be held for the letting or demising any messuages, lands, or tenements, (a) for the term of a life or lives, or any number of years, to be created by the person on whose account such auction shall be held ;"

Sect. 14. "To the sale of any wood, coppice, produce of mines or quarries, or materials for working the same, or to the sale of any cattle, and live or dead stock, or unmanufactured produce of land,—so as such sale of woods, coppices, produce of mines or quarries, cattle, corn, stock, or produce of land may be made whilst they continue on the lands producing the same, and by the owner of such lands, or proprietor of or adventurer in such mines or quarries, or by their steward or agent." See also 17 Geo. III., c. 50, s. 11, 12, 13.

By 42 Geo. III., c. 116, s. 113, no auction duty is payable in respect of monies produced by sale of estates sold by auction for redemption of land-tax.

By 52 Geo. III., c. 53, s. 1. "All coffee imported in any British ship from any British colony in America shall be sold by auction free of the auction-duty, whilst the same shall remain in warehouses, under 43 Geo. III., c. 132, or any other act."

By 59 Geo. III., c. 54, s. 3. "All goods and effects imported in any ship built in the said United States of America, or condemned as prize there, and being owned and navigated as hereinbefore mentioned, shall and may be sold by auction free of auction-duty; but nothing herein shall authorize the sale of any such goods or effects free of the said duty unless on the first sale thereof by, or for the account of, the original importer by whom the same were entered at the customhouse at the port of importation, nor unless such sale shall be made within twelve months next after the time when such goods or effects shall have been so imported." (See *ante*, 19 Geo. III., c. 56, s. 15.)

By 5 Geo. IV., c. 75, s. 2. "All goods and effects imported under stat. 51 Geo. III., c. 47, into any part of the united kingdom, in any vessel built in any of the territories or dominions in the said act mentioned, or condemned as prize there, and being owned and navigated as in the said act is mentioned, shall be sold by auction free of auction-duty. Provided that nothing in this act shall authorize the sale of any such goods, so free of the said duty, unless on the first sale thereof, by or for the account of the original importer, by whom the same were entered at the customhouse at the port of importation, nor unless such sale shall be made within twelve months next after the importation."

"Provided, 19 Geo. III., c. 56, s. 12, (c) that if the real owner shall

Coffee imported from British colonies.

Certain imports from United States.

Goods of the Portuguese dominions imported under stat. 51 Geo. 3., c. 47.  
Proviso.

Buying in by the owner, exempt from duty, when and upon what terms. (b)

(a) A letting by auction of *tithes* is within this exemption. *The King v. Ellis*, 3 Price, 323.

(b) The terms must be strictly complied with, or the duty will attach. Therefore, where an auctioneer was employed to sell an estate, the lowest price of which was fixed by the owner, and written down by him on a piece of paper, which was put under a candlestick at the time of sale, with the privy of the auctioneer, but not signed by the owner, nor any notice in writing given to the auctioneer of the price so set down, nor and the auctioneer given the previous notice of the sale to the collector of the duty, as required by 19 Geo. III., c. 56, s. 12; 28 Geo. III., c. 37, s. 20; and 42 Geo. III., c. 93, s. 1; but being asked at the sale whether he had taken the proper precautions to avoid the duty

in case there was no sale, he said that it was his mode to fix a price under the candlestick, and if the bidding did not come up to that price it was no sale or duty. It was held that the duty attached though there was no sale, for want of taking the precautions required by the statutes under such circumstances, and that the auctioneer having been sued for the duty on his bond to the crown, and compelled to pay it, he could not recover it over from the owner; he having warranted that proper precautions had been taken to prevent the duty attaching in the event, though both parties were mistaken in the law. *Capp v. Topham*, 6 East, 392; 5 Esp. Rep. 1. See *Sugden's V. & P.* 8th ed. 18.

(c) See similar provisions, 17 Geo. III., c. 50, s. 10.

## II. PARTICULAR LAWS, &c. (2.) *Auctions and Auctioneers.*

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become the purchaser by his own bidding, or the bidding of any other on his behalf, without fraud or collusion, the commissioners, or authorized officers, shall make to the owner an allowance of the said duties; provided notice be given to the auctioneer before such bidding, both by the owner and person intended to be the bidder, of such person being appointed by the owner; and provided such notice be verified by the oath of the auctioneer, as also the fairness of the transaction, to the best of his knowledge and belief: in case of dispute, the proof of the fairness to lie upon the auctioneer."

28 Geo. III., c. 37, s. 20. "And whereas, by the said act, made in the nineteenth year of the reign of His present Majesty, it is also enacted, That in case the real owner of any estate, goods, or effects, put up to sale by way of auction, shall become the purchaser by means of his own bidding, or the bidding of any other person in his behalf or for his use, at such sale, without fraud or collusion, then and in such case the respective commissioners of Excise in Great Britain, and such collectors, supervisors, and other officers of Excise, as are thereby respectively authorized within their respective collections and districts to receive the said duties mentioned in the said act, are thereby authorized and required to make an allowance to such owner of the duties arising by that act upon such bidding, provided notice be given to the auctioneer before such bidding, both by the owner and the person intended to be the bidder, of the latter being appointed by the former, and having agreed accordingly to bid at the sale for the use and behoof of the seller, and provided such notice be verified by the oath of the auctioneer, as also the fairness and reality of the said transaction to the best of his knowledge and belief: and whereas it is expedient that no such allowance shall be made, unless such notice in writing be given as is hereinafter directed; be it therefore enacted by the authority aforesaid, that no such allowance shall be made unless notice in writing, signed by the owner and the person intended to be the bidder, of the latter being appointed by the former, and having agreed accordingly to bid at the sale for the use and behoof of the seller, shall have been given to the auctioneer before such bidding, nor unless such delivery of such notice shall be verified upon the oath of the auctioneer, as also the fairness of the transaction to the best of his knowledge."

By 42 Geo. III., c. 93, s. 1. "The allowance aforesaid shall be made to the owner of any estate, goods, or effects, in respect whereof the auction-duties shall not have been actually paid, and which have been or shall be put up to sale by way of auction, and bought in for the owner, either by his steward or known agent, actually employed in the management of such sale, or under a notice in writing, signed as well by him as by the person intended to be the bidder being appointed by the owner, and having agreed accordingly to bid for the use of the seller; provided, that no such allowance shall be so made unless notice in writing, signed by such steward or agent, of his being about to bid for such owner, shall have been given to the auctioneer before such bidding; such delivery to be verified by the auctioneer's oath, and also the fairness of the transaction to the best of his knowledge and belief."

And by 19 Geo. III., c. 56, s. 12, and 42 Geo. III., c. 93, s. 2. "No such allowance shall be made, unless, at the passing of his account, such notice be produced by the auctioneer; and if any dispute shall arise concerning the fairness of the transaction, the proof thereof shall lie on the auctioneer; and on failure therein, or in case of any unfair practice, no such allowance shall be made."

By 19 Geo. III., c. 56, s. 9. "The auctioneer, if it be within the limits of the chief office of Excise in London, shall give two days' notice at the said office, elsewhere three days' notice, to the collector or at the next Excise-office, in writing, signed by him, specifying the particular day when such sale shall begin; and shall, at the same time, or within twenty-four hours after, deliver a written or printed catalogue, attested and signed

### 2. *Auctions and Auctioneers.*

No allowances of duty to be made to purchasers of their own effects at auctions, unless prior notice of their having authorized a bidder be given to the auctioneer.

Notices to be produced by the auctioneer; and proof of fairness to lie on him.

Duty of auctioneer to give previous notice of the sale.

**2. Auctions and Auctioneers.**

To make declaration whether the sale took place.

Duty, how to be paid.

Account.

Payment.

Oath.

Penalty on auctioneers not paying duties on sales in the legal time, &c. double the duty, and forfeiture of bond.

by such auctioneer or his known clerk, in which catalogue shall be particularly enumerated every article, lot, parcel, and thing intended to be sold at such auction. And if he shall presume to make such sale without delivering such notice and catalogue, or sell any estate or goods not enumerated therein, he shall forfeit 20*l*."

By 32 Geo. III., c. 11. "Every auctioneer who shall have delivered such notice or catalogue, shall, within twenty-eight days (if within the limits of the chief office of Excise, elsewhere within six weeks), after the day specified in such notice for such sale, deliver at such chief office, or to the collector of Excise in whose collection such sale has been or was intended to be, a declaration in writing, setting forth whether or not any such sale had been or was opened, or begun, under such notice, or any article, lot, parcel, or thing contained in such catalogue was bid for or sold at such auction; and such auctioneer, or person acting as his clerk as aforesaid, shall make oath to the truth of such declaration before the said commissioners or collector, on pain of forfeiting 50*l*. for every neglect or refusal of delivering such declaration verified as aforesaid."

By 19 Geo. III., c. 56, s. 6. "The aforesaid duties shall be a charge upon the auctioneer, immediately upon knocking down the hammer, or other closing of the bidding."

Sect. 7, 8. "And he shall (in pursuance of his bond entered into at the time of his licensing), within twenty-eight days, if it is within the limits of the chief office of Excise in London, elsewhere within six weeks, deliver in an account in writing of the total amount of the money bid at each sale, and the several articles, lots, or parcels there sold, and the price of each :

"And shall at the same time make *payment* of the duties which he may retain out of the produce of the sale, or deposit made at such sale, or otherwise recover the same by action of debt, or on the case, against the person who employed him, or on whose account the goods were sold : (a)

"Every person so acting as auctioneer, or the person who acted as his clerk at such sale, if any, shall make *oath* to the truth of the account.

"If such auctioneer shall neglect to deliver in his account, or to make payment, or if it shall appear that it was not a true and just account, the commissioners may put his bond in suit, unless they shall find sufficient cause to forbear the same; and, in case of a verdict or judgment against him, the licence shall be void."

Sect. 10. "But if such auctioneer, not being within the limits of the chief office of Excise in London, shall not be prepared to deliver in his account to the collector within whose collection the notice was delivered, and such sale by auction made, he may deliver in his said account within six weeks after every such sale at the chief office of Excise in London, and at the same time deliver a true copy of the notice and of the catalogue delivered by him before to the collector; and if he shall neglect to deliver such copy of the said notice, or of the said catalogue, he shall forfeit 20*l*."

By 38 Geo. III., c. 54, s. 2. "Every auctioneer, who shall neglect or refuse to make payment within the time limited by law of any duty chargeable on sales by way of auction by him held, shall forfeit double the said duty; and in case within fourteen days next after such auctioneer shall have been convicted in such penalty, and execution or process shall have issued on such conviction to levy such penalty, he shall not have sufficient goods or chattels whereon to levy the whole of such penalty, and the same, or any part thereof, shall remain unpaid at the end of such fourteen days; or if it shall appear that he hath acted contrary to the true intent and meaning of his bond, the said commissioners may

(a) But not if he omits to observe the regulations of the act, or neglects to have a proper contract signed by purchaser, *Capp v. Topham*, 6 East, 392; 1 *M'Clk. Rep.* 25. *Sugd. F. & P.* 8th ed. 18.

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cause such bond to be put in suit against him and sureties, unless they shall see sufficient cause to forbear the same; and in case of a verdict against such auctioneer, his licence shall be void."

Sect. 3. "Whereas there is no provision at present to relieve auctioneers against any over-payment made, except in cases where sales are rendered void by reason of the person for whom sold having no title thereto, or no right to dispose thereof; for remedy thereof, if any auctioneer shall make any over-payment for or on account of the duty, he may complain within twelve months after such over-payment before the said commissioners or justices respectively within whose jurisdiction such sale was made, who, upon such complaint, may hear and determine the same, and examine witnesses upon oath on either side, and, on due proof, may relieve the party so complaining of so much of such payment as shall appear to have been overpaid."

By 19 Geo. III., c. 56, s. 16. "Every auctioneer who shall sell any estate, goods, or chattels that have been seized by the sheriff for the benefit of creditors in execution of a *judgment*, shall specify and enumerate in the catalogue, as well the particular estate and effects to be sold, as the exact sum to be levied under such execution; and the sheriff or under-sheriff shall subscribe and sign such catalogue, and certify at the foot thereof, that all the said estates and effects were really and truly the property of the person against whom such judgment was had, and that the same were actually seized in execution of the same judgment: And every auctioneer employed by the assignees under a commission of *bankruptcy* to sell the effects of any bankrupt shall likewise specify and enumerate, in the catalogue, the particular goods and effects then to be sold; (a) and the assignees, or assignee if only one, shall subscribe and sign such catalogue, and certify at the foot thereof, that all the estates and effects were really and truly the property of the said bankrupt at the time of suing out the commission; which respective catalogue, so signed and certified, shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *sheriff*, *under-sheriff*, or *assignee* shall insert or suffer to be inserted in such catalogue, any estate or effects other than such as were really and truly the property of the debtor or bankrupt, or shall not certify in the catalogue the true sum to be levied, he shall forfeit 20*l*."

Sect. 17. "And every auctioneer employed to sell any goods damaged by *fire* for the benefit of the *insurers* shall specify and enumerate in the catalogue the particular goods then to be sold; and the *insurers*, or the *insurer* if only one, shall subscribe and sign such catalogue, and certify at the foot thereof, that all the goods in such catalogue were really and truly sold for the benefit of the insurers; which catalogue so signed and certified shall be produced by the auctioneer to the person to whom he is to deliver his account, before he shall be permitted to pass his account, or to have the same allowed. And if such *insurer* shall insert or suffer to be inserted in the catalogue any goods other than such as were really and truly to be sold for the benefit of him or them as aforesaid, or shall not certify on the catalogue the true particular of the goods to be sold, he shall forfeit 20*l*."

Sect. 11. "If any sale of any estate, goods, or chattels shall be rendered void, by reason that the person for whose benefit they were sold *had no title to the same, or no right to dispose thereof*; (b) then it shall be lawful

### 2. *Auctions and Auctioneers.*

If auctioneers make over-payments of duties, they may complain to the commissioners of Excise, or justices where the sale was made, who may relieve them.

Proviso with respect to fraudulent sales of goods seized by the sheriff.

Goods damaged by fire.

Sale void for defect of title.

(a) 6 Geo. IV., c. 16, s. 98.

(b) See *Sugden, V. & P.* 8th edit. 20. This is construed strictly. If the duty be paid to Excise, and no convey-

ance afterwards can be obtained in consequence of defect of title or right to sell, then upon satisfactory proof before two magistrates for the district of the



## 2. Auctioneers and Auctioneers.

for the auctioneer who paid the duty for the thing so sold, or for the person for whose benefit the same was sold, to lay his complaint before the commissioners of Excise, or justices of peace, within whose jurisdiction such sale was made, (a) and they are required to hear and determine the same, and examine the witnesses upon oath; and thereupon, or by other due proof, to relieve the party of so much as shall be made out to have been overpaid."

sale not having been completed within twelve calendar months after the sale, if rendered void within that time, or otherwise within three months after the discovery of the vender having no title, (28 Geo. III. c. 37, s. 19, *post*, 363), and upon such proof being shown to the collector, the duty will be returned. But this only applies where vender had no title and no power to sell, and when the vender might produce a title, but refuses, then no return of duty can be obtained, *ex relatione Mr. Carr*, solicitor to the Excise, A. D. 1828. See also *Sugd. V. & P.* 8th edit. 20. where it is stated that the Commissioners of Excise will not allow the duty unless they think that the vender has used his utmost exertions to make a good title. An appeal however lies from the judgment of the Commissioners, but as the king never pays costs they fall on the vender, and in many cases would amount to more than the duty itself. *Id. ibid.*

## Consequences of employing puffers.

These exceptions are merely revenue regulations, and do not, as between vender and purchaser, necessarily legalize the secret employment of puffers at a sale; and secret puffing will in some cases vitiate a sale.

The following valuable observations on this subject are from *Sugden's Law of Vender and Purchaser*, 8th ed. pp. 20-27.

"In *Bearewell v. Christie*, (H. 16 Geo. III.; *Cowp.* 395), Lord Mansfield and the other judges of B. R. followed the rule of the civil law, and treated a private bidding, by or on the behalf of the vender, as a fraud; but the legislature, by the subsequent statutes, imposing a duty on sales of estates by auction, seems to have been of a different opinion, and even to have sanctioned it. Lord Rosslyn, who was present at the making of the act, remarked, in the case of *Conolly v. Parsons*, that (see 3 *Ves. jun.* 628) the acts of parliament go upon its being an usual thing and a fair thing for the owner to bid. The pressure, when the tax was imposed, was by embarrassing people who chose to dispose of their goods by auction, if they chose to be pur-

chasers, by the tax falling upon them. His lordship added, that he thought it would have occurred either to Lord Thurlow or to him, when the exception in favour of the owner was proposed, that the case would not exist, as the owner could not be a bidder; or that, for his attempting to do what he could not by law, it would be just that he should pay the duty. It was very wrong to the public to let that clause stand, if at the time it was understood that the owner bidding was doing an illegal thing. The acts do not require an open notice, but only a private notice to the auctioneer, and an oath to prevent the setting up a bidding for the owner that the bidder might evade paying the duty.

"Lord Kenyon, however, in the case of *Howard v. Castle*, where the purchaser was the only real bidder, and there were several puffers (36 Geo. III.; 6 *Term Rep.* 642. See *Twining v. Morris*, 3 *Bro. C. C.* 326; and see 3 *Term Rep.* 93, 95.), clearly coincided with Lord Mansfield's opinion, and held, that unless it was publicly known that the owner intended to bid, it was a fraud upon the purchaser, and consequently no action would lie against him for non-performance of his agreement. The acts of parliament, he thought, did not intend to interfere with this point, but to leave the civil rights of mankind to be judged of as they were before. And *Grose, J.*, also expressed his opinion, that the doctrine was not in the least impeached by the acts of parliament.

"But in the case of *Conolly v. Parsons* (3 *Ves. jun.* 625, n.), Lord Rosslyn said, he fancied the foregoing case turned on the circumstance that there was no real bidder; and the person refused instantly. It was one of those trap auctions which are so frequent in the city. The reasoning went large, certainly, and did not at all convince him. He said, he should wish it to undergo a re-consideration; for if it was law, it would reduce every thing to a Dutch auction, by bidding downwards. He felt vast difficulty to compass the reasoning, that a

(a) See note (b), *ante*, 359.

By 51 Geo. III., c. 95, s. 1. "The commissioners of Excise or justices, before whom any such complaint shall have been so laid [under stat. *Auctions and Auctioneers.*]

person does not follow his own judgment because other persons bid; that the judgment of one person is deluded and influenced by the biddings of others. The facts of the case of *Conolly v. Parsons* do not appear in the report; but I learn, that there was a contest between real bidders, after the person employed to bid on the part of the venders had desisted from bidding. The suit was compromised by the purchaser paying a considerable sum of money to the vender to release him from the contract; and consequently Lord Rosslyn did not give judgment; but it seems he was clearly of opinion that the sale was valid.

"And in the later case of *Bramley v. All*, (3 *Ves. jun.* 620.), where an estate was put up to sale by public auction, and an agent for the vender bid to 75*l.* an acre, without public notice of his intention to do so; and after a contest with real bidders the estate was bought at 101*l.* 17*s.* an acre; Lord Alvanley, then master of the rolls, decreed a specific performance with costs. And he concurred with Lord Rosslyn in considering the case of *Howard v. Castle* only as a decision, that where all the bidders except the purchaser are puffers, the sale shall be void.

"In the last case on this subject, (*Smith v. Clarke*, 12 *Ves. jun.* 477.), it appeared, that assignees of a bankrupt had put up the estate to sale by auction. It was proved that a bidder was employed on their parts to bid up to, but not to exceed, 750*l.*, the sum for which the estate was actually sold. The master of the rolls held, that the assignees had not committed any fraud; they did not employ the bidder for the purpose, generally, of enhancing the price, but merely to prevent a sale at an undervalue, and they stated, previously, what they conceived to be the true value, below which the lot ought not to be sold. His honour treated the case of *Howard v. Castle* as having proceeded on the ground of plain and direct fraud; and said, that in a similar case he should come to a similar conclusion.

"Upon the whole, then, it is clearly settled, that one bidder may be privately appointed by the owner in order to prevent the estate from being sold at an undervalue. And it has been decided, that if there were real bidders at a sale, it must be supported, although the bidding immediately preceding that of the purchaser was fictitious; (*Smith v. Clarke*,

12 *Ves. jun.* 477.), and where public notice has been given, the contract will be binding on the purchaser, although there was no contest between real bidders; but only the purchaser and the person employed to bid, bid against each other. (*Oldfield v. Round*, 5 *Ves. jun.* 508.) It should seem that the rule would be the same, even where public notice had not been given, provided the bidder was appointed only to protect the vender's interest.

"But it seems, that where the person is employed, not for the defensive precaution, with a view to prevent a sale at an undervalue, but to take advantage of the eagerness of the bidders to screw up the price, that will be deemed a fraud. (See 12 *Ves. jun.* 483. In *Fitzgerald v. Forster*, 31st July, 1813, the vice-chancellor seemed rather to be of opinion that the appointment of one puffer was, in no case, bad; but see *Crowder v. Austin*, 3 *Bing.* 368, *contra.*)

"Neither do the cases authorize the vender to appoint more than one person on his behalf. It seems highly proper that a vender should be permitted to appoint a person to guard his interests against the intrigues of bidders; but it does not follow that he may appoint more than one. The only possible object of such a proceeding is fraud. It is simply a mock auction; and, notwithstanding Lord Rosslyn's impression, it is universally felt and acknowledged, that the judgments of most men are deluded and influenced by the biddings of others. As far as any aid is sought from the auction-duty acts, in support of private biddings on behalf of the owner, it is clear that they do not authorize or sanction the appointment of more than one person. In the report of *Conolly v. Parsons* it is stated, that persons were employed to bid, and did bid, for the venders; but the fact is, that one person only was employed by them, and actually bid on their behalf. The master of the rolls observed, in the late case of *Smith v. Clarke*, that he did not see, that if several bidders were employed by the vender, in that case, a Court of equity would compel the purchaser to carry the agreement into execution; for that must be done merely to enhance the price. It was not necessary for the defensive purpose of protection against a sale at an undervalue. (See 12 *Ves. jun.* 483; and see 8 *Term. Rep.* 93. 95.)

## 2. Auctions and Auctioneers.

Commissioners or justices relieving under 19 Geo. 3, c. 56, s. 11, to grant warrants to Excise collectors to pay complainant the sums overpaid.

19 Geo. III., c. 56, s. 11.], and by whom the same shall have been so determined, and such relief given, shall grant their warrant, (a) directed to the proper collector of Excise, authorizing and requiring him to allow and pay to the party so complaining and relieved, out of the duties on sales at auction which shall next come to the hands of such collector, the full amount of such payment as shall be so made out before them to have been overpaid."

"In the last case upon this subject, Lord Tenterden held clearly that the sale was void in point of law, as two persons had been employed to bid, although they were both limited not to go beyond the same fixed sum. The current of authority, therefore, is clearly against the validity of such a sale. (*Wheeler v. Collier*, 1 Mood. & Malk. 123.)

"In the same case, the learned judge also expressed his opinion, that if only one person be appointed to bid, with a view to save the auction-duty, the sale is void, unless it be announced that there is a person bidding for the owner. The act itself is fraudulent; the statute was made for a different purpose, with a view to the duty only, and cannot be made to sanction what is in itself fraudulent.

"But the authorities, as we have seen, appear to have conclusively settled, that one person may, without public notice, be appointed to bid, in order to prevent a sale at an undervalue.

"But although an original purchaser will not be bound where a fraud has been practised in the biddings, yet if he transfer his contract, a strong case of fraud must be made out against the original purchaser, to enable the Court to give the benefit of it to his assignee, who was not induced through competition to give the price. (See 12 Ves. jun. 484.)

"If the particulars or advertisements state (as they frequently do), that the estate is to be sold *without reserve*, it seems clear that the sale would be void against a purchaser, if any person were employed as a puffer, and actually bid at the sale. This was actually decided in the late case of *Meadows v. Tanner*. (5 Madd. 34.) The vice-chancellor said, that the plain meaning of the words *without reserve*, in a particular of sale, is, that no person will be employed to bid on behalf of the vender for the purpose of keeping up the price; and that the vender could have no claim to the aid of a Court of equity to enforce a contract against the purchaser, into which he

might have been drawn by the vender's want of faith.

"It is generally understood, that some person will bid on the part of the owner; and it therefore seems to deserve consideration, whether it would not, in most cases, be advisable to give public notice of the owner's intention previously to the sale. Where public notice is given, the mode least liable to objection seems to be that of reserving a bidding, or stipulating in the conditions of sale, that the owner may bid once in the course of the sale. (See *Cowp.* 397.) It may here, however, be proper to observe, that buying-in an estate, especially where it is done without public notice, mostly prejudices a future sale. This was exemplified in the sale of an estate before one of the masters in Chancery, where 23,000*l.* was *bond fide* bid, and the estate was bought in by the agent of the vender; afterwards there were three other sales in the master's office; and the consequence of the estate having been bought-in deterring others from bidding, was, that on the two first occasions no more was offered than 12,000*l.* and 6,000*l.*; and the estate was finally sold for 15,000*l.* (See 6 Ves. jun. 629; *Wren v. Kirtton*, 8 Ves. jun. 502; and see *Twining v. Morris*, 2 Bro. C. C. 326.)

"On the other hand, if a purchaser by his conduct deter other persons from bidding, the sale will not be binding. Thus, where upon a sale by auction of a barge, a bidder addressed the company present, saying he had a claim against the late owner, by whom he said he had been ill-used, whereupon no one offered to bid against him; but the auctioneer refusing to knock down the property to a single bidding, a friend of the bidder's bade a guinea more, and the first bidder then made a second and higher bidding, amounting, however, to only one-fourth of the prime cost of the barge; it was held that there was no legal sale. (*Fulker v. Abrahams*, 3 Brod. & Bing. 116.)"

## Form of Warrant.

(a) Form of warrant to repay the auction-duty where a sale becomes void for defect of title, pursuant to stat. 19 Geo. III., c. 56, s. 11.

County of } To the collector of Excise for the collection for the time  
to wit. } being.

Whereas complaint hath been made before us whose names are hereunto subscribed,

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But by 28 Geo. III., c. 37, s. 19. "All such complaints shall be laid within twelve calendar months after such sale, if the same be rendered void as aforesaid within the time; but if otherwise, then within three calendar months after the discovery of such defect of title, and not otherwise."

Finally, by 19 Geo. III., c. 56, s. 18; 43 Geo. III., c. 130, s. 2, and 55 Geo. III., c. 30, s. 9, "all fines, penalties, and forfeitures shall be sued for, recovered, or mitigated as by the laws of Excise, or sued for in the courts at Westminster; and be distributed (all necessary charges first deducted), half to the king, and half to him that shall sue." See general act 7 & 8 Geo. IV., c. 53, *ante*, 226 to 310.

### 2. *Auctions and Auctioneers.*

Limitation of time for obtaining return of duty.

Levying forfeitures.

### (3.) *Beer and Brewers.*

(3.) *Beer and Brewers.*

See 6 Geo. IV., c. 81; 7 & 8 Geo. IV., c. 52; 1 W. IV., c. 51, and c. 61. *Vide Ale, Beer, and Brewers, ante*, 311 to 352; and *tit. Malt, post*.

### (4.) *Bricks and Tiles.*

(4.) *Bricks and Tiles.*

[17 Geo. III., c. 42; 24 Geo. III., sess. 2, c. 24; 25 Geo. III., c. 66; 27 Geo. III., c. 13; 28 Geo. III., c. 37; 34 Geo. III., c. 15; 42 Geo. III., c. 93; 43 Geo. III., c. 69; 45 Geo. III., c. 30; 46 Geo. III., c. 138; 55 Geo. III., c. 176; 1 & 2 Geo. IV., c. 102; 5 Geo. IV., c. 75; 6 Geo. IV., c. 111; 7 & 8 Geo. IV., c. 53.]

The 43 Geo. III., c. 69, *sched. (A.)*, and the 48 Geo. III., c. 30, imposed new duties in lieu of any duties of Excise then subsisting.

Duty.

#### Bricks and Tiles, Schedule A.

"For every thousand of bricks which shall be made in Great Britain, not exceeding any of the following dimensions, (that is to say) ten inches long, three inches thick, and five inches wide	£.	s.	d.
	0	0	10
"For every thousand of plain tiles which shall be made in Great Britain	0	0	10

#### Schedule B. (Drawbacks.)

"For every thousand of bricks made in Great Britain, not exceeding any of the following dimensions, (that is to say), ten inches long, three inches thick, and five inches wide, for which all the duties imposed in respect thereof shall have

two of His Majesty's justices of the peace, acting in and for the said county, by A. B., auctioneer, that an estate at \_\_\_\_\_, in the said county, was sold on the \_\_\_\_\_ day of \_\_\_\_\_ last, by auction, for the benefit of S. T., and the duty of Excise arising from such sale, amounting to \_\_\_\_\_ l., hath been paid to you, the said collector of Excise, for the collection aforesaid: And it hath been since discovered, that the said S. T. hath no title or right to dispose of the same estate, or any part thereof, the selling of the premises having this day been made to appear to us the said justices, by the bills of the said A. B., the auctioneer, and the said S. T.: And this complaint having been made within one year after sale, or within three months after discovery was made that the said S. T. had no right to dispose of the said estate, or any part thereof. These are, therefore, to authorize and require you, the said collector of Excise as aforesaid, to repay to the said A. B., auctioneer as aforesaid, the said sum of \_\_\_\_\_ l., so paid by him to you as aforesaid; and for your so doing, this shall be unto you a sufficient warrant. Given under our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

## 4. Bricks and Tiles.

been paid, and which shall be duly exported as merchandize to foreign parts

0 0 10

"For every thousand of plain tiles which shall be made in Great Britain, for which all the duties in respect thereof shall have been paid, and which shall be duly exported as merchandize to foreign parts . . . . . 0 0 10"

The said duties on bricks and tiles to be paid by the maker or makers thereof respectively.

For the duties on importation, see the *Schedule* annexed to the 6 Geo. IV., c. 111.

	£.	s.	d.
Bricks or clinkers, the thousand . . . . .	1	2	6
Tiles of all sorts, for every 100 <i>l</i> . of the value . . . . .	50	0	0

All bricks made for sale to be 8½ inches long, 2½ thick, and 4 wide; and all pantiles 18½ inches long, 9½ wide, and half an inch thick.

Bricks made for sale were required, by 17 Geo. III., c. 42, (partly for the security of the revenue, and partly for the protection of the buyer), to be made of at least certain dimensions. (a) It was enacted, "that, from and after the 1st day of July, 1777, all bricks which shall be made or burnt for sale in any part of England shall, when burnt, be not less than eight inches and a half long, and not less than two inches and a half thick, and not less than four inches wide; and that all pantiles which shall, from and after the said 1st day of July, 1777, be made for sale in any part of England, shall, when burnt, be not less than thirteen inches and a half long, and not less than nine inches and a half wide, and not less than half an inch thick."

Penalty on making bricks or tiles of less dimensions.

Sect. 2. "That all and every person and persons, who, at any time or times from and after the said 1st day of July, 1777, shall make any bricks or pantiles for sale, which, when burnt, shall be of less dimensions in length, breadth, or thickness, than the same are hereinbefore prescribed to be, shall forfeit and pay the sum of 20*s*. for every thousand of bricks, and the sum of 10*s*. for every thousand of pantiles, and so proportionably for a greater or lesser number of bricks or pantiles that shall be so made for sale, contrary to the true intent and meaning of this act."

Exemptions. Tiles for draining lands.

34 Geo. III., c. 15, s. 2. provides, "that tiles made for the sole purpose of draining land, 19½ inches long by 13½ inches broad, and bent into a semi-elliptical form, the inside of the crown of the arch thereof being not less than seven inches perpendicular, from a straight line drawn from the one to the other side thereof, after the same is so bent, and such sides not being at any part thereof more than five inches distant from each other on the inside, and as nearly of the dimensions, and bent as nearly into the form aforesaid as may be, to be used for the purposes aforesaid, shall not be subject to any of the said duties."

And by 42 Geo. III., c. 93, s. 22. "The exemption is extended to tiles made for such purpose not less than nine inches long, such being in every other respect of the same description and dimension as before prescribed."

And by 46 Geo. III., c. 138, s. 3, it is further enacted, "that semi-elliptical tiles not exceeding in inside width six inches, and the height of which from the outside of the crown of the arch in a perpendicular line to the extreme edge shall in all cases exceed the width, but with a foot from the bottom of the arch where necessary, not exceeding two inches in breadth, for the purpose of keeping up the tiles in loose soils, made for draining wet or marshy lands, shall be exempted from the Excise duty."

(a) Therefore where a vender sold and delivered bricks under the statuteable size, it was held that he could not recover the price, although the buyer had

received and used them. *Law v. Hodgson*, 11 East, 300; *Langton v. Hughes*, 1 M. & S. 596.

And by s. 4. "Any person using any such tile for any other purpose than above mentioned, incurs the penalty of 6d. for each tile so used."

By 55 Geo. III., c. 176, it is enacted, "that it shall be lawful to and for any person or persons whatever to make, for the sole purpose of serving for the foundations or support of tiles bent into the semi-elliptical form prescribed by stat. 34 Geo. III., c. 15, or as nearly into the said form as may be, and of the dimensions and lengths allowed by the said act and stat. 42 Geo. III., c. 93, to be used for the purpose of draining wet or marshy lands, flat tiles not exceeding one inch in thickness, each thereof having at one end a semicircular projection, and at the other a semicircular arch or indent, such projection and arch being portions of circles of equal diameters, and each such tile being also not less than nine inches in length and not exceeding seven inches in breadth, such flat tiles being also perforated with circular holes, each thereof being not less than two inches in diameter, and the sum of the areas of such holes in each such flat tile amounting to not less than a quarter part of the surface or superficial content of such flat tile, and no such flat tile being fit or proper for the purpose of being used in building, or in the roof or covering of any house, shed, or other building whatever, without being charged or chargeable with any duty for or in respect of such flat tiles."

By 1 & 2 Geo. IV., c. 102, s. 2, after reciting stat. 55 Geo. III., c. 176, it is enacted, "that it shall be lawful for any person to make flat tiles for the sole purpose of serving for the foundations or support of such semi-elliptical tiles as shall be made and applicable and fit for the sole purpose of draining wet or marshy lands, and no such flat tile being fit or proper for the purpose of being used in building, or in the roof or covering of any house, shed, or other building whatever, or otherwise than as aforesaid, without being charged or chargeable with any duty for such flat tiles."

5 Geo. IV., c. 75, s. 9, for the giving further encouragement to the draining wet and marshy lands, enacts, "that from the 17th June, 1824, it shall be lawful for any person or persons to make tiles or bricks for the sole purpose of draining wet or marshy land, without being charged or chargeable with any duty for or in respect thereof: Provided always, that all such tiles and bricks shall be made upon the land for the draining of which they shall be used, or within a quarter of a mile of such land; and that if any such tiles or bricks shall be used in the erecting, or in the roofing or covering of any house, shed, or other building, or otherwise than for such purpose of draining as aforesaid, the same shall be charged and chargeable with the duty, in like manner as other tiles or bricks are chargeable under any act or acts in force immediately before the passing of this act."

By 24 Geo. III., sess. 2, c. 24, s. 4. "Every maker of bricks or tiles, before he begins to make, shall give or leave notice in writing at the next Excise office of his name and place of abode, and of the sheds, work-houses, or other places where he intends to make such bricks or tiles, on pain of 100l."

Sect. 5, 11, 14. "All bricks or tiles chargeable with the said duties shall be taken account of, and charged by the officer whilst they are drying, after of being turned out of the moulds, and before removed to the kiln or clamp for burning, for which purpose any officer may enter into the fields, sheds, or other places where making, and take an account thereof in writing, and leave a copy (if demanded) with such maker, on pain of 40s.; and if any person shall obstruct such officer, he shall forfeit 50l."

Sect. 6. "The officer in charging the duty shall allow ten for every 100 when charged in the field before burnt, in compensation for all waste, loss, or damages."

And by 25 Geo. III., c. 66, s. 2. "If the maker shall remove any bricks or tiles to the kiln, clamp, or other place for burning, from or out of the

**4. *Bricks and Tiles.***

Penalty.  
Tiles may be made for draining duty-free.

Flat tiles for the foundation of semi-elliptical tiles used for draining lands exempted from duty.

Tiles or bricks may be made for draining land duty-free, provided they are made on such land or within a quarter of a mile of it.

Notice to be given.

When the duty shall be charged.

Obstructing the officer.

Allowance for waste.

Not to be removed until the officer has charged the duties.

## 4. Bricks and Tiles.

Bricks, &c. not surveyed to be kept separate.

To be properly placed whilst drying.

Concealing to evade the duty.

Makers to give an account every six weeks, and to clear off the duty.

Utensils liable.

Bricks, &c. may be exported, duty free.

Penalties, how to be recovered.

field or place where they shall be put to dry, before the officer shall have taken an account thereof, he shall forfeit 50*l*. And all so carried away, and found in the possession of any maker or trader therein, or person for his use, shall be forfeited, and may be seized, or the value thereof, and shall be recovered, one moiety to the king, the other to the informer."

24 Geo. III., sess. 2, c. 24, s. 8, provides, "that no such maker shall be subject to the said penalty, if the officer shall fail to take an account on due notice given him three days before such removal."

By 25 Geo. III., c. 66, s. 3. "The maker shall keep the bricks and tiles unsurveyed separate from those that have been surveyed; on pain of forfeiting 50*l*."

Sect. 4. "And such maker shall, while the same are drying, place them in such manner as the officer may easily and securely take an account thereof; and if he shall place them in any irregular or unusual manner, with intent to make it difficult or unsafe for the officer to take such account, he shall forfeit 50*l*."

By 24 Geo. III., sess. 2, c. 24, s. 10. "If any maker shall fraudulently conceal or hide any bricks or tiles in any part of the operation of making, with intent to defraud the duties, he shall forfeit the same, and also 20*l*."

Sect. 12, 13. "Every such maker shall once in every six weeks make entry in writing upon his oath, or on the oath of his chief workman, at the next Excise office, of all bricks and tiles by him made within that time, distinguishing the kinds, and specifying the names and abodes of the owner, if such maker be not the owner, on pain of 50*l*., and shall, within six weeks after such entry, clear off all the duties then due thereon, on pain of double duty. And if any person shall carry away such bricks or tiles before the duty be cleared off, he shall forfeit double the value thereof. But such maker shall not, for making such entry, be obliged to go further than the next market-town."

Sect. 15. "And all tools, implements, and utensils used in making such bricks or tiles, in custody of such maker, shall be liable to be seized for any debts or penalties (arising or incurred under this act), whether the debtor or offender be the lawful owner thereof or not." See stat. 28 Geo. III., c. 37, s. 21.

Sect. 16, 17, 18. "Bricks or tiles for which the duties have been paid may be exported, and on security given before the shipping thereof that the same shall not be re-landed, the person exporting the same shall be allowed a drawback on such duties; and in case such bricks or tiles shall be re-landed, the same shall be forfeited to the use of His Majesty over and above the penalty of such bond." See 27 Geo. III., c. 13, sched. (F.)

By s. 21. "All penalties and forfeitures are to be sued for, levied, and mitigated as by the laws of Excise or in the Courts at Westminster, and to be distributed half to the king, and half to him that shall sue."

[See the general provision of 7 & 8 Geo. IV., c. 53, *ante*, p. 227 to 310.]

## (s.) Candles.

## (5.) Candles.

[8 Ann. c. 9; 10 Ann. c. 26; 11 Geo. I., c. 30; 12 Geo. I., c. 28; 23 Geo. II., c. 21; c. 24; 24 Geo. II., c. 40; 26 Geo. II., c. 32; 5 Geo. III., c. 43; 10 Geo. III., c. 44; 24 Geo. III., sess. 2, c. 11; c. 30; c. 36; c. 41; 25 Geo. III., c. 74; 26 Geo. III., c. 77; 27 Geo. III., c. 31; 28 Geo. III., c. 37; 42 Geo. III., c. 93; 43 Geo. III., c. 69; 49 Geo. III., c. 98; 53 Geo. III., c. 103; 55 Geo. III., c. 30; 59 Geo. III., c. 32; c. 90; 3 Geo. IV., c. 27; 6 Geo. IV., c. 81; 6 Geo. IV., c. 111.]

Makers of wax or spermaceti or common candles for sale, to be licensed annually.

By 6 Geo. IV., c. 81, s. 2, *ante*, 217. "Every maker of wax candles or spermaceti candles for sale shall annually take out an Excise licence, and pay for the same the annual sum or Excise-duty of 5*l*. And every

chandler, or maker of candles for sale, other than wax or spermaceti candles, shall also annually take out an Excise licence, and pay for the same the annual sum or Excise duty of 2*l*."

5. *Candles.*

But persons in partnership need only take out one licence for one house. 6 Geo. IV., c. 81, s. 7. *Ante*, 250.

Persons in partnership only one licence.

See the several general regulations respecting the duties, licences, penalties, &c. &c. in statute, *ante*, 249 to 262.

By 25 Geo. III., c. 74, s. 25. "No person residing within the limits of the head office shall be permitted to make candles, unless he occupy a tenement of 10*l*. a year, and for which he shall be assessed in his own name, and shall also pay to the parish rates; elsewhere, unless such person shall be assessed and pay to church and poor where he resides. And no entry made shall avail any person for any longer time than he shall be qualified as aforesaid."

Makers of candles to be rated.

By 43 Geo. III., c. 69, *sched. (A)*. "In lieu of any subsisting duties of Excise, other duties are imposed." Duties.

Schedule A. *Candles.*

For every pound weight avoirdupois of candles of tallow and other candles whatsoever, except wax and spermaceti candles, which shall be made in Great Britain	£. s. d.
	0 0 1
For every pound weight avoirdupois of candles which shall be made in Great Britain, of wax or of spermaceti, or which are usually called or sold for either wax or spermaceti candles, notwithstanding the mixture of any other ingredients therewith	0 0 3½
The said duties on candles to be paid by the makers thereof.	

And for the duties on importation, see the schedule annexed to the act 6 Geo. IV., c. 111.

Candles, <i>viz.</i>	£. s. d.
— Spermaceti, the lb.	0 2 6
— Tallow, the cwt.	3 3 4
— Wax, the lb.	0 2 6

By 24 Geo. III., sess. 2, c. 11, s. 10. "All powers given to the Excise officers or other persons by former acts, to compound with any person for the duties on candles, were determined."

Compounding abolished.

"The said duties not to be charged on such small rushlights as shall be made by any persons to be used in their own houses only; so as none of them be sold or delivered out or made for sale, and so as they be once only dipped in or once drawn through grease or kitchen-stuff, and not at all through any tallow melted or refined." 8 *Ann.*, c. 9, s. 31.—24 Geo. III., sess. 2, c. 11, s. 5.

Rushlights excepted.

"During the continuance of the duties upon candles, no person shall use in the inside of his house any lamp, wherein any oil or fat (other than oil made of fish within Great Britain) shall be burned for giving light, on pain of 40*s*." 8 *Ann.* c. 9, s. 18.

Oil not to be used instead of candles.

Sect. 6. "No maker of candles shall erect, set up, alter, change, or use any melting-house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of candles, or for the melting or keeping any wax, tallow, or other materials proper to be made into candles; or use any copper, furnace, moulds, or other vessel for melting wax, tallow, or other materials to be made into candles; without notice thereof being first given in writing at the next office of Excise, on pain of 50*l*."

Places for making candles to be entered. (a)

(a) See form of entry, *ante*, 236, in notes.



5. *Candles.*

Sect. 17. "And all candles, wax, tallow, and other materials for making candles, which shall be found in any private melting-house, workhouse, or other place, and all private coppers, furnaces, and other vessels, for which no entry shall be made, or notice given, shall be forfeited, or the value thereof."

By 11 Geo. I., c. 30, s. 23. "If any maker of candles shall use any melting-house, shop, or other place for making or keeping candles, or for melting or keeping wax, tallow, or other materials, or use any copper, furnace, or other vessel for melting the same, or any moulds or other utensils for making of candles, without having made entry thereof in writing at the next Excise office, he shall forfeit 100*l.* for every such melting-house or other place, and for every such copper," &c.

By 59 Geo. III., c. 90, s. 7. "Every melter of tallow, fat, grease, or kitchen stuff, not being an entered maker of candles, shall give notice in writing at the office of Excise of every house, workhouse, room, and place made use of for the melting, rendering, or keeping of any tallow, fat, grease, or kitchen-stuff, within the limits whereof such house, &c. shall be situate, before he shall so make use of any such house, &c.; and it shall be lawful for any officer of Excise to enter every house, workhouse, room, and place, entered or made use of by any melter of tallow, fat, or grease, for the melting, rendering, or keeping of tallow, fat, grease, and kitchen-stuff, and to survey and take an account of all tallow, fat, grease, and kitchen-stuff, and other materials, in the possession of any melter, and to take any sample thereof, not exceeding one pound for each such sample, paying for the same at the current value thereof; and if any melter shall use any house or place for the melting, &c. of any tallow, fat, grease, or kitchen-stuff, without having first made entry of such house, workhouse, room, and place, at the office of Excise within the limits where the same shall be situated; or if any such person, not being an entered soap-maker, shall have in his possession any barilla, kelp, black ashes, or any lees, ley or lye; or if any such person shall at any time obstruct or hinder any officer of Excise from entering any house, workhouse, room, or place, entered or made use of by any melter of tallow, fat, grease, or kitchen-stuff, for the melting, rendering, or keeping of any tallow, &c., or from inspecting, surveying, or taking an account or sample of any tallow, fat, grease, or kitchen-stuff, or other materials, barilla, kelp, black ashes, lees, ley or lye, in the possession of any melter, such melter so offending shall for every offence forfeit the sum of 200*l.*; and all barilla, kelp, black ashes, lees, ley or lye, found in the possession of any such person, not being an entered soap-maker, shall be forfeited, and may be seized by any officer of Excise."

By 8 Ann, c. 9, s. 10. "The officer shall at all times, and if in the night then in the presence of a constable, be permitted on his request to enter the house, melting-house, warehouse, or other place belonging to or used by any maker of candles; and by weighing or tale of the candles, or otherwise, to take an account of the quantity; and shall thereof make a return in writing to the commissioners, or to whom they shall appoint; leaving a true copy of such report, under his hand, with or for the maker; and if he shall refuse or neglect to leave such copy (on demand thereof made in writing, 12 Geo. I., c. 28, s. 30,) he shall forfeit 40*s.*"

By 11 Geo. I., c. 30, s. 24. "The officer, between five in the morning and eleven in the evening, with or without a constable, and between eleven in the evening and five in the morning with a constable, shall be permitted on request to enter and search; and all chests and other like things locked up shall on his request be opened: on pain that every person obstructing or molesting him shall forfeit 100*l.*"

By 24 Geo. III., sess. 2, c. 11, s. 7. "But the officer shall at all times, by day or by night, be permitted, upon his request, to enter into the house, warehouse, melting-house, or other place whatsoever belonging to

Melters of tallow, not being entered candle-makers, to give notice to officer of places to be used for melting.  
Officer to enter and take an account.

Barilla, &c. not allowed unless in a soap-maker's premises.  
Officer not to be obstructed.

Penalty 200*l.*

Officer to enter and take account.

or used by any maker of candles, in like manner as such officers might, before have done in the daytime." (5.) *Candles.*

But by 27 Geo. III., c. 31, s. 20. "No officer shall enter such work-house or place between the hours of *eleven* at night and *five* in the morning without the presence of a constable or peace-officer, unless such maker shall have any course or making of candles unfinished or in operation; or shall have any legal notice depending of his intention to make between those hours; or shall have made any preparation for making any course or making of candles."

Exception.

Sect. 18. "No entry shall be deemed to be withdrawn whilst any duty shall be depending and unpaid, or any copper, furnace, or other utensil shall be standing in any such melting-house, workhouse, warehouse, storehouse, shop, room, or other place."

Whilst any duty unpaid, no entry deemed withdrawn.

By 11 Geo. I., c. 30, s. 25. "If the officer, on searching any unentered house or place, shall find candles either made or making, or tallow or other materials, melting or melted, or cottons or rushes spread, or any copper, mould, or other utensil warm with tallow or other materials, this shall be sufficient evidence to convict the offender in the penalty of 100*l.* for having used the same not being entered."

Finding candles, &c. in unentered places.

Sect. 26. "And leaving a summons at the place where the discovery was made, directed to the person prosecuted by his right or assumed name, shall be deemed as effectual as if personally delivered to him, and by his proper name." *Vide ante*, 287.

Summoning offenders.

By 10 Ann. c. 26, s. 106, 107; 11 Geo. I., c. 30, s. 27; 24 Geo. III., sess. 2, c. 11, s. 9. "Every maker of candles for sale shall, before he begins to work upon, make, or dip any course or making of candles, not being mould candles [but by 24 Geo. III., sess. 2, c. 11, s. 9, the exception of *mould candles* is taken away], or make preparation for the same, give notice in writing to the officer of such his intention, and declare the time of the day or night when he intends to begin, and the number of sticks of which such making is intended to consist, and the size and number of candles on each stick, and the number and size of the moulds he intends to fill and draw, and how often they are intended to be filled and drawn in each making; and in default thereof, or if he have at such making more sticks or more candles, or of a larger size, or more or larger moulds, or shall draw the said moulds a greater number of times than mentioned in such notice or declaration, he shall forfeit 50*l.* (or after the weighing by the officer increase the weight of such candles, by re-dipping or otherwise, he shall forfeit 10*l.*) And if after such notice he shall not begin at the time mentioned therein, or within three hours of it, such notice shall be void."

Notice to be given of the time of making.

By 25 Geo. III., c. 74, s. 29. "Every such maker shall give to such officer notice in writing of the hour when he intends to begin to spread cottons, wicks, or rushes for any course or making of candles, and the hour and time when he intends to begin to run in or dip such wicks, which notice shall be given (if within the limits of the *head office*, six hours; if in any *city* or market town, twelve hours; elsewhere, twenty-four hours) before he shall begin, on pain of forfeiting 50*l.* for every time he shall so begin."

Times for giving such notice limited.

Sect. 30. "And if such maker shall not begin and proceed at the time mentioned in such notice, or within three hours next after, such notice shall be void."

By 26 Geo. III., c. 77, s. 6. "Every maker of candles having begun to spread cottons, wicks, or rushes, for any course or making of candles (other than mould candles), shall proceed and continue, without delay or interruption, until the whole intended to be used in such course or making is finished; and the time for beginning to run in or dip such cottons, wicks, or rushes respectively shall not be more than five hours after the beginning to spread the same as aforesaid; and shall continue to run in or dip such

Maker to continue working without interruption.

(5.) *Candles.*

To begin to dip within five hours of spreading the cotton.

What to be deemed beginning work.

Furnace doors, &c. to be locked or secured.

Having moulds not locked up.

The officer shall charge for materials missing.

Candles spoiled in making.

cottons, &c. respectively without interruption until the whole is finished, on pain of 50*l.* for every such offence."

Sect. 7. "If in any such notice the hour or time specified for beginning to run in or dip such cottons, &c. shall be more than five hour after the time specified in the notice for beginning to spread such cottons, &c., such notice shall be void, and such Chandler giving the same shall be liable to all such fines, penalties, and forfeitures as he would have been if no notice had been given."

And by 11 Geo. I, c. 30, s. 28. "Lighting a fire under a vessel, for melting the materials, or finding in such vessel, or in any mould or other utensil, the materials melted or melting, or cottons or rushes spread or spreading, shall be deemed to be such a *beginning to work* as shall make him liable to the said forfeiture of 50*l.*"

By 27 Geo. III., c. 31, s. 21. "Every candlemaker shall, at his own expense, find and affix sufficient fastenings, to be approved of in writing by the surveyor or supervisor, to every furnace, copper, pan, or other utensil used for melting materials to be made into candles; and also covers with proper fastenings, to be approved as aforesaid, to every dipping-mould which such maker shall have in his custody; and every such utensil shall be securely locked, fastened, or sealed by the officer, as soon as any melting shall be finished; and every such dipping mould, with the cover, shall be locked, fastened, or sealed in like manner, as soon as the dipping shall be finished. And such maker shall provide a secure room, place, or chest with fastenings, to be approved as aforesaid, for locking up all moulds for making mould candles, which shall be there locked up and secured by such officer when the same shall cease to be used. And when such maker shall be desirous to light a fire, and to have the furnace door, copper, pan, or utensil or dipping-mould opened, or to use such moulds, he shall give to such officer six hours' notice in writing if within the limits of the *chief office*; twelve hours if he shall reside in any *market-town*; and twenty-four hours if he reside *out of a market-town*; and such officer shall attend at the time mentioned in such notice, and open such doors and places, as the case may require; and if such maker shall not light a fire, or shall not proceed to use such utensils, within one hour after the doors are opened, such notice shall be void, and such officer shall proceed to lock up and secure the same again in manner as aforesaid, and such maker shall be obliged to give a fresh notice. And if such maker shall neglect or refuse to do and perform any of the matters aforesaid, or to pay for any locks, keys, or other necessary fastenings which shall have been provided by such officer, or if any person shall hinder any officer in fixing such locks or fastenings, or in locking, sealing, or securing the same in such manner as he shall think most effectual to answer the purposes of this act, or shall open any such furnace, copper, pan, utensil, dipping-mould, or door, before the same shall have been opened by the officer, or shall wilfully break or damage any lock, seal, or fastening, he shall for every such offence forfeit 100*l.*"

Sect. 22. "If there shall be on the premises in the custody of any candlemaker any mould proper to be made use of for making mould candles not locked up and secured as aforesaid, unless after notice given as aforesaid, every such maker shall forfeit 100*l.*"

By 8 Ann. c. 29, s. 12, 13. "The officer shall be permitted to take an account of the quantities of wax, tallow, and other materials; and if he shall miss any that he had taken account of at the last time he was at the maker's, and shall not on demand receive satisfaction what is become thereof, the officer may charge such quantity of candles as the materials so missing in his judgment would have made, not exceeding 108*lb.* of candles for every 112*lb.* of materials missing, and so proportionably. And if any such maker shall obstruct the officer, he shall forfeit 20*l.*"

Sect. 29. "Candles cracked or spoiled in making may be defaced by the officer, who shall make allowance for the duty."

Sect. 14. "No maker of candles (on pain of 20*l.*) shall remove any candles before the officer hath taken account of the same, without giving to the officer, within the bills, twenty-four hours' notice, and elsewhere two days' notice, of his intention to remove the same."

Sect. 15. "The maker shall keep his candles which have not been surveyed separate from all other candles which have been surveyed for twenty-four hours after making within the bills, and for two days elsewhere, unless they shall have been sooner surveyed by the officer, on pain of 5*l.*"

By 5 Geo. III., c. 43, s. 20. "If the officer shall have cause to suspect that candles are privately making in any place, or that any candles are concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner [two commissioners, 23 Geo. II., c. 21, s. 34.] or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer, by day or night (but if in the night in presence of a constable), to enter into every such place so suspected, and to seize and carry away as forfeited all such candles as he shall there find so privately making, together with all materials then ready or preparing for making the same, and also all such candles as he shall find so concealed, together with the boxes or other package containing the same. And the person that shall be found privately making such candles, or in whose possession any such shall be found, shall forfeit 100*l.* unless he shall prove payment of the duty."

By 23 Geo. II., c. 21, s. 34. "If any person shall obstruct any such officer in searching any such suspected places, or in seizing such candles, he shall forfeit 100*l.*"

By 11 Geo. I., c. 30, s. 30. "If any maker of candles for sale shall mingle candles which have not been weighed by the officer with those which have, or shall fraudulently remove any before weighing, or conceal any candles or materials, he shall forfeit 100*l.*"

(5.) *Candles.*

Removing candles before charged with the duty.

Candles uncharged to be kept separate from those charged with duty.

Search for candles concealed.

(a) Candles one-eighth made are within the meaning of this statute. But an information upon it against a candle-maker for mixing unweighed with weighed candles must charge the act to have been done with intent to deceive His Majesty of his duties. *The Attorney-general v. Barrett*, 1 Young & J. 495.

The maker of the candles is liable to the forfeiture of treble value, which attaches under the stat. 26 Geo. III., c. 77, s. 10, upon all persons who knowingly receive, buy, or have in possession, candles after they have been removed from the place where they were made, and where they ought to have been charged with duty, before the duty is charged, or before the candles have been condemned, whether they do or do not claim any property in them. (26 Geo. III. c. 77, s. 10, 11, spirits, soap, and candles. *Attorney-General v. Forge, Forrest*, 105.) And, therefore, where a maker of candles removed them from his manufactory at Edmonton to a shop in London, before the duty had been paid, he was holden liable to penalties under the act. (*Id. ibid.*; and see 2 *Higmore*,

66 to 97; *Hulk*, 80 to 94. And as to coffee, tea, cocoa-nuts, and chocolate, *Hulk*, 94 to 128.) The meaning of the clause is, that the candles shall be impounded until the duty is charged; and any person who removes them is liable to forfeit treble value. A change of place is prohibited, and not change of property. On a prosecution by indictment in the Court of King's Bench, against several defendants, for conspiring to dissuade a witness from attending before the commissioners of Excise, to give evidence in support of an information for removing candles in respect of which no duty had been paid, and no condemnation had taken place, several points were determined with regard to the information, which it is material to notice. First, the Court determined that the clause of the statute 26 Geo. III. c. 77, which enacts that no prosecution shall be carried on in the king's Courts for the recovery of an Excise penalty, unless prosecuted by the attorney-general or some revenue officer, was confined to the superior Courts of Record; and therefore an information for a penalty for removing wax candles from the place of

Further penalty of removing, mingling, or concealing. (a)

## (5.) Candles.

Persons assisting in privately making candles.

Entry of candles made. (a)

By 25 Geo. III., c. 74, s. 31. "If any officer shall discover that any making of candles is carried on in any private workhouse, room, or place, whereof no notice has been given as aforesaid, and shall at the same time discover therein any person knowingly assisting or any ways concerned in carrying on the same, he shall forfeit 20*l.* over and above all penalties which such maker shall be liable to; and such officer may detain such person, and carry him before a justice, who, on confession or oath of one witness, may convict such offender, who, immediately on conviction, shall pay 20*l.* into the hands of such officer; and on his refusing or neglecting, such justice shall, by warrant under hand and seal, commit him to the house of correction to hard labour for *two* months, unless the penalty be sooner paid: and if such person shall be convicted of a second offence, he shall in like manner pay 40*l.* or be committed for *four* months."

Sect. 27. "Every person who shall make any candles shall once in every week make a true entry in writing, at the next Excise office, of all candles by him made within such week; which entry shall contain the weight, number, and size of the candles, and what quantity thereof was made at each course in the said week; on pain for every neglect of entry to forfeit 20*l.*: which entry shall be upon the oath of the maker or his chief workman or servant employed in the making, according to the best of their knowledge and belief; and said entries and oaths, within the bills, to be made with and administered by such officer as the commissioners shall appoint at the general Excise office, and elsewhere by the collectors or supervisors."

manufactory before the duty paid might be prosecuted before the commissioners of Excise by a person not stated to be an officer. (*The King v. Steventon and others*, 2 East, 362. See now 56 Geo. III., c. 104, s. 15, *ante*, 801.) And it seemed also to be the opinion of the Court, that an information, stating in effect that the candles were home-made, would be sufficient, without expressly describing them as British candles; the words of the act being "British spirits, soap, and candles;" although an informality of this nature, however available, it might have been as a ground of error or of appeal in the original information, would not constitute a sufficient ground of objection in a collateral prosecution for conspiring to prevent the examination of a witness before the commissioners of Excise. (*The King v. Steventon and others*, 2 East, 362. The word British does not apply to candles, but to spirits, though the act seems to assume that they should be home-made, 2 East, 371, 372.) The information for removing the candles is correct in stating that no condemnation had taken place, and that the duty had not been paid before the removal of the goods. (*The King v. Steventon*, 2 East, 362.) And it is not material on the collateral prosecution for a conspiracy to state the issuing of process, or the joinder of issue on the information, before the commis-

sioners. [*The King v. Steventon and others*, 2 East, 362.] Nor is it necessary to recite, that the original information was prosecuted before the commissioners by name, although it is not averred to have taken place before three or more of them, according to the stat. 1 Geo. II., stat. 2, c. 16. (*The King v. Steventon and others*, 2 East, 362.) And in stating the information, it is sufficient to allege, that it was preferred within three months after the commission of the offence, according to the stat. 1 W. & M. c. 54, s. 13, without also stating that notice was given to the defendant within a week, as directed by the same statute. (*The King v. Steventon and others*, 2 East, 362.) The statute 7 & 8 W. III., c. 30, enabling the commissioners of Excise to summon witnesses before them, on a charge being exhibited for an offence of which they take cognizance, it was held sufficient to prove a printed summons distributed and issued in blank by the order of the commissioners to their agents, and afterwards filled up without any special directions from the board, although not signed by any of the commissioners, nor issued in their individual names. (It appeared that this was the constant practice at the Excise office. *The King v. Steventon and others*, 2 East, 362.)

(a) See form of entry, *ante*, 266.

But by 8 Ann. c. 9, s. 8. "He shall not be obliged to go further than the next market-town for making such entry." (5.) *Candles.*

By 25 Geo. III., c. 74, s. 28. "The maker shall, in one week after such entry, clear off the duties, on pain of double duty; and no maker after such default in payment shall sell, deliver, or carry out any candles till he hath cleared off the duty, on pain of double value."

Duty to be cleared off.

And by 11 Geo. I., c. 30, s. 29. "If there shall be found in the possession of any maker of candles for sale any candles not mentioned in the entry made by him, and of which the officer hath not had an account, and the duties have not been charged and paid, he shall be chargeable with the duties; and if he do not pay the same, he shall be liable to double duty, unless he shall prove that the duty hath been paid, or that he bought the same of some other chandler who had paid the duty, and that he gave six hours' notice in writing to the surveying officer, or at the next Excise office, of his intention to buy the same, and of whom."

Candles not entered, nor duty paid.

And by 26 Geo. III., c. 77, s. 10, 11. "If any person shall knowingly receive, buy, or have in his possession any candles after the same shall be removed from the place where they were made, and ought to have been charged with the duty, before the said duty hath been charged (except such as have been condemned as forfeited), whether he claim any property or interest therein or not, he shall forfeit the same, and treble the value thereof, to be estimated at the best price the like sorts shall then bear in London."

Persons having candles in their possession not charged with the duty. (a)

By 8 Ann. c. 9, s. 18. "No person shall expose to sale any candles, unless in his public shop or warehouse, public fair or market, on pain of 5*l*."

Candles, where to be sold.

By 23 Geo. II., c. 21, s. 29. (a) "Cocquets granted for shipping candles to be landed in any other part of the kingdom shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if they shall be shipped without such cocquet, they shall be forfeited and seized, together with the package."

Candles carried coastwise.

Sect. 27. "No candles shall be imported, otherwise than in some package containing at least 224*lbs*. neat of candles, and stowed openly in the hold, on pain of being seized and forfeited, together with the package; and the master of the vessel shall forfeit 50*l*." See 42 Geo. III., c. 93, s. 19.

Exportation and importation.

But by 26 Geo. II., c. 32, s. 8. "On information brought against such master, he may detain the wages of the mariners till it be determined; and if it shall appear that the candles were put on board by any mariner without the master's knowledge, the master may apply such mariner's wages in payment of the forfeiture."

By 42 Geo. III., c. 9, s. 19. "No candles imported otherwise than according to 23 Geo. II., c. 21, s. 27, shall be entered for exportation, on pain of forfeiture of the same."

"Candles for which the duty hath been paid may be exported, and the duty drawn back." 8 Ann. c. 9, s. 24, 25, 26; 43 Geo. III., c. 69, *sched.* (C).

By 23 Geo. II., c. 21, s. 28. "The officers of Excise (in like manner as the officers of the Customs) may go on board any vessel, and search for and seize all candles forfeited, together with the package; and they may likewise seize such as, before entry and payment of duties, shall be found unshipping or unshipped."

Seizures.

And by 24 Geo. III., sess. 2, c. 36, s. 7. "All wax candles seized on importation or otherwise, and condemned for nonpayment of the duties, shall be broken or otherwise rendered unfit for use."

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(a) The provisions of 23 Geo. II., c. 21, respecting CANDLES, are similar to those respecting SOAP and STARCH.

(5) Candles.

By 23 Geo. II., c. 21, s. 30. "The officers of Customs or Excise may seize any candles, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same were made in some private workhouse, or clandestinely imported without payment of duty, or that the same have been exported and re-landed after re-payment of the duty; and if the party in whose possession the same shall be found shall not at the hearing of the information make it appear that the duty hath been paid or secured, he shall forfeit 5*l.* for every 100*lb.* weight, and also the candles and package shall be forfeited."

Sect. 31. "If any foreign candles shall be unshipped, with intention to be laid on land, before entry and payment of the duties, or shall be landed again after shipping for exportation upon debenture, the same, together with the package, vessels, boats, horses, and other carriages used in landing or conveying the same, shall be forfeited, and may be seized by any officer of the Customs or Excise; and the persons from whom the same shall be seized shall forfeit 5*l.* for every hundred-weight."

Sect. 32. "If any person shall knowingly harbour or conceal any candles unlawfully imported, or re-landed after shipping for exportation upon debenture, or suffer the same, he shall, whether he claim any property therein or not, forfeit 50*l.* for every 100*lbs.* weight, together with the candles and package."

Sect. 33. "And where any such candles shall be seized as forfeited, and no person shall claim the same in twenty days, if it be within the limits of the chief office of Excise in London, the officer who made the seizure may cause notice, signed by the solicitor of Excise, to be affixed at the Royal Exchange, of the day and time of day for proceeding to trial and condemnation of the same by the commissioners of Excise; and if it be out of the said limits, then public notice shall be given by proclamation at the next market-town on the market-day next after the said twenty days, of the day and place when and where the justices will proceed to trial and condemnation thereof: and the judgment thereon shall not be liable to any appeal, or to be removed by *certiorari*."

Sect. 37. "But where any person shall claim the same, then all informations for the condemnation of such seizures, or recovering such penalties (if within the limits of the chief office in London), shall be heard by the commissioners of Excise or appeals, elsewhere by two neighbouring justices where the seizure was made or penalty incurred; who, on complaint within three months, may summon the party accused, and the witnesses on either side, and on appearance of the offender, or on proof of notice given to him, may proceed to examine the facts and witnesses upon oath, and to give judgment as well for the penalty as for the condemnation of such candles, and the packages, boats, cattle, and carriages so seized, and to issue their warrant for the sale thereof, and for levying any pecuniary penalty upon the goods of such offender, which may be sold if not redeemed within fourteen days; and for want of sufficient distress, such offender may be imprisoned till satisfaction be made."

Sect. 37, 40. "If either party be not satisfied with the judgment of such justices, he may appeal to the next sessions, whose judgment therein shall be final, and shall not be removable by *certiorari*."

Sect. 34. "And all such penalties and forfeitures shall be applied, half to the king, and half to the seizer or prosecutor."

Sect. 38. "Provided that any such penalties and forfeitures may be mitigated, so as not to reduce the same to less than one-fourth over and above the costs."

Sect. 35. "Where candles shall be seized for nonpayment of duties, or nonentry, and it shall be disputed whether such payment or entry was made or not, the proof shall lie on the claimer, and not on the officer."

By 24 Geo. III., sess. 2, c. 11, s. 8. "If any maker of candles shall obstruct any officer in the execution of the power given to him by this or

Penalties how  
recovered.

Appeal.

Distribution of  
penalties.

Mitigation.

Proof lies on  
the owner.

Obstructing  
officers.

## II. PARTICULAR LAWS, &c. (5.) *Candles.*

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any other act for securing the duties on candles, he shall for every such offence forfeit 100*l*." (5.) *Candles.*

By 8 Ann. c. 9, s. 11. "Every maker shall keep just scales and weights where he makes his candles, and shall permit and assist the officer to make use thereof, on pain of 10*l*." Scales and weights.

By 10 Geo. III., c. 44. "If he shall make use of insufficient scales or weights, he shall forfeit 100*l*. But not to be prosecuted both on this and the former act." [And by stat. 28 Geo. III., c. 37, s. 15, "the same shall be forfeited, and may be seized by any officer of Excise."]

By 26 Geo. III., c. 77, s. 8. "If he shall, in weighing his stock, put any other substance therein, whereby such officer may be hindered from taking a just account of such stock, or shall forcibly obstruct or by any contrivance prevent or impede such officer, he shall forfeit 100*l*." Cheating or obstructing the officer in weighing.

By 8 Ann. c. 9, s. 28; 11 Geo. I., c. 30, s. 29; 24 Geo. II., c. 40, s. 39; 25 Geo. III., c. 74, s. 32, 33. "All the fines, forfeitures, and penalties may be recovered and mitigated as by the laws of Excise, or in the Courts at Westminster; and distributed, half to the king and half to him that shall inform or sue." Power of the justices.

By 8 Ann. c. 9, s. 19, and 28 Geo. III., c. 37, s. 21, "all candles, materials, and utensils for making candles, in custody of any maker of candles, or person in trust for him, shall be chargeable with all duties in arrear, and subject to all penalties and forfeitures, in the same manner as if the debtor or offender were the lawful owner." Utensils liable to the duties and penalties.

See the general provision in 7 & 8 Geo. IV., c. 53, *ante*, p. 227, to 310.

CHOCOLATE, see *title Coffee, &c.*

CIDER, see *title Cyder.*

COCOA-NUTS, see *title Coffee, &c.*

## (6, 7 and 8.) *Coffee, Tea, Chocolate, and Cocoa-nuts.*

[10 Geo. I., c. 10; 11 Geo. I., c. 30; 12 Geo. I., c. 28; 4 Geo. II., c. 14; 9 Geo. II., c. 35; 18 Geo. II., c. 26; 6 Geo. III., c. 43; 12 Geo. III., c. 46; 17 Geo. III., c. 29; 21 Geo. III., c. 55; 22 Geo. III., c. 68; 35 Geo. III., c. 118; 41 Geo. III., U. K. c. 91; 42 Geo. III., c. 29; 49 Geo. III., c. 80; 53 Geo. III., c. 88; 58 Geo. III., c. 76; 59 Geo. III., c. 53; 1 Geo. IV., c. 59; 3 Geo. IV., c. 53, c. 57; 4 Geo. IV., c. 24; 5 Geo. IV., c. 75; 6 Geo. IV., c. 81; c. 111, c. 118; 7 Geo. IV., c. 48; 9 Geo. IV., c. 44.]

6, 7 and 8 Coffee, Tea, Chocolate, and Cocoa-nuts.

By 6 Geo. IV., c. 111, "all former duties of Customs were repealed, and new duties imposed," *ante*, 125, &c. See also 7 Geo. IV., c. 48. Duties of Customs.

By 59 Geo. III., c. 53, "new duties of Excise were imposed upon tea, coffee, and cocoa-nuts; and all former duties determined, except arrears," &c. Duties of Excise.

Sect. 16. After reciting that all the duties payable upon tea, coffee, and cocoa-nuts are by this act made wholly *Excise* duties, enacts "that all powers, regulations, &c. contained in any act relating to tea, coffee, and cocoa-nuts, &c. or to the importation, warehousing, removing, &c. thereof, and heretofore exercised by the commissioners and officers of Customs, shall in future be executed by the commissioners and officers of Excise; and all fines, penalties, &c. imposed by former acts are extended to this."

The duties upon tea to be paid by the purchaser to the company, and by the company to the commissioners of Excise.

By 4 Geo. II., c. 14, s. 12. "If any person shall import any cocoa-nut-shells, or husks without the nuts, the officers of the Customs, Excise, or inland duties may seize them, with the bags, boxes, and other package; Cocoa-nut-shells without the nuts.



(6, 7 and 8.)  
*Coffee, Tea,  
&c.*

Excise officers  
may go on board  
and search.

Ships hovering  
near the coast,  
with tea on  
board.

Tea unshipped  
in G. B. with-  
out due entry  
shall be for-  
feited; and the  
offenders shall  
forfeit 10*l.* for  
every pound of  
tea, or 100*l.*, at  
election of pro-  
secutor.

Who shall be a  
dealer in coffee,  
tea, and choco-  
late.

Dealer fraudu-  
lently increasing  
his stock.

and after condemnation they shall be destroyed, or otherwise disposed of, as any three respective commissioners shall appoint; and they may reward such officer in any sum not exceeding 20*s.* per cwt."

By 11 Geo. I., c. 30, s. 1. "The Excise officers may go on board any ships, and search as the officers of the Customs may do, for coffee, tea, cocoa-nuts, chocolate, and cocoa paste, and seize all such as shall be forfeited, or shall be unshipping, or unshipped, to be laid on land, without entry and payment of duties, with the boxes, bags, or other package."

By 9 Geo. II. c. 35, s. 22. "Where any vessel coming from foreign parts, and having six pounds or more of *tea* on board, shall be found at anchor, or hovering within the limits of any port, or within two leagues of the shore, or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, unless in case of unavoidable necessity and distress of weather, of which the person in charge of such vessel shall give notice, and make proof before the chief officer of Customs, immediately after arrival in the said port, with coffee on board; all such tea, with the chests and other packages, or the value thereof, shall be forfeited (whether bulk shall have been broken or not), and the same may be seized and prosecuted, or the value thereof sued for by the officers."

And by 5 Geo. III. c. 43, s. 38. "Where any vessel coming from foreign parts, and having on board 20*lbs.* of coffee, shall be found at anchor, or hovering within two leagues of the shore; or shall be discovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting (notice, as in the 9 Geo. II. c. 35, s. 22, *ante*); all such coffee, together with the package, or the value thereof, shall be forfeited, whether bulk shall have been broken or not; and the vessel also with her tackle and furniture shall be forfeited, provided such vessel doth not exceed the burden of 50 tons; to be disposed of according to 5 Geo. III. c. 43."

By 10 Geo. I. c. 10, s. 27. "If any person shall import any coffee, tea, or cocoa-nuts, which ought to be secured in warehouses, and shall not make due entries thereof, and bring the same into such warehouse, the same shall be adjudged to be clandestinely run and unlawfully imported, and may be seized by any officer of Customs or inland duties, and shall be forfeited, with the packages thereof, and the horses, carts, and other carriages made use of in carrying the same."

By 58 Geo. III. c. 76, s. 3. "If any person shall import, unship, or land in Great Britain, or within the limits of any of the ports thereof, any tea, and shall not make due entries thereof, so that the duties of Custom and Excise be secured and paid, all such tea so imported shall be deemed and is hereby adjudged to be clandestinely run, and shall be forfeited, and may be seized by any officer of Customs or Excise; and the person so offending, or aiding or assisting therein, or removing, receiving, harbouring, or concealing any run tea, shall, for each and every such offence, severally forfeit and lose the sum of 10*l.* for every pound weight thereof, or the sum of 100*l.*, at the election of the attorney-general, or the person who shall sue or prosecute for the same; and no such penalty shall be mitigated by any justice or justices below one-fourth part thereof."

By 11 Geo. I. c. 30, s. 4. "Every person who shall keep a public-house, shop, cellar, or other warehouse for selling brandy or other spirituous liquors, and shall have in his custody for his use any coffee, tea, chocolate, or cocoa-nuts, above six pounds' weight, of any kind, shall be deemed a dealer in the said commodities."

By 21 Geo. III. c. 55, s. 29. "If the officer of Excise shall find any increase of the stock of any dealer over and above what the officer found in his last survey, such increase shall be deemed to be made by a commodity for which no duty has been paid; and so much of the said stock as shall be found increased shall be forfeited, and taken by the officer of

## II. PARTICULAR LAWS, &c. (6, 7 and 8.) *Coffee, Tea, &c.*

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Excise discovering the same, and the person in whose stock the increase shall be found shall also forfeit 20*l*." (6, 7 and 8.) *Coffee, Tea, &c.*

By 12 Geo. III. c. 46, s. 5. "No tea above the quantity of six pounds' weight shall be removed from any part of this kingdom, by land or water, without such a permit, expressing also the quality, whether black or green, on pain of forfeiting the tea, together with the package in which contained."

Above six lbs. of tea not to be removed without a permit.  
Tea to be only removed at certain hours.

By 21 Geo. III. c. 55, s. 26. "If any tea, exceeding six pounds' weight, shall be found removing from one part of this kingdom to another, unless at such times as hereinafter mentioned, viz. from 29th September to 25th March between seven in the morning and five in the evening, and from 25th March to 29th September between five in the morning and seven in the evening (except the same is removing by a known common stage-coach, waggon, or other carriage, which usually travel out of those hours), the said tea, and the package containing the same, whether accompanied with or without a permit, and all cattle and carriages made use of in removing the same, shall be forfeited, and may be seized by any officer for the inland duties upon tea."

By 21 Geo. III. c. 55, s. 24. "If any dealer, having received any tea into his stock, shall, within twenty-four hours after such receipt, see cause to return the same, he shall give twelve hours' notice to the officer of Excise, expressing the cause of return; and the officer shall attend; and after he shall have examined the tea, and taken an account thereof, the dealer shall immediately, in his presence, repack it, and in half an hour after his arrival the officer shall grant a permit for returning the same; and if the dealer shall return the same without a permit, or be guilty of any fraud relating thereto, he shall forfeit 100*l*."

Dealer returning tea.

Sect. 25. "When any dealer in tea shall have taken out a permit for removing tea from his own stock to the stock of any other like dealer, the officer may take a sample (not exceeding two ounces, nor less than one, to be sealed by the trader in the presence of the officer,) out of each parcel so intended to be removed, paying for the same according to the price that such tea is then commonly sold for; and if such dealer shall refuse to permit the officer to take such sample, or shall deliver a sample not being the very tea so to be sent away, he shall forfeit 20*l*."

Officers may take samples.

By 22 Geo. III., c. 63, s. 21. 24. "No tea whatever shall be removed from any part of this kingdom, not being within the limits of the weekly bills of mortality, or of the chief office of Excise in London, to any place within the said limits, on pain of forfeiting the tea, together with the packages containing the same, and the vessels and boats, horses and other cattle, and carriages employed in removing the same, which may be seized by any officer of Excise. But nothing herein shall prevent dealers in tea, who shall have received any tea accompanied with an authentic permit, from returning the same, for the cause and in the manner directed by 21 Geo. III., c. 55, s. 24."

By 6 Geo. IV., c. 81, s. 1, *ante*, 247, "all former duties on Excise licences are repealed. And by sect. 2 new duties are imposed, viz. (*int. al.*) on every person trading in or selling coffee, tea, cocoa-nuts, chocolate, or pepper, the annual sum of 1*l*s."

Licences.

See the several regulations respecting the licences, duties, fines, &c. contained in that act, stated at length, *ante*, 249 to 262.

By 10 Geo. I. c. 10, s. 10. "Every druggist, grocer, chandler, coffee-house keeper, chocolate-house keeper, and other person dealing in coffee, tea, or cocoa-nuts, or making or selling chocolate, either by wholesale or retail, shall, before he take any of the said goods into his possession, make entry in writing of all storehouses and other places intended to be used by him for the keeping the same at the office for the division, on pain of forfeiting 200*l*., and the said goods found therein, with the canisters, bags, vessels, and other package."

Houses of manufacturing and sale to be entered.

By 18 Geo. II. c. 26, s. 8. "No entry of any shop, warehouse, room, or

(6, 7 and 8.)  
Coffee, Tea,  
&c.

utensil for carrying on any trades aforesaid shall be deemed a legal entry, unless made in the name of the real owner of and trader in such shop; and the person who acts as visible owner of such place, or principal manager in such trade, shall be deemed the real owner and trader, and consequently liable for any stock found there, or for not making entries, or other offences."

And by 10 Geo. I. c. 10, s. 14, and 12 Geo. III. c. 46, s. 6. "None of the said goods shall be offered to sale but in places entered, or in a warehouse to be approved of by the commissioners, on pain of forfeiting the same, and also 10*l*."

No mixture in  
manufacturing  
coffee.

By 11 Geo. I. c. 30, s. 9. "No person in roasting, or soon after roasting, or before selling, shall mix with coffee, to increase the weight, any butter, lard, grease, water, or other materials, on pain of 100*l*.; and if any dealer shall knowingly buy or sell any so mixed, he shall forfeit 100*l*."

Roasting-houses.

By 10 Geo. I. c. 10, s. 31. "The commissioners for inland duties may appoint houses for roasting coffee-berries, and officers to attend them, and one or more persons at each house well skilled in roasting coffee; to which all persons may resort to have their coffee-berries roasted, bringing a certificate from an officer that the duties have been paid, or that it hath been condemned as forfeited; for the roasting of which coffee shall be paid 8*s*. per cwt."

Sect. 32. "But the sellers and dealers may send their own roasters, who shall be permitted to roast the same therein, paying 3*s*. per cwt."

Sect. 33. "And during the continuance of such roasting-houses, no coffee-berries shall be roasted, burned, or dried, but in some one such house, on pain of forfeiting the same, and 5*s*. a pound."

Sect. 34. "If any officer or roaster duly appointed shall neglect or refuse to attend such house, he shall forfeit 10*l*. for the first offence, and 20*l*. for the second, and be incapable to hold any office in the revenue."

Dealers in  
coffee may roast  
their own coffee  
on making entry  
at the next  
office of Excise.

But by 49 Geo. III. c. 80. (reciting 10 Geo. I. c. 10.) "It is enacted, that after the passing of this act all sellers of and dealers in coffee shall be at liberty to roast their own coffee, according to the following regulations; viz. every such seller, being desirous to roast coffee, shall, before he shall roast any coffee, make true entry in writing, at the next office of Excise, of one or more rooms for that purpose, which rooms respectively shall either be adjoining or as near as possible to the places by him entered and made use of for keeping raw coffee; and if any seller, &c. shall roast in any place whereof he shall not have made such entry, he shall, for every such offence, forfeit 50*l*., together with all the coffee which shall at any time be found in any such place whereof no such entry shall be made. Provided, that no seller, &c. who shall at any time receive into his custody or possession any unroasted coffee, less in quantity than 56*lbs*., except coffee returned to him by any customer for being disliked, shall be at liberty to roast, or put in operation of roasting, any coffee; and if any seller, &c. shall, contrary to this act, roast, or put in operation of roasting, any coffee, he shall, for each offence, forfeit 50*l*., together with all such coffee by him so roasted, &c."

Penalty for not  
making entry,  
50*l*.

Dealers receiving  
into their  
custody un-  
roasted coffee  
in less quantity  
than 56*lbs*. shall  
not be per-  
mitted to roast  
coffee.

Penalty 50*l*.  
If any article  
made to re-  
semble coffee  
or cocoa be  
found in the  
possession of  
any dealer, or  
called by him  
English or  
British coffee,  
&c. it shall be  
forfeited, and  
the dealer for-  
feit 100*l*.

And by 43 Geo. III., c. 129, s. 5. (repealing s. 3 of 41 Geo. III., united kingdom, c. 91, which respected imitations of coffee) "If any burnt, scorched, or roasted peas, beans, or other grain or vegetable substance, prepared for the purpose of being an imitation of or in any respect to resemble coffee or cocoa, or to serve as a substitute for the same, or pretended by the possessor or vender thereof so to be, shall be made or kept for sale, or offered or exposed to sale, or found in the possession of any dealer in or seller of coffee or cocoa, or of [*query*, if?] any burnt, scorched, or roasted peas, beans, or other grain or vegetable substance, not being coffee or cocoa, shall be called by the preparer, possessor, or vender thereof by the name of English or British coffee, or any other name of coffee, or by the name of American cocoa, or English or British cocoa, or any other name of cocoa, the same shall be forfeited, together with the packages, and shall be seized by any Excise officer; and the person preparing or selling the same, or having the

same in his possession, or the dealer in or seller of coffee or cocoa in whose custody the same shall be found, shall forfeit 100*l*." (6, 7 and 8.)

By 3 Geo. IV., c. 53, s. 1, after reciting 43 Geo. III., c. 129, s. 5, it is enacted, "that it shall be lawful for any person, not being a dealer in or seller of coffee or cocoa, to manufacture, deal in, and sell scorched or roasted corn, peas, beans, or parsnips, whole and not ground, crushed, or powdered, under the licence and subject to the regulations and restrictions thereinbefore mentioned."

Sect. 6. "Before any person shall begin to manufacture for sale, or deal in, or sell any such scorched or roasted corn, peas, beans, or parsnips, he shall make a true and particular entry in writing, according to the laws in respect to Excise entries of places, of every house, room, and place, and of every utensil by him made use of, or intended to be made use of, in or for the scorching or roasting or keeping of scorched or roasted corn, peas, beans, or parsnips for sale, at the office of Excise within the limits whereof such house, room, or place shall be situate, and shall be subject to the survey of the officers of Excise, in like manner as coffee-dealers; and every such person shall, as soon as any such corn, peas, beans, or parsnips has or have been scorched or roasted, put and make up the same whole, and not ground, crushed, or powdered, and unmixed with any other article or ingredient whatsoever, in packages, and stamp or mark the cover of every such package with the words '*roasted corn, peas, beans, or parsnips*,' as the case may be, and with his name and place of residence; and shall not have or keep, or sell or offer to sell or deliver, any scorched or roasted corn, peas, beans, or parsnips under any other name or description whatever than scorched or roasted corn, peas, beans, or parsnips, as the case may be, or in any other state or condition than whole, and not ground, crushed, or powdered, or mixed with any other article or ingredient, or otherwise than so made up into such packages so marked, on pain of forfeiting for each offence the sum of 50*l*., together with all the corn, peas, beans, or parsnips, and other articles or ingredients mixed or of the like kind as are mixed therewith, and also the utensils for the scorching or roasting corn, peas, beans, or parsnips, which shall at any time be found in any house, room, or place so made use of or intended to be made use of as aforesaid, and whereof no such entry shall be made, or which shall be in the possession of any such person not licensed, or had or kept by him, or sold or delivered, otherwise than as aforesaid; and the same shall be seized by any officer of Excise. Nothing herein contained shall repeal or alter the act or provisions hereinbefore recited, in any other respect, manner, or degree, than is and are expressly provided by this act."

Sect. 7. "It shall be lawful for any person licensed to deal in cocoa, who shall first make entry of his premises, for the purpose hereinafter mentioned, at the nearest office of Excise, and who shall not be a scorcher or roaster of corn, peas, beans, or parsnips, or a dealer in or seller of scorched or roasted corn, peas, beans, or parsnips, or have in his possession any such corn, &c., to make and manufacture in such premises, and with the knowledge of the proper officer, cocoa-paste, broma, and other mixtures and preparations of cocoa, with sugar and arrow-root flour or other farinaceous powder, such arrow-root flour or other farinaceous powder not being baked, scorched, roasted, or altered from its natural state, except by being mixed with cocoa as aforesaid, and to sell such cocoa-paste, broma, or other mixture: provided (a) that every such person shall enclose all such cocoa-paste, broma, and other such mixtures and preparations of cocoa, as soon as the same is made, and before the same is sold, offered, or exposed for sale, or delivered, in paper sealed and stamped,

Persons not being dealers in coffee may roast and sell corn, peas, beans, or parsnips.

Entry to be made of premises, and roasted corn to be sold whole and in packages.

Penaity for selling roasted corn under any other name, 50*l*. &c.

Person licensed to deal in cocoa, not being a roaster of corn, may, on being licensed, manufacture cocoa paste, broma, and other mixtures of cocoa.

Cocoa paste, &c. to be put up in paper or put in a pot, and a stamp to be affixed:

(a) By 6 Geo. IV., c. 118, s. 7, this proviso requiring the stamps to be affixed is repealed.

(6, 7 and 8.)  
Coffee, Tea,  
&c.

6d. stamp to  
a lb. ad. for  
a  $\frac{1}{2}$  lb. and  
1 $\frac{1}{2}$ d. for  $\frac{1}{4}$  lb.

Penalty for not  
conforming to  
the directions  
herein given,  
100*l*.

Saving for  
former Excise  
laws.

True manufac-  
turing of tea.

Imitations of  
tea.

Dyeing or ma-  
nufacturing in  
imitation of tea  
any leaves of  
tea that have  
been used, &c.  
or selling or  
offering to sell  
the same, &c.

Penalty.

Penalty on per-  
sons having

or in some pot or other vessel, to which a stamp shall be affixed in such manner as the commissioners of Excise shall direct, and which stamp the commissioners of Excise shall furnish and cause to be delivered to every such person upon his request, and upon such person paying to such commissioners, for such stamps so to be used, *sixpence* for every stamp to be attached to a pound weight, and *three-pence* for every stamp to be attached to half a pound weight, and *three halfpence* for every stamp to be attached to every quarter of a pound weight of all such cocoa-paste, broma, or other mixtures as herein described; and if any person shall make or manufacture any cocoa-paste, broma, or other mixture or preparation of cocoa as aforesaid, without first making such entry, or shall mix with any cocoa any baked, scorched, or roasted material whatsoever, or any ingredient whatsoever, except as aforesaid, or shall keep, offer for sale, sell, or deliver any such preparation of cocoa, otherwise than in the manner and enclosed in the paper or pot, containing not less than one quarter of a pound, or more than one pound, stamped as aforesaid, or shall use any such stamp or paper a second time, or imitate or use any stamp for the purpose aforesaid which shall not have been issued by or by the order of the commissioners of Excise, or shall use any art or contrivance by which the officer surveying such premises shall be prevented or deceived in taking a true account of all such compound cocoa, broma, or other mixture of cocoa with sugar and arrow-root flour, or other unbaked, unscorched, unroasted, and undisguised farinaceous powder as aforesaid, or shall obstruct or hinder such officer in taking such account, every such person and persons in such cases respectively offending shall, for every such offence, severally forfeit the sum of 100*l*.

By 11 Geo. I., c. 30, s. 5. "No dealer in tea, or manufacturer or dyer thereof, or pretending so to be, shall counterfeit or adulterate it, or alter or manufacture it with any drug, or mix it with any leaf or other ingredient, on pain of forfeiting the same and 100*l*."

By 41 Geo. III., c. 91, s. 4. "If any commodity shall be seized as manufactured in imitation of or to resemble coffee, or to serve as a substitute for coffee, or if any action shall be brought by the owner or claimer against any officer of Excise, or any person acting in his assistance, for such seizure, the proof that the commodity so seized is not manufactured in imitation of or to resemble coffee shall lie upon the owner or claimer, by the oaths of two credible witnesses."

By 4 Geo. II., c. 14, s. 11. "If any dealer in or seller of tea shall dye or manufacture any aloe-leaves, liquorice-leaves, or the leaves of tea that have been used, or the leaves of any other tree, shrub, or plant, in imitation of tea, or shall mix, colour, or stain, with *terra japonica*, sugar, molasses, clay, logwood, or any other ingredients, or shall sell or offer to sale, or have in his custody, any such leaves in imitation of tea, or any such stained leaves, or tea mixed with any other ingredient, he shall forfeit for every pound weight thereof 10*l*."

By 17 Geo. III., c. 29, s. 1. "If any person, whether he be a dealer in or seller of tea or not, shall dye or manufacture any aloe-leaves, liquorice-leaves, or the leaves of tea that have been used, or the leaves of any ash, elder, or other tree, shrub, or plant, in imitation of tea, or shall mix or colour any such leaves with *terra japonica*, copperas, sugar, molasses, clay, logwood, or any other ingredients, or shall sell or offer to sale, or have in his custody, any such leaves dyed or manufactured or dyeing or manufacturing in imitation of tea, and shall be thereof convicted upon the oath of one witness before one justice, he shall, for every pound of such leaves so dyed or manufactured, or dyeing or manufacturing, in imitation of tea, and for every pound of such mixed, stained, or dyed leaves of tea, forfeit 6*l*.; and on nonpayment thereof such justice shall commit him to the common gaol, for any time not exceeding twelve months, nor less than six, or until the penalty and charges shall be paid."

Sect. 2. "That from and after the said 1st day of June, 1777, if any

person or persons shall have in his, her, or their custody or possession, any quantity (exceeding six pounds' weight) of sloe-leaves, or the leaves of ash, elder, or any other tree, shrub, or plant, green or manufactured, and shall not prove, to the satisfaction of the justice or justices before whom the matter shall be heard, that such leaves were gathered with the consent of the owners of the trees, shrubs, or plants from which the said leaves were taken, and that such leaves were gathered for some other use or uses, and not for the purpose of fabricating and manufacturing the same in imitation of tea, and shall be thereof convicted, by the oath of one or more credible witness or witnesses, before any one or more justice or justices of the peace for the county, city, riding, division, district, or place where such leaves shall be so found, such person or persons shall respectively, for every pound of such green or manufactured leaves so found in his, her, or their custody or possession, as aforesaid, forfeit and pay the sum of *5*l.**; and upon nonpayment thereof such justice or justices shall commit the offender to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize for any time not exceeding twelve months, nor less than six months, or until the penalty and charges shall be paid."

(6, 7 and 8.)  
*Coffee, Tea,  
&c.*

more than six  
pounds of any  
such leaves in  
their possession:  
except, &c.

Sect. 3. "That if any officer or officers of His Majesty's revenue of Excise, or other person or persons, shall have cause to suspect that any such leaves dyed, fabricated, or manufactured, or leaves dyeing, fabricating, or manufacturing, in imitation of tea, or leaves intended so to be dyed, fabricated, or manufactured, shall be hid, concealed, or lodged, in any place whatsoever; then and in such case, upon oath made by such officer or officers, or other person or persons, before any one or more justice or justices of the peace for the county, city, riding, division, district, or place where the same shall be so suspected to be hid, concealed, or lodged, setting forth the ground of such his, her, or their suspicion, it shall and may be lawful to and for the said justice or justices of the peace respectively, before whom such affidavit or affidavits shall be made, if he or they shall judge it reasonable, by special warrant or warrants under his or their respective hand and seal or hands and seals, to authorize and empower such officer or officers, or other person or persons, by day or by night, but if in the night-time, then in the presence of a constable, or other lawful officer of the peace, to enter into all and every such place or places where he or they shall so suspect the said dyed, fabricated, or manufactured, or other the said leaves shall be so hid, concealed, or lodged, and to seize and carry away as forfeited all such leaves so dyed, fabricated, or manufactured, or dyeing, fabricating, or manufacturing, or intended to be so dyed, fabricated, or manufactured, which he or they shall so find hid, concealed, or lodged, together with all and singular the waggons, carts, boxes, bags, tubs, or other vessels, or package, containing the same: and it shall and may be lawful to and for the said justice or justices so granting the said warrant, or any other justice or justices of the peace for the county, city, riding, division, district, or place wherein such seizure shall be made, on proof of the premises, by oath of one or more credible witness or witnesses, by warrant or warrants under his or their hand or seal, hands or seals, respectively, to order the said dyed, fabricated, or other leaves, so seized as aforesaid, to be conveyed to some convenient place, and there to be burnt or otherwise destroyed, and to order the said waggons, carts, boxes, bags, tubs, or other vessels or package, containing the same as aforesaid, to be forthwith sold, and the money arising by such sale, after deducting the charges of such seizure and sale, and of the burning or otherwise destroying of the said leaves, to go and be paid, one half to the informer, and the other half to the poor of the parish where the offence shall be committed: and if any person or persons whatsoever shall let, obstruct, or hinder, such officer or officers, or other person or persons having such authority as aforesaid, from entering such places where he or they shall suspect such leaves to be so hid, concealed, or lodged, or in

If any officer  
of Excise, &c.  
shall make oath  
before a justice  
that he suspects  
any such leaves  
as aforesaid are  
concealed, such  
justice may  
grant a special  
warrant for  
entering any  
place in search  
of the same.

All such leaves  
so found to be  
destroyed, &c.

Penalty on per-  
sons obstructing  
officers in search  
of such leaves,  
&c.

(6, 7 and 8.)  
Coffee, Tea,  
&c.

seizing, carrying away, burning, or otherwise destroying the same, or in seizing, carrying away, or selling, the said carts, waggons, boxes, bags, tubs, or other vessels or package, containing the same as aforesaid, the person or persons offending therein shall, for every such offence, forfeit and lose the sum of 50*l.* each, on conviction thereof, by the oath of one or more credible witness or witnesses, before one or more justice or justices of the peace for the county, city, riding, division, district, or place where such offence shall be committed; and upon nonpayment of the said forfeiture, such justice or justices shall commit the offender or offenders to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize, for any time not exceeding twelve months, nor less than six months, or until the penalty and charges shall be paid."

Certain cases  
in which leaves  
found concealed  
shall not be de-  
stroyed, &c.

Sect. 4. "Provided always, that no such green and unmanufactured leaves, so found hid, concealed, or lodged, as aforesaid, shall be burnt or otherwise destroyed, if the owner or owners thereof shall, within twenty-four hours after such seizure, prove, to the satisfaction of the justice or justices granting the said warrant for seizing such leaves, or any other justice or justices of the peace for the county, city, riding, division, district, or place where the same shall be so seized, that the said green or unmanufactured leaves were gathered with the consent of the owner or owners of the trees, shrubs, or plants from which the said leaves were taken, and that the same were so gathered for some other use or uses, and not for the purpose of dyeing, fabricating, or manufacturing, in imitation of tea, as aforesaid; and if such proof shall, within the time aforesaid, be made to the satisfaction of the said justice or justices, then the said green or unmanufactured leaves, together with the carriages, vessels, and package in which the same shall have been so seized, shall be forthwith restored to the owner or owners thereof, by order of such justice or justices."

Occupiers of  
houses, &c.,  
wherein any  
such leaves  
shall be found,  
if lodged there  
with their con-  
sent, shall be  
liable to the  
penalties of  
this act.

Sect. 5. "That all such dyed, coloured, stained, fabricated, and manufactured and other leaves aforesaid shall be deemed and adjudged to be in the custody and possession of the occupier or occupiers of the dwelling-houses, outhouses, gardens, and lands wherein or whereon the same shall be so found hid, concealed, or lodged, as aforesaid; and such occupier or occupiers of the said dwelling-houses, outhouses, gardens, and lands, shall be liable to all the pains and penalties by this act inflicted on the person or persons having such dyed, coloured, stained, fabricated, or manufactured and other leaves in his, her, or their custody or possession; if it shall be proved, to the satisfaction of the justice or justices before whom the matter shall be heard, that such leaves were lodged in such dwelling-houses, outhouses, gardens, or lands, with the privity or consent of the said occupier or occupiers thereof."

Application of  
the forfeitures.

Sect. 6. "That one moiety of all and every the forfeitures hereinbefore directed to be paid in pursuance of this act shall go to the informer, and the other moiety to the poor of the parish where such offence shall be committed."

Inhabitants of  
the parish to  
be admitted as  
evidence.

Sect. 7. "*And for the more easy conviction of persons offending against this act*, that in all informations and other proceedings for any of the offences aforesaid, the evidence of the inhabitants of the parish or place where the offence shall be committed shall be taken and allowed, any law, custom, rule, order, or usage to the contrary notwithstanding."

Justices to put  
this act in exe-  
cution.

Sect. 8. "That His Majesty's justices of the peace for the respective counties, cities, ridings, divisions, districts, or places wherein any of the offences committed against this act shall be done, are hereby authorized to put this act in execution, and to administer an oath to any such credible witness or witnesses."

Convictions of  
offenders to be  
certified to the  
next quarter  
sessions.

Sect. 9. "That the conviction or convictions of all and every offender and offenders against this act shall be certified, by the justice or justices of the peace before whom the same shall be made, to the next general quarter sessions of the peace, to be filed amongst the records of the said

## II. PARTICULAR LAWS, &c. (6, 7 and 8.) *Coffee, Tea, &c.*

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sessions; and that such conviction shall be fairly written on parchment or paper, in the following form of words (as the case shall happen), or in any other form of words to the like effect; that is to say,

(6, 7 and 8.)  
*Coffee, Tea,  
&c.*

Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, A. B. was, upon the complaint of C. D., convicted before \_\_\_\_\_, of the justices of the peace for \_\_\_\_\_, in pursuance of an act passed in the seventeenth year of the reign of His Majesty King George the Third, for \_\_\_\_\_, [as the case shall be.]  
Given under \_\_\_\_\_ hand and seal, the day and year above written.

Form of conviction.

Which said conviction shall be good and effectual in law to all intents and purposes, and shall not be quashed, set aside, or adjudged void or insufficient, for want of any form or words whatsoever; nor shall the same be liable to be removed by *certiorari* into His Majesty's Court of King's Bench, but shall be deemed and taken to be final to all intents and purposes whatsoever."

Conviction not to be quashed for want of form, &c.

As to the true manufacturing, stamping, tying up of chocolate in proper quantities, and as to making it for private families from not less than half a cwt. of cocoa-nuts at one time, see 10 Geo. I., c. 10, s. 17, 18. 22—25; 11 Geo. I., c. 30, s. 13; 32 Geo. II. c. 10, s. 16, 17; 27 Geo. III., c. 13, s. 35—c. 31, s. 26; 6 Geo. IV., c. 118, s. 7.

True manufacturing, stamping, tying up, &c. of chocolate, and making it for private use.

By 9 Geo. II., c. 35, s. 20. "That from and after the said 24th day of June, 1736, if any person shall offer any tea, brandy, arrack, rum, or other strong waters, or spirits, to sale, not having a permit for the same, or if any hawker, pedlar, petty chapman, or any other trading person or persons going from town to town, or to other men's houses, and trading either on foot, or with any horse or horses, or other cattle, or otherwise, within the kingdom of Great Britain, shall offer any such tea, brandy, or other spirits, to sale, although such hawker, pedlar, or trading person or persons, shall have a permit for the same, it shall and may be lawful to and for every person and persons, to whom the same shall be so offered to sale, to stop, arrest, seize, and detain all such tea, brandy, or spirits, and carry the same to the next warehouse belonging to the Customs or Excise, and to bring the person and persons so offering the same to sale before any one of His Majesty's justices of the peace, to be by him committed to prison, and prosecuted for the penalties and forfeitures incurred for such offence; and such tea, brandy, or other spirits, shall and may be prosecuted in the name of such person or persons who stopped or seized the same, in like manner as if the said goods had been seized by any officer of the Customs or Excise; and after condemnation of the goods, and commitment of the persons so offending as aforesaid, the persons so seizing the same as aforesaid shall be entitled to one-third part of the gross produce of the sale of such goods, which the commissioners of the Customs and Excise respectively are to cause to be paid accordingly; and in case such person or persons, so seizing the said goods, shall desire it, the said commissioners shall in the mean time, till the said goods can be publicly sold, cause one shilling for every pound of tea, and one shilling for every gallon of brandy so seized, to be paid or advanced to such person or persons, upon a certificate under the hand of such justice or justices of such offender or offenders being committed to prison, and after the sale of such goods the moneys so paid or advanced shall be replaced out of the produce of such sale; any law, custom, or usage to the contrary notwithstanding."

Tea, brandy, &c. offered to sale, with or without a permit, may be stopped on suspicion.

The person stopping such goods may prosecute in his own name, and on recovery be entitled to a third part of the produce at sale.

Commissioners to advance 1s. per pound for tea, and 1s. per gallon for brandy, so seized, to the prosecutor, till sale.

By 10 Geo. I., c. 10, s. 16. "That from and after the said 24th day of June, 1724, no coffee, tea, cocoa-nuts, or chocolate, exceeding the quantity of six pounds' weight, shall be removed or carried from any part of this kingdom, by land or by water, without a permit or certificate, signed by one or more of the officers for the said inland duties hereby set and imposed, signifying and certifying the names and places of abode of the buyer and seller, and expressing the quantity and species of the commodity so permitted or certified for, and that His Majesty's inland duties chargeable by

Any quantity exceeding the weight of six pounds carrying without such permit or certificate is forfeited.



(6, 7 and 8.)  
Coffee, Tea,  
&c.

The time to be  
limited by the  
officer for such  
permit or cer-  
tificate to be  
in force.

Penalty for  
taking out per-  
mits, and not  
sending away  
the commodities  
in the time  
limited,

or not returning  
the permits,  
treble the value.

If there does not  
appear a sufficient  
decrease to an-  
swer the removal,  
officer to seize  
a like quantity  
of the brandy, &c.

No permit for  
removal, but by  
direction of him  
from whose stock  
commodities are  
to be removed.

Penalty sol. or  
imprisonment.

All sellers of,  
&c. and keepers  
of coffee and  
chocolate houses,  
to keep accounts  
of quantities less

this act upon coffee, tea, and chocolate, have been duly paid and satisfied, or that the cocoa-nuts have been duly entered as aforesaid, or that the same have been condemned as forfeited, or were part of such stock in hand as aforesaid; upon pain of forfeiting the coffee, tea, cocoa-nuts, or chocolate which shall be found carrying from one place to another without such permit or certificate, together with the canisters, bags, jars, tubs, boxes, casks, and other vessels or package whatsoever containing the same; which permit or certificate shall be left with the officer of the division to which the same shall be carried, to prevent the seizure thereof; in which permits or certificates the officers who grant the same shall express and limit the time for which the same shall continue in force."

By 11 Geo. I., c. 30, s. 10. "That from and after the said 24th day of June, 1725, if any person or persons whatsoever shall take out any permit or permits from the officers employed in the said duties or any of them, for removing of any of the said commodities from one place to another; and if, within the times limited in such permit or permits respectively, the party or parties, by or for whom such permit or permits shall be so taken out, shall not either actually and really send away all the commodities by such permit or permits authorized thereby to be sent away, pursuant to the true intent and meaning thereof, or, in default of so sending away such commodities, shall not before the expiration of the time limited in and by such permit and permits, respectively, return such permit and permits to the officer or officers from whom the same was had; then, and in every such respective case and cases, the person or persons taking out such permit or permits, or for whose use such permit or permits shall be taken out, shall, for every gallon of brandy, arrack, rum, spirits, and strong waters, and for every pound weight of coffee, tea, and cocoa-nuts, mentioned in such permit or permits, and not removed according to the purport thereof, forfeit and lose treble the value thereof, to be estimated according to the highest rate of the like commodities at the time when such forfeiture shall be incurred: and if such permit or permits are not so returned, as aforesaid, and in case, upon taking an account by any of the officers for the said duties upon brandy, arrack, rum, spirits, and strong waters, and for the said inland duties of the stock of the coffee, tea, and cocoa-nuts remaining in the hands or custody of the person or persons from or out of whose stock the commodities mentioned in such permit or permits as aforesaid are thereby authorized to be removed, there shall not appear a sufficient decrease to answer the removal of the commodities mentioned in such permit or permits as aforesaid, respectively; then, and in such case, the respective person or persons, from or out of whose stock the said commodities mentioned in the said permit or permits shall be authorized to be removed, shall forfeit and lose the like quantities of the respective commodities, so permitted to be removed, and not removed according to such permission, to be seized and taken by the officers for the said respective duties, for his Majesty's use, out of the like commodities then in the possession of the person or persons forfeiting the same. Provided always, that no person or persons whatsoever shall demand, take, or receive any permit or permits from any officer or officers for the said respective duties, for the removal of any of the said commodities from one place to another, without the special direction in writing of the person or persons or the known servant or servants of the person or persons from or out of whose stock the said commodities are to be removed, upon pain of forfeiting for every such offence therein the sum of 50l.; or in default of the payment thereof, shall suffer imprisonment for and during the space of three months, without bail or mainprize."

But by 9 Geo. IV., c. 44, s. 5, permits for the removal of *coffee* or *cocoa* are no longer necessary.

By 10 Geo. I., c. 10, s. 35. "That for the better ascertaining the quantities of all coffee, tea, cocoa-nuts, and chocolate, which shall from time to time be sold, all sellers and dealers therein, or in any of them, and all makers of chocolate, and all coffeehouse-keepers and chocolate-

house-keepers, who shall sell or consume the same, or any of them, in small quantities under the weight of six pounds, shall, and are hereby obliged and directed, from time to time, after the said 24th day of June, 1724, to keep an account of all such coffee, tea, chocolate, and cocoa-nuts which they or any of them respectively shall so sell or consume in small quantities in each day, and shall every night enter in a book, to be kept for that purpose, an account of the gross quantities of the said several commodities which have been by him, her, or them respectively so retailed or consumed in that day in small quantities under the said weight of six pounds; and the said sellers or dealers in coffee, tea, cocoa-nuts, and chocolate, and coffeehouse-keepers and chocolatehouse-keepers, shall also keep one other book, wherein they shall respectively enter each parcel of coffee, tea, cocoa-nuts, or chocolate, above the weight of six pounds, which they shall respectively sell in each day; which said parcels of coffee, tea, cocoa-nuts, or chocolate, above the weight of six pounds, shall not be removed out of the respective sellers' custody, without a permit or certificate signed by some officer for the said duties, expressing the quantity and quality of the coffee, tea, cocoa-nuts, or chocolate so sold, and the name of the person so selling and the persons so buying the same, and the place to which the same is intended to be carried; and that the duties by this act charged on the coffee, tea, and chocolate, were paid, or that the cocoa-nuts were entered, or that the same were condemned as forfeited, or were part of the stock in hand of some person or persons, expressing their names, of which an account had been taken on or before the said 24th day of June, 1724; which said books shall be and are hereby directed to be prepared for the making such entry as aforesaid, and delivered, upon demand, unto the respective sellers and dealers in coffee, tea, cocoa-nuts, and chocolate, by the commissioners for the said inland duties, or such person or persons as they the same commissioners for the said inland duties shall for that purpose direct and appoint. Provided always, that no such seller or dealer as aforesaid shall have in his, her, or their custody more than one such book of each sort at a time; and when the said books in their custody shall be filled up, the same are hereby directed, from time to time, to be returned to the respective officer or officers for the said inland duties from whom the same were respectively received, upon the oath, or, in case of a quaker, upon the solemn affirmation of such sellers or dealers as aforesaid, or his, her, or their servant or servants, who kept the same, and made the entries therein, of the truth of such entries, according to the best of his, her, or their knowledge and belief; and one or more new book or books shall thereupon be delivered to such respective sellers or dealers, in the room of such book or books so returned, and so *toties quoties*, as often as such book or books shall be filled up with such entries; which said books so kept by such respective sellers or dealers shall, from time to time, lie open to be perused by the officers for the said inland duties hereby granted, the better to enable them to make their charges of such duties, and keep their stocks of the increase and decrease of the respective commodities charged therewith. Provided always, that if any such seller or dealer in coffee, tea, cocoa-nuts, or chocolate, shall neglect or refuse to keep such books and make such entries therein, or to permit the said officers for the said duties to inspect them, or not return the said books according to the direction of this act, or shall make any false entry in such book or books, he, she, or they shall, for every such offence, forfeit and lose the sum of 100*l*."

By 53 Geo. III., c. 88, s. 1. "That no verification on oath, as mentioned in 10 Geo. I., c. 10, s. 35, shall be made or required; and when any or either of the books or papers therein mentioned shall be returned to the officer or officers in the said recited acts in that behalf respectively mentioned, the truth of the entries made in every such book or paper so returned shall be verified upon the declaration in writing of and subscribed by the seller of or dealer or dealers in coffee, tea, cocoa-nuts, or chocolate,

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C C

(6, 7, and 8.)  
*Coffee, Tea,*  
*&c.*

than six pounds  
daily sold or con-  
sumed.

The like sellers,  
&c. in one other  
book to set down  
each parcel sold,  
&c. being above  
six pounds.

Such parcels  
above six pounds  
not to be re-  
moved without  
permit.

Verification on  
oath under re-  
cited acts not  
required, but a  
declaration to  
be made in lieu.

(6, 7, and 8.)  
*Coffee, Tea,*  
*&c.*

or dealer or dealers in or seller or sellers of foreign wine, or manufacturer or manufacturers of or dealer or dealers in tobacco, or manufacturer or manufacturers of or dealer or dealers in snuff, as the case may require, with his, her, or their proper name in the presence of such officer or officers; and if any such dealer or dealers in coffee, tea, cocoa-nuts, or chocolate, or dealer or dealers in or seller or sellers of foreign wine, or manufacturer or manufacturers of or dealer or dealers in tobacco, or manufacturer or manufacturers of or dealer or dealers in snuff, shall neglect or refuse to verify upon his, her, or their declaration in writing the truth of any such entry or entries as aforesaid made in any such book, or on any such paper, or to subscribe any such his, her, or their declaration in manner aforesaid, or shall make or subscribe any false or untrue declaration in writing as or for any declaration in writing prescribed or required by this act, the dealer or dealers in coffee, tea, cocoa-nuts, or chocolate, or dealer or dealers in or seller or sellers of foreign wine, or manufacturer or manufacturers of or dealer or dealers in tobacco, or manufacturer or manufacturers of or dealer or dealers in snuff, as the case may require, so offending, shall, for each and every such offence, severally forfeit and lose the sum of 100*l*."

**Penalty.**

Certain dealers  
 to make entries  
 in books on  
 being required  
 by Excise officer.

Sect. 2. "That all and every seller or sellers of and dealer or dealers in coffee, tea, cocoa-nuts, or chocolate, all and every dealer or dealers in and seller or sellers of foreign wine, and all and every manufacturer or manufacturers of and dealer or dealers in tobacco or snuff respectively, as the case may require, shall, on the demand of any officer or officers of Excise under whose survey he, she, or they shall then be, enter into the said books or on such papers respectively the quantities of the said several commodities which such seller or sellers, or dealer or dealers, or manufacturer or manufacturers respectively is or are by the said recited acts respectively required to enter at the respective times in the said recited acts respectively mentioned, in the book or books or paper or papers in that behalf respectively mentioned in the said recited acts, and shall also immediately afterwards, if demanded by such officer or officers, return every such book or paper to the officer or officers in the said recited acts in that behalf respectively mentioned; and the truth of the entries made in every such book or paper so returned shall then be verified upon such declaration as aforesaid, under the penalty of 100*l*. for every neglect or refusal to enter the quantity or quantities of any of the said commodities which any such seller or sellers, or dealer or dealers, or manufacturer or manufacturers is or are so required to enter, or to return any such book or books or paper or papers in manner last aforesaid."

**Penalty.**

No dealer in  
 cocoa-nuts to  
 dispose of less  
 than 28*lbs*. at  
 one time;

But by 12 Geo. I., c. 28, s. 29. "That from and after the 24th day of June, 1726, no seller of, trader, or dealer in cocoa-nuts, shall in any parcel or parcels sell, deliver out, or dispose of less than the quantity of 28 pounds' weight of cocoa-nuts at the least, at any one time or times; and further, that from time to time, and at all and every time and times, when such seller of, trader, or dealer in cocoa-nuts shall either sell, deliver out, or dispose of any parcel or parcels of cocoa-nuts, of 28 pounds' weight or more, the party or parties so selling, delivering out, or disposing of such cocoa-nuts, shall enter or cause to be entered down an account in writing of the christian and surname and names, and place and places of abode of the person and persons to whom, or to or for whose use, or for or upon whose account such cocoa-nuts shall be so sold, delivered out, or disposed of; and upon demand or request made by any officer or officers of and for the inland duties on chocolate, shall produce such account or accounts to such officer or officers, and shall permit him and them not only to inspect and peruse the same, but also thereout and therefrom to take an account of the name and names, place and places of abode of the person and persons to whom or for whose use, or for or upon whose account such cocoa-nuts shall be or shall have been sold, delivered out, or disposed of; on pain of forfeiting and losing the sum of 20*l*. for every pound of cocoa nuts which

and to enter in a  
 book to whom  
 all cocoa-nuts  
 are sold, to be  
 perused by the  
 officer.

**Penalty.**

## II. PARTICULAR LAWS, &c. (6, 7 and 8.) *Coffee, Tea, &c.*

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shall either be sold, delivered out, or disposed of in any parcel or parcels not containing or amounting in the whole to 28lbs. of cocoa-nuts at the least, or which shall be or shall have been so sold, delivered out, or disposed of, without entering down or causing to be entered down in such account or accounts in writing as aforesaid the name and names, and place and places of abode, of the person and persons to whom, or to or for whose use, or for or upon whose account such cocoa-nuts shall be or shall have been so sold, delivered out, or disposed of; and on pain of forfeiting and losing the sum of 20*l.* every and each time and times when such seller of, trader, or dealer in cocoa-nuts shall refuse to permit such officer or officers for the said inland duties to inspect and peruse such account or accounts as aforesaid, or thereout or therefrom to take such account or accounts as aforesaid."

By 12 Geo. III., c. 46, s. 4. "That from and after the said 24th day of June, 1772, all dealers in and sellers of tea who shall sell or consume the same in small quantities, under the weight of six pounds, shall and are hereby obliged and directed to keep separate and distinct accounts of all the black tea, and of all the green tea, which they or any of them shall so respectively sell or consume in small quantities in each day, and shall, every night, enter into a book, to be kept for that purpose, an account of the gross quantities of the black tea, and also of the green tea, which have been by him, her, or them respectively so retailed or consumed in that day in small quantities under the said weight of six pounds; and the said dealers in and sellers of tea shall also keep one other book, wherein they shall make separate and distinct entries of all the black tea, and all the green tea, above the weight of six pounds, which they shall respectively sell in each day; which said books shall be provided, and the entries so to be made in the said books shall be under the same directions, rules, regulations, penalties, and forfeitures, as are provided and enacted by the said above-recited act of the tenth of His late Majesty King George the First."

By 10 Geo. I., c. 10, s. 39. "That if any seller or dealer in coffee, tea, or cocoa-nuts, or any maker or seller of chocolate, shall hide or conceal any coffee, tea, cocoa-nuts, or chocolate from the sight or view of the officers of the said inland duties by this act granted, with an intent to defraud His Majesty of the same, the person or persons offending therein shall forfeit and lose all such coffee, tea, cocoa-nuts, and chocolate which shall be found so concealed, and treble the value thereof, and also all canisters, bags, boxes, jars, tubs, and other vessels and package containing the same."

Sect. 40. "That if, from and after the said 24th day of June, 1724, any person or persons whatsoever shall assault, resist, oppose, molest, obstruct, or hinder any officer or officers of the Customs, or for the duties by this act granted, in the due seizing or securing of any coffee, tea, cocoa-nuts, or chocolate which by any officer or officers of the Customs, or for the duties hereby granted, shall or may be seized by virtue or in pursuance of this or any other act or acts now in force, or hereafter to be made, or shall by force or violence rescue, or shall cause to be rescued, any of the said commodities after the same shall have been seized by such officer or officers as aforesaid, or shall attempt or endeavour so to do, or after such seizure shall stave, break, or otherwise destroy or damage any vessels or package wherein the same shall be contained, all and every the party or parties so offending shall, for every such offence, forfeit and lose the sum of 50*l.*"

And by 35 Geo. III., c. 118, s. 22. "That if any person or persons whatsoever shall assault, resist, oppose, molest, obstruct, or hinder any officer or officers of the Customs or Excise in the due execution of this or any other act or acts of parliament in force at the commencement of this act, or thereafter to be made, relating to coffee or cocoa-nuts, or of any of the powers or authorities by any such act or acts of parliament given or granted

(6, 7, and 8.)  
*Coffee, Tea,*  
*&c.*

Sellers of tea in small quantities, under six pounds' weight, to keep distinct accounts of what quantity they retail of each sort.

Such entries to be under the directions provided by act 10 Geo. I.

Coffee, tea, &c. concealed, &c.

And the treble value forfeited.

For assaulting, &c. officer, &c. or for rescuing, destroying, or damaging coffee, &c. seized.

Penalty 50*l.*

Penalty for obstructing officers or rescuing coffee, &c.

(6, 7, and 8.)  
Coffee, Tea,  
&c.

to any such officer or officers, or shall by force or violence, after any such officer or officers shall have seized any coffee or cocoa-nuts forfeited by any such act or acts of parliament, rescue or cause to be rescued any such coffee or cocoa-nuts, or shall attempt or endeavour so to do, all and every such person or persons so offending shall, for each and every such offence, for which no penalty is particularly provided by this act, forfeit and lose the sum of 100*l*."

Obstructing  
officers.

By 59 Geo. III., c. 53, s. 26. "That if any person or persons whatsoever shall molest, disturb, hinder, oppose, or impede any officer or officers of Excise in the due execution of the powers and authorities by this act granted, or any or either of them, except in such cases for which other penalties are by this act provided, every person so offending shall forfeit and lose the sum of 200*l*." And see 7 & 8 Geo. IV., c. 53, s. 24, *ante*, 268.

Penalty 200*l*.

Proof on the  
claimer.

By 10 Geo. I., c. 10, s. 28. "That if any dispute shall arise whether the Customs or inland duties payable for any coffee or tea, or the Customs for any cocoa-nuts, which shall be seized in pursuance of this act, have been duly paid, or that the same or any part thereof have been condemned as forfeited, the proof thereof shall lie upon the owner or claimer thereof, or the person or persons on whom the same shall be found, and not on the officer."

Excise laws in  
force before  
1825, relating  
to dealers in  
and manufactur-  
ers of certain  
excisable arti-  
cles, shall con-  
tinue in force  
notwithstanding  
any thing in  
any acts relating  
to the Customs.

By 9 Geo. IV., c. 44, s. 1. "That all acts relating to the revenue of Excise in force at and immediately before the year 1825, with respect to dealers in and sellers of coffee, cocoa, pepper, tobacco, snuff, foreign and colonial spirits and wine, and manufacturers of tobacco and snuff respectively, and with respect to the taking and keeping account of and survey of all stocks of such commodities respectively in the possession of such traders respectively, and to the manufacture of tobacco and snuff, and with respect to the granting of permits for the removal of such commodities as aforesaid respectively, have remained and continued and are and shall be and remain and continue in full force and virtue, as laws relating to the revenue of Excise (save and except so far as any of such act or acts, or any part or parts thereof, may have been repealed or altered by any subsequent act relating to the Excise passed for that purpose), and the said acts shall and may be executed and carried into effect in all particulars (save and except as to the landing and shipment of the said commodities respectively, and the collection and payment of the duties of Customs on the said respective commodities, and the lodging of such commodities in warehouses without payment of duty) by the said commissioners of Excise and their officers; and that all and singular the powers and authorities, rules, regulations, provisions, and directions (except as aforesaid) in anywise relating to the licences to be taken out by the dealers in and sellers of such commodities respectively, and to the survey by the Excise officers of such dealers and sellers, and of their respective stocks of such commodities respectively, and to the granting of all permits (except as hereinafter mentioned) for the removal of such commodities respectively, contained in any act or acts relating to the said commodities respectively, and the jurisdiction and management thereof by the commissioners and officers of Excise, shall and may be possessed, used, executed, exercised, and put in force by the said commissioners of Excise and their officers, to all intents and purposes whatsoever (save and except as aforesaid); any thing in any act or acts relating to the duties or revenue of Customs to the contrary in anywise notwithstanding."

All penalties and  
forfeitures pro-  
secuted by order  
of commissioners  
of Excise shall  
be prosecuted  
and recovered  
according to  
8 Geo. 4, c. 53.

Sect. 2. "That all penalties and forfeitures imposed by any act or acts relating to the revenue of Customs or Excise respectively, which by law the officers of Excise are authorized to prosecute, and which the commissioners of Excise shall order to be prosecuted, shall and may be so prosecuted, sued for, recovered, levied, mitigated, and applied, and in and by such ways, means, and methods, and in, under, and before such jurisdiction respectively, as penalties and forfeitures incurred or forfeited by reason of

## II. PARTICULAR LAWS, &c. (6, 7 and 8.) *Coffee, Tea, &c.*

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offences committed against any law or laws of Excise are or may be sued for, recovered, levied, mitigated, and applied by an act passed in the last session of parliament, for consolidating and amending the laws relating to the collection and management of the revenue of Excise throughout Great Britain and Ireland; any thing in any other act or acts to the contrary thereof in anywise notwithstanding." (6, 7, and 8.) *Coffee, Tea, &c.*

Sect. 3. "That it shall not be lawful to send, remove, or convey any tea from Great Britain to Ireland, nor to deliver any tea out of any warehouse in Great Britain for the purpose of being sent, removed, or conveyed to Ireland, until the full duty of Excise on such tea shall have been paid and satisfied; any thing in an act made in the sixth year of His present Majesty's reign, intituled *An act for the warehousing of goods*, or in an act made in the seventh year of His present Majesty's reign, intituled *An act to alter and amend the several laws relating to the Customs*, or in any other act or acts in force immediately before the passing of this act, to the contrary in anywise notwithstanding."

Tea shall not be sent to Ireland without payment of duty.

Sect. 4. "That all and every act and acts now in force, or hereby declared to be in force as aforesaid, in England, relating to the revenue of Excise on tea, and relating to coffee, cocoa, pepper, foreign and colonial spirits and wine, shall be established, observed, executed, and put in force in and throughout the united kingdom of Great Britain and Ireland, in the same manner, to all intents and purposes whatsoever, as heretofore in England; any thing in any act or acts to the contrary thereof in anywise notwithstanding."

Excise laws of Great Britain relating to tea, coffee, cocoa, pepper, &c., extended to the united kingdom.

See general act 7 & 8 Geo. IV., c. 53, *ante*, 226 to 310.

(9.) COTTONS AND CALICOES. (See title *Linen Cloths*.)

(10.) *Cyder, Perry, Mum, Metheglin, and Mead.*

10.) *Cyder, Perry, &c.*

[12 C. II., c. 24; 3 Geo. III., c. 1; c. 14; 7 & 8 Geo. IV., c. 53; 12 & 13 W. & M. c. 11; 6 Geo. IV., c. 37; c. 81; 1 W. IV. c. 64.]  
7 & 8 W. III., c. 19; c. 30; c. 111;

By 6 Geo. IV., c. 37, all former *Excise* duties and drawbacks upon cyder and perry, mead and metheglin, are repealed, and new duties enacted; the whole being placed under the management of the commissioners of Excise, and the duties assimilated throughout Great Britain and Ireland.

Duties.

These duties are now collected according to the general regulations and provisions of the stat. 7 & 8 Geo. IV., c. 53, *ante*, p. 226; and 1 W. IV., c. 64, *ante*, 347.

By 6 Geo. IV., c. 111, all former duties of Customs were repealed, and new duties enacted. *Ante*, p. 113.

By 6 Geo. IV., c. 81, s. 1, all former duties on Excise licences are repealed; and by s. 2 new duties are imposed, *ante*, 245; for which, as applying to persons selling cyder or perry by retail, *vide ante*, title *Ale and Beer*; and see 1 W. IV., c. 64, *ante*, 350.

The several general regulations respecting the duties, licences, &c. as to the general sale of beer and cyder by retail, contained in the statute 6 Geo. IV., c. 81, are stated *ante*, 249 to 262.

Licences.

By 1 W. IV., c. 51, *ante*, 333, the rates, duties, and drawbacks on cyder in the united kingdom are not to be collected during the life of William the IVth.

By 1 W. IV., c. 64, s. 30, licences to retail cyder may be granted under the regulations of that act on payment of 1*l.* 1*s.* duty. *Ante*, 350.

By 3 Geo. III., c. 1, s. 25. "Every dealer in and retailer of *cyder* and *perry*, and other person receiving into his custody either of them for sale,

Dealers in cyder, &c. to make entry of their storehouses.

10. *Cyder, Perry, &c.*

Factors are to enter at the next office of Excise their names and storehouses, three days before they make sale of any cyder or perry consigned them,

on forfeiture of 50*l.* for every unentered storehouse made use of; and they are subjected to all the regulations, penalties, and provisions, which dealers in, and retailers of, cyder and perry are subjected to.

All persons receiving any cyder or perry into their custody for sale are deemed factors, and chargeable with the said duty; unless the same was made from fruit of their own growth, or were otherwise duly charged.

Persons buying cyder or perry, or fruit to make into cyder or perry, and selling what they so buy or make, are deemed retailers.

and every person who shall buy any fruit to make into cyder or perry for sale, shall make entry of his storehouses, cellars, and other places, at the Excise office within the district, on pain of 50*l.*"

By 6 Geo. III., c. 14, s. 9. "That from and after the said 5th day of July, 1766, every such factor or agent, or factors or agents, so having, receiving, or taking any cyder or perry into his, her, or their custody, possession, or power, to sell or dispose of, shall, at least three days before he, she, or they shall begin to sell or dispose of the same, make a true and particular entry in writing, at the office of Excise next to the place where such cyder or perry shall be intended to be sold or disposed of, of the respective name and names of such factor or agent, factors or agents, and of every storehouse, warehouse room, cellar, or other place wherein he, she, or they have laid or kept, or intend to lay or keep, any cyder or perry; and if any such factor or agent, factors or agents, shall, contrary to the direction of this act, make use of any warehouse, storehouse, room, cellar, or other place, for the laying or keeping any cyder or perry, without having made such entry as aforesaid, he, she, or they shall respectively forfeit and lose the sum of 50*l.* for every such storehouse, room, cellar, vault, or other place which, from and after the said 5th day of July, 1766, shall be made use of without entry as aforesaid; and all and every such factor or agent, factors or agents, so receiving cyder or perry to sell or dispose of as aforesaid, shall be subject and liable, and is and are hereby declared to be subject and liable, to all the clauses, provisos, regulations, fines, penalties, forfeitures, rules, methods, matters, and things, any dealer or dealers in, or retailer or retailers of, cyder or perry, are subject and liable to by this or any other act or acts of parliament now in force for the regulating and enforcing, managing, raising, levying, collecting, paying, mitigating, adjudging, ascertaining, and recovering the duties on cyder and perry."

Sect. 5. "That all and every person and persons who shall receive into his, her, or their custody or possession any cyder or perry, to be by him, her, or them, sold or disposed of, shall be deemed to be, and is and are hereby declared to be, a factor or agent, factors or agents, within the intent of the last-mentioned clause, and chargeable as such with the said duty of 16*s.* 8*d.* per hogshead; unless he, she, or they, so receiving the same, shall and do make due proof(a) that such cyder or perry was made from fruit of his, her, or their own growth respectively, and not from bought fruit; or unless it shall appear by a certificate under the hand of the proper officer or officers of Excise, accompanying the said cyder or perry, that the duties imposed by this and all former act or acts of parliament now in force had been charged on the same."

Sect. 11. "That all and every person or persons who shall buy any cyder or perry, or any fruit to make into cyder or perry, and shall sell any of the cyder or perry so bought or made by the hogshead, or any greater or lesser measure, or shall sell any quantity of cyder or perry, or either

(a) Affidavit that cyder sent by a ship is from fruit of the maker's own growth, 6 Geo. III., c. 14, s. 5.

County of } A. B. of , in the said county, , maketh oath  
to wit. } before me, one of His Majesty's justices of the peace in and for the  
said county of , that ten hogsheads of cyder, marked G. H.,  
shipped by G. H. of , in the county aforesaid, yeoman, on the  
of instant, at (within the limits of the port of  
, in the said county, on board the ship , of , the master  
of which ship is N. O., and bound from aforesaid to , is  
cyder made from apples of the growth of him the said G. H., and that no bought  
fruit was mixed therewith. The said cyder is consigned to Y. Z., esquire,  
Sworn before me, at , in } A. B.  
the said county of , this }  
day of , 18—. } I. K.

of them, in less quantity than twenty gallons at a time, whether the same be made from fruit of his, her, or their own growth, or from bought fruit, shall be deemed and taken to be a dealer or dealers in, and retailer or retailers of, cyder or perry, within the intent and meaning of this act, and shall be chargeable with the several duties hereby granted for such cyder or perry so made and sold respectively."

Sect. 13. "That all and every such dealer or dealers in, and retailer or retailers of, cyder or perry made from fruit of his, her, or their own growth, shall be subject and liable, and is hereby declared to be subject and liable, in respect of such cyder or perry so made, to all the clauses, provisos, regulations, fines, penalties, forfeitures, rules, methods, matters, and things, which any dealer in, or retailer of, cyder or perry, is subject and liable to, by this or any other act or acts of parliament now in force for the regulating, enforcing, managing, raising, levying, collecting, paying, mitigating, adjudging, ascertaining, and recovering the duties on cyder or perry."

Sect. 15. "And whereas great frauds have been committed by dealers in, and retailers of, cyder or perry, by sending and removing, or causing or procuring to be sent or removed, great quantities of cyder and perry from the makers thereof immediately to the person or persons who contract for the same with, or order the same from, such dealers in or retailers of cyder or perry, whereby the duties thereon have not been charged, as such cyder and perry never comes into the possession of such dealers or retailers, and the like frauds may be committed by such factors and agents if proper provision is not made for prevention thereof; that from and after the said 5th day of July, 1766, if any dealer or dealers in, or retailer or retailers of, cyder or perry, or any such factor or factors, agent or agents, shall remove or send, or cause or procure to be removed or sent, any cyder or perry, from the maker or makers thereof, to the person or persons buying or contracting for or ordering the same, without the duties thereon have been first charged, and without a certificate to accompany the same, signed by the proper officer of Excise (which certificate he is hereby required to give, without fee or reward, to the person or persons desiring the same), signifying the quantity of cyder or perry so sent or removed, and the number of casks or other package containing the same, and that the duties due thereon had been charged for the same, every such dealer or dealers in or retailer or retailers of cyder or perry, or factor or factors, or agent or agents, respectively, so offending, shall, for every such offence, forfeit and lose the sum of 50*l*."

Sect. 16. "That the said duties by this act imposed upon cyder and perry shall and may be drawn back on the exportation of such cyder and perry, by the same means and methods, and under the same rules and directions, as the other duties, or any of them, now payable for cyder or perry, may be drawn back on the exportation thereof; and also that the said duties on cyder and perry granted by this act shall be drawn back or allowed upon the distillation of cyder and perry into low wines and spirits, by the same means and methods, and under the same rules and directions, as the other duties, or any of them, now payable for cyder or perry, may be drawn back or allowed upon the distillation thereof: and in case any cyder or perry which hath been charged with and hath paid the said duties, or any of them, granted by this act, shall hereafter, by being unfit for sale as cyder or perry, be charged with the duties on vinegar, it shall be lawful for three or more of the commissioners of Excise for the time being, or two justices of the peace within their respective jurisdictions, on proof that such cyder or perry hath been charged with and paid the said duties, or any of them, granted by this act, and that the same cyder or perry hath also been charged with the duty on vinegar, to discharge or allow such of the duties granted by this act as shall have been charged thereon, which they are hereby required to do."

By 7 & 8 W. III., c. 30, s. 16. "That if any maker of vinegar, cyder,

10. *Cyder, Perry, &c.*

Dealers in, and retailers of, cyder and perry from fruit of their own growth, are subjected to like regulations, penalties, and provisions, as other dealers and retailers.

Dealers, retailers, or factors, sending, &c. cyder or perry from the maker to the contractor, &c. without the duties charged, and a certificate,

forfeit *sol*.

These duties are to be drawn back on exportation and distillation;

and also where cyder or perry become unfit for sale as such, and shall be charged with the duties on vinegar.

Penalty for concealing vinegar, &c. from gauger.



10. Cyder,  
Perry, &c.

metheglin, mead, or sweets for sale, shall at any time hereafter hide, conceal, or convey away any vinegar, or liquor prepared for vinegar, or any cyder, metheglin, mead, or sweets, from the sight and view of the gauger or gaugers appointed to take account of the same, whereby His Majesty shall or may be defrauded of any of the duties due for the same; that every such maker of such vinegar, cyder, metheglin, mead, or sweets, for every barrel of vinegar, or liquor prepared for vinegar, or sweets, so hid, concealed, or conveyed away, as aforesaid, shall forfeit the sum of 40s., and so in proportion for any greater or lesser quantity; and for every hogshead of cyder so hid, concealed, or conveyed away, the sum of 40s., and so in proportion for any greater or lesser quantity; and for every gallon of metheglin or mead so hid, concealed, or carried away, as aforesaid, shall forfeit the sum of 5s."

For refusing  
gauger to take  
account, &c.

Sect. 17. "That from henceforth, in case any maker or retailer of vinegar, or of any of the commodities aforesaid, shall, upon due request or demand made by the gauger or officer in the daytime, or if by night, then in the presence of a constable, refuse to permit such gauger or officer to enter and come into his or their house, storehouse, or other place belonging to or used by such maker or retailer of vinegar, or of any other the liquors or commodities aforesaid, and to take account of any of the liquors or commodities aforesaid; in every such case such maker of vinegar, or any other of the liquors or commodities aforesaid, shall forfeit for every such offence the sum of 15l."

Penalty of ob-  
structing of-  
ficers in the  
execution of  
their duty,

By 6 Geo. III., c. 14, s. 17. "That if, from and after the said 5th day of July, 1766, any person or persons whatsoever shall assault, resist, oppose, molest, or hinder any officer or officers of Excise in the due seizing or securing of any cyder or perry which, by any officer or officers of Excise, shall or may be seized by virtue or in pursuance of this act, or in the execution of any of the powers or authorities by this act given or granted, or shall by force or violence rescue, or cause to be rescued, any cyder or perry, after the same shall have been seized by such officer or officers as aforesaid, or shall attempt or endeavour so to do, or after such seizure shall stave, break, or otherwise destroy or damage any casks, vessels, or package wherein the same shall be contained, all and every the party or parties so offending shall, for every such offence respectively, forfeit and lose the sum of 40l."

or rescuing or  
staving cyder  
or perry after  
seizure, is 40l.

Penalty on  
brewer or cyder-  
maker deliver-  
ing to distiller  
or vinegar-maker  
any wash, &c.  
without giving  
notice to the  
gauger.

By 8 & 9 W. III., c. 19, s. 9. "That if any common brewer, or maker of cyder, brewing or making any beer, ale, or cyder for sale, shall at any time after the said 10th day of April deliver to any distiller or vinegar-maker any wash, tilts, ale, beer, vinegar, beer, or cyder, without first giving notice to the gauger or gaugers within whose division or district such brewer or maker of cyder doth or shall inhabit, what quantity of wash, tilts, ale, beer, vinegar, beer, or cyder he intends to deliver, and when and to whom he intends to deliver the same, every such common brewer or maker of cyder shall forfeit and lose for every barrel of wash, tilts, ale, beer, vinegar, beer, and cyder, delivered without such notice given as aforesaid, the sum of 20s."

Masters of ves-  
sels carrying  
cyder or perry  
coastwise  
are to make  
report thereof  
to the proper  
officer of Ex-  
cise within  
three days after  
their arrival in  
port; distinguish-  
ing in the account  
the persons and  
places from whence  
sent, and where,  
and to whom  
consigned, &c.

By 6 Geo. III., c. 14, s. 8. "That from and after the said 5th day of July, 1766, the master or other person having the charge of any ship, vessel, barge, or trow, in which shall be shipped or put on board any cyder or perry, to be carried from one part of this kingdom to another, shall, within three days after his arrival at any port or place where any part of such cyder or perry is to be delivered, give to the proper officer of Excise, to be appointed for that purpose by the respective commissioners of Excise in England and Scotland respectively, a just and true account in writing of the whole quantity of cyder and perry by him received on board; distinguishing in such account the names and places of abode of the persons by whom the same, and every part thereof, was put on board, and at what place; and the names and places of abode of the persons to whom the same, and every part thereof, is or was sent, directed, or consigned;

and where the same, and every part thereof, was to be delivered: and in case the master or other person having the charge of any such ship, vessel, barge, or trow, shall neglect or refuse to give such account as aforesaid, according to the directions of this act, or shall dispose of or deliver any part of the cyder or perry by him taken on board at sea, or in any other place, except the place to which the same was consigned (unavoidable accidents excepted), the person so offending shall, for every such offence, forfeit and lose the sum of 20*l.*; and such master or other person having the charge of such ship, vessel, barge, or trow, shall, within twenty-one days after his arrival at the place of delivery, land or cause to be landed all the cyder and perry then on board to be delivered there, on pain of forfeiting all such cyder and perry which shall not be landed according to the directions of this act; which shall and may be seized by any officer or officers of Excise, together with the casks or other package containing the same."

By 12 C. II., c. 24, s. 29. "That all common brewers of beer and ale shall once in every week, and all inn-keepers, alehouse-keepers, victuallers, and other retailers of beer, ale, cyder, perry, metheglin, or strong water, brewing, making, or retailing the same, shall once in every month make true and particular entries at the office of Excise within the limits of which the said commodities and manufactures are made, of all beer, ale, perry, cyder, metheglin, strong-water, or other the liquors aforesaid, which they or any of them shall brew, make, or retail in that week and month respectively as aforesaid."

Sect. 30. "That all such common brewers who do not once a week make due and particular entries shall forfeit 10*l.*: and that every such inn-keeper who doth not make true and particular entries once a month shall forfeit 5*l.*: and that every alehouse-keeper, victualler, or other retailer, who doth not once a month make due and particular entries, shall forfeit 20*s.*"

Sect. 31. "That every common brewer who shall not pay and clear off within a week after he made his entry, or ought to have made his entry, as aforesaid, shall pay double the value of the duty; and that every inn-keeper, alehouse-keeper, victualler, or other retailer, who shall not pay and clear off within a month after he made his entry, or ought to have made his entry, as aforesaid, shall pay double the value of the duty: the said respective forfeitures to be levied upon their goods and chattels, in such manner and form as hereafter in this act is ordained and directed."

Sect. 32. "That no such person as aforesaid shall be compelled by the commissioners or sub-commissioners of the Excise to travel for the making of the said entries or payment of the said duties or other cause whatsoever touching or concerning the same, if he live in a market-town, out of the said town; if he live out of a market-town, then to no other place than to the next market-town to his habitation in the same county, on the market-day."

12 C. II., c. 25, s. 20. "And for the avoiding of all incertainty and dispute touching the returns made or to be made by the gaugers of any beer or ale so brewed as aforesaid, be it enacted and declared by the authority aforesaid, that every six-and-thirty gallons of beer taken by the gauge according to the standard of the ale quart, four whereof shall make the gallon, remaining in the custody of the chamberlains of His Majesty's Exchequer, shall be reckoned, accounted, and returned by the gauger for a barrel of beer; and every two-and-thirty gallons of ale taken by the gauge according to the same standard shall be in like manner reckoned, accounted, and returned for a barrel of ale; and all other the liquors aforesaid according to the wine gallon."

12 C. II., c. 24, s. 34. "That every six-and-thirty gallons of beer taken by the gauge according to the standard of the ale-quart, four whereof shall make the gallon, remaining in the custody of the chamberlains of His Majesty's Exchequer, shall be reckoned, accounted, and returned by the gauger for

10. *Cyder, Perry, &c.*

on penalty of 20*l.* for every such neglect or refusal, or delivering, &c. the same otherwise than as consigned.

Perry and cyder to be landed within 31 days after arrival, on forfeiture thereof.

Entries to be made at the Excise office by common brewers, inn-keepers, &c.

The penalty for not making entries.

The penalty for not paying.

In what places entries shall be made.

What shall be reckoned a barrel of beer.

The barrel of ale.

Proportions to be observed in returns of gaugers.

10. *Cyder, Perry, &c.*

Proviso concerning distiller, &c.

a barrel of beer, and every two-and-thirty gallons of ale taken by the gauge according to the same standard shall be in like manner reckoned, accounted, and returned for a barrel of ale, and all other the liquors aforesaid according to the wine gallon."

By 12 & 13 W. III., c. 11, s. 17. "That no information shall be brought, laid, or prosecuted against any common distiller, vinegar-maker, or cyder-maker, for any false or mis-entry, or offence made or committed, from and after the 24th day of June, 1701, unless the same information or informations be laid and entered before such persons appointed to determine the same, within three months next after every such offence committed, and that notice thereof be given to such person or persons (against whom such information shall be laid) in writing, or left at their dwelling-houses, within one week after the laying and entering such information, to the end a timely provision may be had and made in defending the same; any thing in this act or other law to the contrary notwithstanding."

DRUGS and DRUGGISTS. See title *Ale and Beer*, and 56 Geo. III., c. 58, s. 2 & 3, *ante*, p. 324.

11. *Glass.*(11.) *Glass.*

[10 Geo. II., c. 12;	39 & 40 Geo. III., c. 45;	56 Geo. III., c. 108;
19 Geo. II., c. 12;	43 Geo. III., c. 69;	58 Geo. III., c. 21; c. 33;
10 Geo. III., c. 44;	45 Geo. III., c. 30;	59 Geo. III., c. 97; c.
17 Geo. III., c. 39;	47 Geo. III., sess. 2, c.	104; c. 115;
24 Geo. III., sess. 2, c.	30;	1 & 2 Geo. IV., c. 13;
41;	49 Geo. III., c. 63;	3 Geo. IV., c. 27;
26 Geo. III., c. 77;	51 Geo. III., c. 69;	5 Geo. IV., c. 40;
27 Geo. III., c. 28; (a)	52 Geo. III., c. 54; c. 94;	6 Geo. IV., c. 81; c. 111;
28 Geo. III., c. 37;	53 Geo. III., c. 103;	c. 117;
32 Geo. III., c. 40;	54 Geo. III., c. 97;	7 & 8 Geo. IV., c. 40; c.
35 Geo. III., c. 14; c.	55 Geo. III., c. 30; c.	53;
114;	113;	9 Geo. IV., c. 48.]
38 Geo. III., c. 33;		

## Duties.

By 6 Geo. IV., c. 105, all former duties of *Customs* were repealed, and by 6 Geo. IV. c. 111. new duties enacted. *Vide ante*, p. 113, 129.

By 6 Geo. IV., c. 117, the former Excise duties and drawbacks on *flint glass* were repealed, and other duties and another drawback enacted.

By 9 Geo. IV., c. 48, the Excise duties and drawbacks on *plate glass*, *broad glass*, *crown glass*, *bottle glass*, and *glass bottles*, were repealed, and other duties and drawbacks enacted.

These several duties of Excise are now collected and recoverable pursuant to the general regulations and provisions of the stat. 7 & 8 Geo. IV., c. 53, *ante*, 264 to 310.

## Licences.

By 6 Geo. IV., c. 81, all former duties on Excise licences are repealed; and by sect. 2 new duties are imposed; *viz.* (*int. al.*) upon every glass-maker, for each and every glass-house, 20*l.* (*Ante*, 247.)

The several general regulations respecting the duties, penalties, licences, &c. &c., contained in this statute are as stated *ante*, 249 to 263.

By 17 Geo. III., c. 39, s. 25. "That in case any foreign glass of any

Foreign glass liable to any duty, which shall be imported clandestinely, to be forfeited; (b)

(a) The duty imposed by this act upon plate glass squared into plates of a certain superficies was holden to attach upon rectangular figures, the word square not being confined to its strict acceptation as equilateral. *The Attorney-Ge-*

*neral v. Cast Plate Glass Company*, 1 *Anstr.* 39.

(b) The master of a homeward-bound vessel coming up the *Thames* proved to have hired and sent off a boat and men, accompanied by one of his own crew, to

kind, liable to the payment of any Customs, subsidies, or duties, by any act or acts of parliament or law whatsoever, so imported as aforesaid, shall be landed or put on shore out of any ship or vessel, or unshipped with intent to be put on shore, before due entry be made thereof at the custom-house in the port or place where the same shall be imported, and the respective duty or duties payable for the same shall be paid or secured, or without a warrant for the landing or delivering of the same, first signed by the commissioners, collectors, or other proper officer or officers of the Customs respectively; all such glass as shall be so landed or put on shore, or taken out of any ship or vessel, contrary to the intention of this present act, shall be forfeited, or the value thereof, and shall or may be seized or recovered of the importer or proprietor thereof, by any officer or officers of the Customs or Excise; and moreover the master, mate, or other person or persons taking the charge or command of such ship or vessel, and all and every other person or persons who shall be any ways concerned, or aiding or assisting, in such unshipping or landing of such glass as aforesaid, shall, for every such offence, forfeit and lose the sum of 100*l*."

By 38 Geo. III. c. 33, s. 6. "That every package containing any plate or plates of glass unframed, being plate glass, crown glass, or glass called *sheet glass*, which shall be imported into this kingdom, or which shall be brought into this kingdom for the purpose of exportation, shall be marked or stamped on the outside thereof, in Roman letters not less than four inches in length, with the word 'Glass;' and in case any such glass shall be so imported, or brought for exportation, without having the outside package thereof marked or stamped as aforesaid, such glass, together with the package, and all goods, wares, or merchandise contained therein, shall be forfeited."

Sect. 7. "That the master or other person having or taking the charge or command of every ship or vessel in which any such glass shall be imported into this kingdom, or brought for the purpose of exportation, shall, in the report of his ship's cargo, express every package or packages in which such glass shall be contained as containing glass; and in case any package shall be found on board such ship or vessel containing such glass, the contents of which shall not have been reported as glass, such package, together with the glass, shall be forfeited, and the master or other person having or taking the charge or command of such ship or vessel shall forfeit 100*l*."

Sect. 8. "That no such glass shall be imported into this kingdom, or brought into the same for the purpose of exportation, in any package whatever which shall not contain five cwt. nett, at least, of such glass, under the penalty of the forfeiture thereof. Provided always, that this act shall not extend to forfeit any plate or plates of glass being of the length of 60 inches or upwards, on account of the same not being imported or brought in packages marked and described as aforesaid."

By 17 Geo. III., c. 39, s. 27. "That all and every person or persons who, from and after the said 5th day of July, 1777, shall become a maker or makers of glass, shall make such entry and entries, in writing, of their respective names, and of their respective furnaces, pots, pot-chambers, warehouses, rooms, and other places, for making or keeping of glass, or of materials mixed and prepared for making of glass, and give like notice before they use any pot or pots for the preparing or making of glass, as

11. Glass.

and the master of the vessel, &c. to forfeit 100*l*.

Packages containing unframed glass imported to be marked "Glass," on penalty of forfeiture.

Masters of vessels to report every package in which such glass shall be imported, on penalty of its forfeiture and 100*l*.

Such glass imported in packages not containing 5 cwt. forfeited; but not to extend to plates 60 inches long.

Makers of glass to enter their names, furnaces, &c. as directed by the above recited act.

bring away certain boxes of foreign and *British* glass lying on the sands on the *Essex* coast, to be landed at *Woolwich*, which they find and bring as far as *Gravesend*, where the whole is seized by the custom-house officers. Held to be sufficient evidence for a jury of a being concerned in *unshipping foreign glass*

without payment of duty, and in unshipping *British* glass shipped for exportation, subjecting the master of the vessel to the penalties for both those offences, although the whole was one transaction. *Attorney-General v. Towns*, 6 *Price*, 108.

## 11. Glass.

Makers of glass, before beginning to make it, or to mix materials, to make entry of workhouses, furnaces, &c. on penalty of 200*l*.

Persons having places for making or keeping smalts within the distance of a mile from any entered house for keeping other glass,

Penalty 500*l*.

Who shall be deemed makers of glass.

Who deemed makers of glass.

Persons carrying on the business of a drop-pincher making entry of their workshop, &c.

makers of glass were by the said recited act directed to make, on pain of forfeiting, for every neglect, as by that act directed."

By 35 Geo. III., c. 114, s. 1. "That from and after the fifth day of July, 1795, all and every maker and makers of glass, before he, she, or they shall begin to make any glass, or to mix or prepare any materials for the making of glass, shall, in pursuance of this act, make true and particular entry in writing of all workhouses, furnaces, pots, pot-chambers, annealing arches, warehouses, rooms, and other places by him, her, or them respectively intended to be made use of for the making or keeping of glass, or for the making or keeping of any pot or pots for the making of glass, or for the keeping of materials mixed and prepared for the making of glass, at the office of Excise within the compass or limits whereof such respective workhouses, furnaces, pots, pot-chambers, annealing arches, warehouses, rooms, and other places respectively shall be situate, on pain of forfeiting the sum of 200*l*. for every workhouse, furnace, pot, pot-chamber, annealing arch, warehouse, room, or other place which he, she, or they shall make use of for the making or keeping of glass, or for the making or keeping of any pot or pots for the making of glass, or for the keeping of any materials mixed or prepared for the making of glass, without having made such entry thereof as aforesaid."

By 58 Geo. III., c. 21, s. 3. "That from and after the passing of this act, no person or persons whatsoever shall make, manufacture, or keep, or erect, set up, enter, or make use of any house or place whatsoever in Great Britain for the making, manufacturing, or keeping of a certain glass called smalts, within the distance of one mile in a direct line from any house or place which shall be entered or used for the making, manufacturing, or keeping of any other glass; nor shall any person or persons whatsoever make, manufacture, or keep, or erect, set up, enter, or use any house or place whatsoever in Great Britain for making, manufacturing, or keeping any other glass within the distance of one mile in a direct line from any house or place which shall be entered or used for making, manufacturing, or keeping the said glass called smalts; nor shall any maker or manufacturer of smalts make or manufacture any other kind of glass, on pain of forfeiting for every such offence the sum of 500*l*.; and all and every entries and entry of any such house or place so made use of for the making, manufacturing, or keeping of either smalts or other glass contrary to the true intent and meaning of this act, shall be null and void to all intents and purposes whatsoever." See also 59 Geo. III., c. 115, s. 8.

By 45 Geo. III., c. 30, s. 10. "That each and every person who shall make or manufacture any sort or kind of glass, or glass wares, by melting any metal, materials, cullet, or old or broken glass, in any pot, crucible, or other utensil, shall be deemed and taken to be a maker of glass, and shall be subject to all and every the provisions, rules, regulations, restrictions, and penalties to which makers of glass are now by law subject and liable; any thing in this or any other act or acts of parliament to the contrary in anywise notwithstanding."

By 54 Geo. III., c. 97, s. 7. "That each and every person who shall make or manufacture any kind or sort of glass ware by means of the melting or softening of any glass, or who shall melt or soften any glass, in any manner whatsoever, for the purpose of making or converting the same into any vessel, utensil, ware, or piece of household furniture, or part of any vessel, utensil, ware, or piece of household furniture, shall be deemed and taken to be a maker of glass, and shall be subject to all and every the provisions, rules, regulations, restrictions, and penalties to which makers of glass are now by law subject and liable; any thing in any act or acts of parliament to the contrary in anywise notwithstanding."

By 58 Geo. III., c. 33, s. 2. "That no person who shall carry on the trade or business of a drop-pincher only, and not make or manufacture any other kind of glass or glass wares, and who shall use and employ in such trade or business lump, paste, or cane glass only, and shall duly make

entry with the proper officer of Excise of all and every workshop and workshops, room and rooms, and place and places where he shall carry on such trade or business, or keep any material or materials for that purpose, and shall from time to time produce to the officer or officers of Excise surveying such workshop, room, or place, all materials by him used or employed in such trade or business, and shall at the same time deliver to such officer an invoice or invoices for all lump, paste, or cane glass received into his custody or possession, signed by the maker and seller of such glass, or his foreman or clerk, and subscribed also by the officer of Excise surveying the glass-house where such glass was made, and shall not use or employ as aforesaid any cullet or waste glass, and shall in all other respects observe and perform the several regulations, matters, and things by law imposed for and in respect of such trade or business, except taking out a licence as a glass-maker, shall incur or be subject or liable to any penalty or forfeiture for or by reason of using or carrying on such trade or business as aforesaid without having first taken out the licence required by law for that purpose; any thing in any other act or acts to the contrary thereof notwithstanding. Provided always, that all cullet or waste glass, and all and every other material and materials for or which may be used in making any glass or glass wares, found in the custody or possession of any such person or persons as aforesaid, or any person or persons using or carrying on such trade or business as aforesaid, save and except lump, paste, or cane glass for which such invoice so subscribed shall be produced as aforesaid, shall be forfeited, and shall and may be seized by any officer or officers of Excise; and the person and persons in whose custody or possession the same shall be found shall, over and above all other penalties, forfeit and lose the sum of fifty pounds."

By 35 Geo. III., c. 114, s. 2. "That it shall and may be lawful to and for all and every the officers of Excise, at all times, by day or by night, upon his or their request, to enter into all and every the workhouses, furnaces, pot-chambers, annealing arches, warehouses, rooms, and other places whatsoever entered or made use of by any maker or makers of glass for the making, preparing, or keeping any materials for the making of glass, or for the making or keeping of glass, or for the making or keeping of any pot or pots for the making of glass, and at any such time or times, and from time to time, to inspect, examine, weigh, gauge, or otherwise take account of the metal and materials there mixed and prepared for the making of glass, as well before such metal and materials shall be put into the pot or pots, as after the same shall be put into the pot or pots, and of all glass there made or manufactured, or making or manufacturing; and also to examine, gauge, or otherwise take an account of, the capacity or content of each and every pot there found for the making of glass; and to mark and number every such pot, in such manner as he or they shall think fit; and if any person or persons whatsoever shall counterfeit or alter, or cause or procure to be counterfeited or altered, any such mark on any pot for the making of glass, or shall connive at any such mark being so counterfeited or altered, the person or persons so offending shall for each and every such offence severally forfeit and lose the sum of 500*l.*; and if any person or persons shall wilfully deface or obliterate any such mark, or cause or procure any such mark to be defaced or obliterated, or shall connive at any such mark being so defaced or obliterated, the person or persons so offending shall, for each and every such offence, severally forfeit and lose the sum of 200*l.*"

By 10 Geo. II., c. 12, s. 9. "The officer shall be permitted at all times, by day or night, to enter into the workhouse, warehouse, or other place for making glass, and to weigh and take account of the quantity of materials; and shall make report thereof to the commissioners or whom they shall appoint, leaving a copy (if demanded) under his hand for the glass-maker; and if he shall not leave such copy on demand, he shall forfeit 40*s.*"

11. *Glass.*

with the proper officer, and observing the regulations required, not subject to penalty for not taking out a licence as a glass-maker.

Cullet or waste glass found in the possession of such persons forfeited;

and penalty 50*l.*

Officers of Excise may at all times enter into workhouses, &c. to gauge materials, &c. and mark pots.

Penalty of 500*l.* for counterfeiting marks, and 200*l.* for defacing them.

## 11. Glass.

Notice of beginning to work.

By 35 Geo. III., c. 114, s. 3. "Every maker shall, four hours before he begins to light any fire to heat his annealing arch, give to the officer under whose survey he is notice in writing of his intention so to do, specifying therein every pot set in such annealing arch, with the number marked by the officer on such pot, on pain of forfeiting 20*l*."

Notice to be given to the officer in writing.

By 19 Geo. II., c. 12, s. 7. "That every maker of glass, before he, she, or they do or shall begin to fill or charge any pot or pots for making of glass, shall, by the space of twelve hours next before the beginning of every such filling or charging, give to the officer or officers of the division or place where such glass is intended to be made, notice in writing of the particular time and hour when and at which such filling or charging is intended to be begun, with an account of the true weight of the metal or preparation to be made use of, and the species of glass so to be made, on pain of forfeiting and losing the sum of 50*l*. at every time or times when any such filling or charging shall be begun, without first giving such notice as aforesaid."

Penalty.

Proviso.

Sect. 8. "That if such intended filling or charging of such pot or pots, whereof such notice shall have been given, shall not be begun pursuant to such notice, then, and in every such case and cases, such notice or notices respectively shall be null, void, and of no effect; and every maker of glass whatsoever, who after the expiration of such times mentioned in such notice shall begin to fill or charge such pot or pots, without having first given a new or other like notice, as aforesaid, of his, her, or their intention to fill or charge such pot or pots, with an account of the true weight of the metal or preparation to be made use of, and the species of glass so to be made, shall in every such case incur and be subject to the like penalty and forfeiture as if he, she, or they had not thereof given any notice at all."

New notice to be given.

Particulars of the notice to be given by glass-makers before they charge their pots.

Penalty on neglect.

17 Geo. III., c. 39, s. 33. (a) "That every maker of glass shall, in every notice hereafter to be given, express in writing the particular time and hour when he intends to begin to fill or charge his pot or pots, and the account of the true weight of the metal or preparation to be made use of in each particular pot used for the making of glass, and the species and particular kind of glass intended to be made in each pot: and if any maker of glass shall neglect or refuse to give the notice by this present act, and the said recited act, directed and required, or after such notice given, and a gauge taken by the officer of the metal or preparation in their pots, shall, without a fresh notice in writing, put into any such pot any metal, material, or preparation whatsoever, every such maker of glass shall, in every such case, forfeit and lose the sum of 50*l*."

No pot to be filled with metal till gauged by the officer, on penalty of 50*l*.

35 Geo. III., c. 114, s. 4. "That no maker or makers of glass shall, after any pot for the making of glass shall have been placed or set in the furnace, begin to fill or charge any such pot with metal, or preparation for the making of glass, until the proper officer or officers of Excise shall have previously examined and gauged such pot after the same shall have been placed or set in the furnace as aforesaid; and if any maker of glass shall, after any pot for the making of glass shall have been placed or set in the furnace, begin to fill or charge any such pot with metal, or preparation for making of glass, before the proper officer or officers of Excise shall have examined and gauged such pot, after the same shall have been so placed or set in the furnace, as aforesaid, all and every such maker and makers of glass so offending shall, for each and every such offence, forfeit and lose the sum of 50*l*."

No fire to be stirred, &c. in any furnace or annealing arch, to obstruct the officer, on penalty of 100*l*.

Sect. 5. "That no maker or makers of glass shall, during the space of one quarter of an hour after any officer or officers of Excise shall have entered

(a) Breaking the moiles of glass bottles into the pot is a putting in fresh materials within the 17 Geo. III., c. 39 : *Attorney-General v. Parke*, 1 *Ant.* 240.

the glass-house of any such maker or makers of glass, and shall have forbidden the same, stir or break up the fire, or add fresh coals or fuel thereto, in any furnace or annealing arch belonging to such glass-house, or wilfully raise any smoke, or other noisome or offensive vapour, whereby the officer may be hindered or obstructed in gauging or examining any pot or pots placed or set in any furnace or annealing arch, or in the examining the metal or materials in any such pot or pots in the furnace for the making of glass, or in gauging or ascertaining the quantity of any such metal or materials, or in examining or counting the vessels, utensils, or wares in any annealing arch; and if any maker or makers of glass shall, contrary to the directions hereinbefore in that behalf contained, stir up or break up the fire, or add fresh coals or fuel thereto, in any furnace or annealing arch as aforesaid, or wilfully raise any such smoke, or other noisome or offensive vapour, all and every such maker and makers of glass shall, for each and every such offence, forfeit the sum of 100*l*."

Sect. 6. "That all and every the officer and officers of Excise shall and may at all times unstop or take down any stopper from any pot or pots containing any metal or preparation for the making of glass, for the purpose of inspecting, examining, gauging, or taking account of the materials, metal, or other preparations in such pot or pots for the making of glass."

Officers may unstop pots to gauge materials.

By 47 Geo. III., sess. 2, c. 30, s. 16, reciting the 19 Geo. II., c. 12, and the method prescribed therein of taking an account of metal and materials for making glass after being put into the pots, and reciting that since that act it had been the invariable practice of the officers of Excise to take such account of the quantity after the same had been put into such pots according to the following method, viz. to gauge and ascertain the dimensions of every such pot, before the same had been set in the furnace, and therefrom to calculate the quantity which every such pot was capable of containing at every inch,  $\frac{1}{2}$  inch,  $\frac{1}{4}$  inch, and fractions of an inch, and to ascertain the weight or quantity of the metal or materials at any time contained in such pot, for the making of crown or any other species of glass, by gauging or measuring the dry inches or unfilled and unoccupied space or distance between the top, rim, edge, or lip of such pot in the furnace, and the surface of the fluid, metal, or materials in such pot, and deducting the quantity of metal or materials which this space, denoted by such dry inches, or the unfilled and unoccupied part of such pot, appeared, by such original gauge or calculation, capable of containing, from the quantity of metal or materials which, according to such original gauge or calculation, the whole pot was denoted to be capable of containing, and reciting that doubts had arisen whether this method were warranted by law, enacted, "that from and after the 10th day of October, 1807, the quantity of the metal and materials mixed and prepared for the making of glass, after the same shall have been put into any such pot or pots, shall be deemed and taken to be such as the same shall by the said method be denoted to be; and the officer and officers of Excise shall make a return or report thereof in writing to the respective commissioners of Excise in Great Britain, or such person or persons as they shall respectively appoint to receive the same; and such return or report of the said officer or officers of Excise shall be a charge upon such maker or makers of glass, any thing in this or any other act or acts of parliament to the contrary in anywise notwithstanding."

By 51 Geo. III., c. 69, s. 5. "That all and every maker and makers of glass, before he, she, or they shall begin to anneal any glass or glass wares whatsoever, shall make true and particular entry in writing of all and every lear and lears by him, her, or them respectively intended to be made use of, for the annealing of glass, at the office of Excise within the compass or limits whereof such lear or lears respectively shall be situate, on pain of forfeiting the sum of 200*l*. for every lear which he, she, or they shall make

Entry of lears.

Penalty.



## 11. Glass.

If makers, desirous of making common glass bottles, &c. in distinct houses, give a declaration thereof, and of their desire to pay the duty according to the weight of the bottles, the officer not to charge it on the materials in the pot. (a)

Declarations to remain in force for six months at least.

Makers delivering such declarations to make their annealing arches of a certain form, and to number them, on penalty of 100*l*.

use of for the annealing of any glass or glass wares whatsoever, without having made such entry thereof as aforesaid."

By 35 Geo. III., c. 114, s. 7. "That in case any maker or makers of common glass bottles, or other vessels or utensils, shall be desirous of making common bottles, or other vessels or utensils, of common bottle metal only, in any distinct and separate glass-house and building, and to be charged with and pay the duty for or in respect of the materials or metal or other preparations made use of in the making of such common bottles, or other vessels or utensils, of common bottle metal, and shall deliver in to the surveyor or supervisor of Excise of the division or district within which his, her, or their glass-house shall be situate, a declaration in writing of his, her, or their being desirous to be charged with and pay the said duty according to the weight of the bottles, (b) or other vessels or utensils of common bottle metal, and specifying the particular glass-house and building in which such maker or makers shall be desirous of making the same, then and in such case it shall not be lawful to or for any officer or officers of Excise to make any charge of duty from any gauge or gauges taken by such officer or officers in any pot or pots of the materials or metal or other preparations made use of by such maker or makers in such glass-house or building for the making of common glass bottles, or other vessels or utensils of common bottle metal, any thing in any act or acts of parliament contained to the contrary in anywise notwithstanding. Provided always, nevertheless, that every such declaration so delivered as aforesaid shall be and remain in full force for six months at the least, to be computed and reckoned from the time of the delivery thereof, and from thenceforth until the same shall be revoked or withdrawn by a note or memorandum in writing, delivered by such maker or makers of glass to the surveyor or supervisor of Excise of the division or district within which his, her, or their glass-house shall be situate."

Sect. 8. "That all and every maker and makers of common glass bottles, or of other vessels or utensils of common bottle metal, having delivered such declaration as aforesaid, shall, and he, she, and they is and are hereby required to erect, build, make, and construct every annealing arch or oven by him, her, or them intended to be made use of in such glass-house or building as aforesaid, for the annealing of common glass bottles, or of other vessels or utensils of common bottle metal, in a rectangular form, with the sides and ends thereof perpendicular and parallel to each other respectively, and the bottom thereof level, and with only one mouth or entrance into the same, and shall number the same progressively

(a) The stat. 35 Geo. III., c. 114, gives the maker of common glass bottles, &c. the option of being charged with the duty either according to the weight of the materials ascertained by the gauge thereof in the pots, or by weighing the pots, &c. when made; but, in case of his electing the latter mode, requires him to deliver to the officer of Excise a declaration in writing to that effect. In an information for penalties on that statute, and others *in pari materia*, containing counts for using *false scales* and weights, and counts for obstructing an officer in weighing glass, the delivery of the declaration must be proved, but the production of the instrument itself may be dispensed with, and its existence may be presumed from the defendant's being charged with, and paying the duty for

six years by weighing the bottles and other vessels.

Quære, Whether the counts for the obstruction should contain the averment respecting the declaration, in order to bring the defendant within the statute; or whether, if the duties are computed by the gauge, the officers are entitled to weigh the bottles also, for the purpose of checking the account taken by the other method.

What shall not be held a misdescription of the defendant under the statute: *Attorney-General v. Pemberton, M'Clel.* 634.

(b) Under the word *bottles* is to be understood also all other vessels or utensils made of common bottle metal, unless otherwise expressed.

with a durable mark; and if any such maker or makers shall erect, build, make, or construct any annealing arch or oven contrary to the directions of this act, or shall neglect or refuse to number and mark the same according to the directions of this act, or shall make use of any annealing arch or oven not constructed in the manner before directed, all and every such maker or makers so offending shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 9. "That all and every maker and makers of common glass bottles, or of other vessels or utensils of common bottle metal, having delivered such declaration as aforesaid, shall, at his, her, and their own expense, find, provide, and affix, a good and sufficient iron grating to the mouth or entrance of every annealing arch and oven by him, her, or them intended to be made use of for the annealing of common glass bottles, or of other vessels or utensils of common bottle metal, such iron grating to be approved of in writing by and under the hand of the respective surveyors or supervisors of Excise of the division or district within which such annealing arch or oven shall be situate; and proper locks and keys, and all other necessary fastenings for securing and sealing every such annealing arch and oven, and the mouth or entrance and iron grating thereof, shall be provided by the respective surveyors and supervisors of Excise of such division or district, at the expense of such maker or makers; and each and every such annealing arch or oven, and the mouth or entrance and iron grating thereof, shall be securely locked, fastened, and sealed by the officer or officers of Excise under whose survey such maker or makers respectively shall from time to time be, at all times, except when such maker or makers shall be actually at work in putting, placing, or depositing therein common glass bottles, or other vessels or utensils of common bottle metal, for the purpose of annealing the same therein, or when such annealing arch or oven shall be opened by the proper officer or officers of Excise in that behalf, in pursuance of such previous notice as is hereinafter directed and prescribed for opening the same, for the purpose of lighting fire in or heating the same for annealing common glass bottles, or other vessels or utensils of common bottle metal, or for the purpose of drawing or taking any such common glass bottles, or such other vessels or utensils as aforesaid, from or out of such annealing arch or oven, or for the purpose of necessarily repairing the same; and if any such maker or makers shall neglect or refuse, at his, her, and their own expense, to find or provide such good and sufficient iron grating, or to affix the same in the manner herein directed, before such annealing arch or oven shall be made use of as aforesaid, or to pay for any lock, key, or other necessary fastening which shall be provided by any surveyor or supervisor of Excise, according to the directions of this act, or if any person or persons shall obstruct or hinder any officer or officers of Excise, or any person or persons by him or them employed in that behalf, in the fixing or placing any such fastening, in such manner as the said officer or officers shall direct or think expedient to answer the purposes by this act in that behalf intended, or in the locking, sealing, or securing any such annealing arch, or oven, or the mouth or entrance, or iron grating thereof, or any such fastening as aforesaid, or by any means, art, device, or contrivance whatsoever, shall open any such lock or annealing arch or oven, or the mouth, entrance, or iron grating thereof, after the same shall have been locked, sealed, fastened, or secured as aforesaid, before the same shall have been unlocked and opened by the officer of Excise, or shall wilfully break or damage any such lock, seal, or fastening, every such maker or makers, or other person or persons, so offending, shall, for each and every such offence, forfeit and lose the sum of 200*l*. Provided always, nevertheless, that no such annealing arch or oven shall be, remain, or continue unlocked or open, for any purpose or on any pretence whatever (except for the necessary repairing thereof when empty) for any greater or longer space of time than 24 hours, to be computed and reckoned from the time when the same shall have been opened

11. *Glass.*

Makers delivering such declaration to fix iron gratings to the mouth of annealing arches, to be approved of by the officer, &c.

Annealing arches to be locked by the officer except at certain times.

Penalty of 200*l*. for neglecting to furnish or fix iron gratings, or for obstructing officers in placing fastenings, &c.

No annealing arch to remain open more than 24 hours except for repairs.

11. *Glass.*

Makers of common glass bottles to alter locks, &c. when required by the surveyors or supervisors of Excise, on penalty of 100*l*.

Makers delivering declaration, to give 12 hours notice of intention to heat annealing arches.

Officers to attend to unlock them.

If fires be not lighted within an hour, the officers to lock up the arch,

and fresh notice to be given.

Bottles, when blown, to be removed into the annealing arch, and placed as the officers shall approve: and bottles of different makings not to be put at the same time therein, or any other sort of glass, on penalty of 50*l*.

by the proper officer of Excise; and that it shall and may be lawful to and for any officer or officers of Excise, under whose survey such maker or makers shall then be, at the end and expiration of such 24 hours, securely to lock, fasten, and seal such annealing arch or oven, and the mouth, entrance, and iron grating thereof; any thing herein contained to the contrary in anywise notwithstanding."

Sect. 10. "That where any locks, keys, or fastenings shall be provided in pursuance of this act, all and every maker and makers of common glass bottles, and other vessels or utensils of common bottle metal, to whom such locks, keys, and fastenings respectively shall then belong, shall at his, her, or their own expense, from time to time, and at all times, when required so to do by the respective surveyors or supervisors of Excise of the division or district in which his, her, or their glass-house shall be situate, immediately set about the altering, repairing, and amending; and shall also, within a reasonable time then next following, alter, repair, and amend the same respectively, according to such requisition; and if any such maker or makers of common glass bottles, or of other vessels or utensils of common bottle metal, to whom any such locks, keys, and fastenings, or any or either of them, shall belong, shall neglect or refuse immediately to set about the altering, repairing, or amending the same, or to repair, amend, or alter the same, when thereunto required according to the directions of this act, he, she, or they shall, for each and every such neglect or refusal, forfeit and lose the sum of 100*l*."

Sect. 11. "That when any maker or makers of common glass bottles, or of other vessels or utensils of common bottle metal, having delivered such declaration as aforesaid, shall be desirous to light, kindle, or prepare any fire to heat his, her, or their annealing arch or oven, into which any common glass bottles, or other vessels or utensils of common bottle metal, are intended to be put or deposited, for the purpose of annealing the same, such maker or makers shall give to the officer of Excise under whose survey he, she, or they shall then be, twelve hours notice in writing of his, her, or their intention; and upon such notice being given, such officer shall attend at the time mentioned in such notice, and shall unlock and open such annealing arch or oven, and the mouth or entrance and iron grating thereof; and if any such maker or makers shall neglect or refuse to light, kindle, or prepare such fire, within one hour after such annealing arch or oven, and the mouth or entrance and iron grating thereof, shall be opened by such officer, then such notice shall be void, and such officer shall again, immediately after the expiration of such one hour, lock up, fasten, and seal such annealing arch and oven, and the mouth or entrance and the iron grating thereof, in manner aforesaid; and such maker and makers shall give the like and a fresh notice in writing to such officer, before such annealing arch or oven, or the mouth or entrance or iron grating thereof, shall be again opened."

Sect. 12. "That all and every maker and makers of common glass bottles, or of other vessels or utensils of common bottle metal, having delivered such declaration as aforesaid, shall, when and so soon as the same shall be severally and respectively blown or made, remove all and singular the common bottles, and other vessels and utensils of common bottle metal, by him, her, or them so blown or made, directly into such annealing arch or arches, or oven or ovens, and shall there place and deposit the same in such manner and form as the officer or officers of Excise, under whose survey such maker or makers shall then be, shall approve, and so that the same may the most easily and securely be viewed, inspected, and examined, and the numbers and kinds thereof respectively ascertained in each and every such annealing arch or oven; and no such maker or makers shall at one and the same time put, place, have, or keep in any such annealing arch or oven any common bottles, or other vessels or utensils of common bottle metal, of different makings, or fillings or

11. *Glass.*

chargings of the pots, nor shall any such maker or makers put, place, or keep any other sort or species of glass or glass wares whatever, or any phials, in any such annealing arch or oven entered or made use of for the annealing of common bottles, or other vessels or utensils of common bottle metal; and if any such maker or makers shall neglect or refuse to remove, when and so soon as the same shall be blown or made, any such common bottles, or other vessels or utensils respectively of common bottle metal, by him, her, or them made, directly into such annealing arch or arches, or oven or ovens, or to place or deposit any such common bottles, or other vessels or utensils, in manner and form as aforesaid, or if any such maker or makers shall at one and the same time put, place, or keep in any such annealing arch or oven, any common bottles, or other vessels or utensils of common bottle metal, of different makings, or fillings or chargings of the pots, or put, place, have, or keep, any other sort or species of glass or glass wares whatever, or any phials, in any annealing arch or oven entered or made use of for the annealing of common glass bottles, or other vessels or utensils of common bottle metal, every such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 50*l*."

Sect. 13. "That all and every maker and makers of common glass bottles, or of other vessels or utensils of common bottle metal, having delivered such declaration as aforesaid, and having begun to work any common bottle metal from or out of any pot or pots, shall, without any unnecessary delay or interruption, continue to work such common bottle metal out of all and every the pots then charged in such glass-house or building, and shall proceed therein until the whole of the metal by him, her, or them intended to be manufactured shall be worked out of all such pots, and shall finish such working out thereof within sixteen hours next after such maker or makers shall so have begun to work out the same; and when and so soon as such metal shall have been so worked out as aforesaid, and the common glass bottles, or other vessels or utensils of common bottle metal, made or manufactured therefrom, put or deposited in the annealing arch or arches, or oven or ovens, such maker or makers shall, in the presence of the officer of Excise under whose survey such maker or makers shall then be, again charge each and every such pot and pots with fresh materials or preparations (other than cullet or broken glass), not less in quantity than fifty pounds weight, and shall also deliver to such officer a declaration in writing, specifying the true number of bottles, and whether the same are reputed quart or pint bottles, or bottles of any other and what, reputed measure, and the true numbers and kinds of any other vessels or utensils of common bottle metal put or deposited, and contained in each and every such annealing arch respectively; and if any such maker or makers shall neglect or refuse to work the metal from or out of such pot or pots within such sixteen hours as aforesaid, or shall neglect or refuse to deliver such declaration in writing as last aforesaid, every such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 100*l*. Provided always, nevertheless, that no such maker or makers shall incur or be liable to the said penalty of 100*l*. for or by reason of his, her, or their not delivering a true declaration as last aforesaid, in any case where the number of bottles, vessels, or utensils respectively, of any particular kind, specified in any declaration so delivered, shall not differ from the number of bottles, vessels, or utensils respectively, so put, deposited, or contained in any such annealing arch, in any greater proportion than in the proportion of five in the hundred; any thing hereinbefore contained to the contrary in anywise notwithstanding."

Sect. 14. "That all and every maker and makers of common glass bottles, or other vessels or utensils of common bottle metal, who shall have begun to work any common bottle metal from or out of any pot in his, her, or their glass-house or building, shall be deemed and taken to

The whole of metal intended to be manufactured into common glass bottles to be worked within sixteen hours after beginning to work it from pots;

and when the bottles are put in the annealing arch, the pots to be charged again in the presence of the officer, and a declaration of the number of bottles delivered him, on penalty of 100*l*.

Penalty not incurred if the number declared does not differ from the actual number more than five in the 100.

Beginning to work metal out of any pot to be deemed beginning to work the whole then charged.

## 11. Glass.

Scales and weights to be kept for the use of the officers, on penalty of 50*l*.

Penalty of 100*l*. for using false weights, &c.

Twelve hours previous notice to be given of intention to take bottles out of the annealing arch :

officer to attend, and the whole to be taken out within four hours.

have begun to work out the common bottle metal from and out of every pot which shall at that time be charged with any materials or metal, or other preparations made use of in the making of common bottles, or of other vessels or utensils of common bottle metal, within the same glass-house or building."

Sect. 15. " That all and every maker and makers of common glass bottles, or of other vessels or utensils of common bottle metal, having delivered such declaration as first aforesaid, shall, and he, she, and they is and are hereby required to keep sufficient and just scales and weights at the place or places where he, she, or they shall make or manufacture glass bottles, or other vessels or utensils of common bottle metal, and shall at his, her, and their own expense, find, provide, and affix, a fit and proper hook or staple in a proper place, to be approved of in writing by and under the hands of the respective surveyors or supervisors of Excise of the division or district in which his, her, or their glass-house shall be situate, and also permit and suffer any officer or officers of Excise to use the same for the purpose of weighing and taking an account of the bottles, and other vessels or utensils of common bottle metal, which shall at any time be in the possession of such maker or makers of glass; and if any such maker or makers shall neglect to keep such scales and weights, or either of them, or shall not, at his, her, or their own expense, find, provide, and affix a fit and proper hook or staple in a proper and convenient place, to be approved of in writing by and under the hands of the respective surveyors or supervisors of Excise of the division or district in which his, her, or their glass-house shall be situate, or shall not permit or suffer any officer or officers of Excise to use the same, he, she, or they shall, for each and every such offence, forfeit the sum of 50*l*.; and if any such maker or makers of glass shall, in the weighing of any such common glass bottles, or other vessels or utensils of common bottle metal, make use of, or cause, or procure, or suffer to be made use of, any false, unjust, or insufficient scales or weights, or shall practise any art, device, or contrivance, by which any such officer or officers may be hindered or prevented from taking the just and true weight of any such glass bottles, or other vessels or utensils of common bottle metal, then and in every such case such maker or makers shall, for each and every such offence, forfeit the sum of 100*l*., with all such false, unjust, or insufficient scales and weights respectively, and the same shall and may be seized by any officer or officers of Excise."

Sect. 16. " That all and every maker and makers of common glass bottles, or of other vessels or utensils of common bottle metal, having delivered such declaration as first aforesaid, and being desirous to draw or take any glass bottles, or other vessels or utensils of common bottle metal, from or out of any annealing arch or arches or oven or ovens to him, her, or them belonging, shall, by the space of twelve hours next before the beginning to draw or take any such glass bottles, or other vessels or utensils, from or out of any such annealing arch or arches, or oven or ovens, give to the officer of Excise under whose survey he, she, or they shall then be, a notice in writing of his, her, or their intention, specifying each particular arch or oven, and the number thereof, from and out of which it is intended to take such common bottles, or other vessels or utensils of common bottle metal, and the particular time and hour at which it is so intended to begin to draw or take the same from or out of such annealing arch or arches, or oven or ovens; and upon such notice being given, such officer shall attend at the time mentioned in such notice, and shall unlock and open such annealing arch and arches, and oven and ovens, for the purpose aforesaid; and such officer shall attend to see such glass bottles, or other vessels or utensils, respectively drawn or taken from and out of such annealing arch and arches, and oven and ovens; and such maker or makers shall immediately on such officer's attendance begin to draw and take, and shall proceed and continue,

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without any unnecessary delay or interruption, to draw and take, from and out of such annealing arch and arches, or oven or ovens, the whole of the bottles, or other vessels or utensils of common bottle metal, and shall draw and take the whole of such bottles, and other vessels and utensils respectively, from and out of such annealing arch and arches, and oven and ovens, within the space of four hours, to be computed and reckoned from the time of such beginning to draw or take such bottles, or other vessels or utensils, from and out of any such annealing arch or oven as aforesaid; and such maker or makers shall, immediately on such bottles, and other vessels and utensils respectively, being so drawn or taken from or out of such annealing arch, or oven, proceed to weigh the whole thereof with such scales and weights as aforesaid, in the presence of such officer, and such weight shall be deemed and taken to be the weight of the materials or metal, or other preparations, from which such bottles, or other vessels or utensils respectively, shall have been made; and such maker or makers shall be charged with and pay the duty for or in respect of such materials or metal, or other preparations, according to such weight: and if any such maker or makers of common glass bottles, or of other vessels or utensils of common bottle metal, having given such notice, and begun to draw or take any such common glass bottles, or other vessels or utensils, from or out of his, her, or their annealing arch or arches, or oven or ovens, shall not proceed and continue, without any unnecessary delay or interruption, to draw and take the whole of such common glass bottles, or other vessels or utensils respectively of common bottle metal, from and out of such annealing arch and arches, and oven and ovens, or shall not draw and take the whole of such bottles, or other vessels or utensils respectively, from and out of such annealing arch and arches, and oven and ovens, within the space of four hours, to be computed and reckoned as aforesaid, then and in every such case such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 100*l.*; and if any such maker or makers of common glass bottles, or of other vessels or utensils of common bottle metal, having given any such notice as last aforesaid, shall neglect or refuse to begin to draw or take such common glass bottles, or other vessels or utensils respectively, from or out of his, her, or their annealing arch or arches, or oven or ovens, immediately after such annealing arch or arches, or oven or ovens, and the mouths or entrances and iron gratings thereof, shall be opened by such officer, then such notice shall be void, and such officer shall again immediately lock up, fasten, and seal each and every such annealing arch or oven, and the mouth or entrance, and iron grating thereof, in manner aforesaid, and such maker and makers shall give the like and a fresh notice in writing to such officer before any such annealing arch, or oven, or the mouth or entrance or iron grating thereof, shall be again opened. Provided always, nevertheless, that no such maker or makers of common glass, or of other vessels or utensils of common bottle metal, shall be at liberty to give any such notice to draw or take any such common bottles, or other vessels or utensils respectively, from or out of any of his, her, or their annealing arches or ovens, except in the daytime, and that between the hours of eight in the morning and six in the afternoon; and that every notice given for the drawing or taking any such common bottles, or other vessels or utensils respectively, from or out of any annealing arch or oven at any hour or time, other than in the daytime, and that between the hours of eight in the morning and six in the afternoon, shall and the same is hereby declared to be null and void, to all intents and purposes whatsoever."

Sect. 17. " Provided also, that in the weighing, as aforesaid, of any such common glass bottles, or other vessels or utensils of common bottle metal, the turn of the scale shall be given in favour of the crown; and in lieu thereof there shall be allowed to such maker or makers of such common glass bottles, or other vessels or utensils of common bottle metal,

Bottles, when taken out, to be weighed in the presence of the officer.

Penalty of 100*l.* for delaying to draw, or not clearing out the whole in four hours.

If makers neglect to begin drawing bottles out of annealing arches immediately on their being opened, fresh notice to be given.

No notice to be given for drawing out bottles but between certain hours.

In weighing common glass bottles, one pound per 100 to be allowed for turn of the scale.

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Makers to assist officers in weighing, &c., on penalty of 50*l*.

The allowance by 17 Geo. 3, c. 39, of one-fifth part of the metal in pots for making common bottles, repealed.

Bottles not to be conveyed from annealing arch till weighed, and to be produced for that purpose, on penalty of 100*l*.

Bottles weighed and not weighed to be kept separate, on penalty of 50*l*.

Penalty of 500*l*. for using private annealing arches, or removing bottles not weighed, or concealing them.

one pound weight upon each and every one hundred pounds of such common glass bottles, or other vessels or utensils of common bottle metal."

Sect. 18. "That all and every maker and makers of common glass bottles, or of other vessels or utensils of common bottle metal, having delivered such declaration as first aforesaid, shall, when and so often as he, she, or they shall be thereunto required by the officer or officers of such Excise under whose survey he, she, or they shall then be, with a sufficient number of his, her, or their servants, aid and assist, to the utmost of his, her, or their power, such officer or officers in weighing and taking an account of all common glass bottles, and other vessels or utensils of common bottle metal, of such maker or makers, on pain of forfeiting for every neglect or refusal the sum of 50*l*."

Sect. 19. "And whereas, by an act made in the 17 Geo. III., c. 39, amongst other things, for the better collecting the duties upon glass, it was enacted, that in pots used for the making of common bottles, and of other vessels or utensils thereinbefore mentioned, to be made of common bottle metal, an allowance should be made to the makers thereof of one-fifth part of the metal or other materials contained therein; and whereas it is expedient to repeal the said recited allowance; be it therefore enacted, by the authority aforesaid, that the said recited allowance shall be, and the same is hereby repealed, and no such allowance shall hereafter be made."

Sect. 20. "That no maker or makers of common glass bottles, or of other vessels or utensils of common bottle metal, having delivered such declaration as first aforesaid, shall convey away any common glass bottles, or other vessels or utensils of common bottle metal, from any annealing arch or oven, before the proper officer of Excise shall have weighed the same, or shall neglect or refuse to produce any such common glass bottles, vessels, or utensils to such officer, that he may weigh the same, according to the directions of this act; and if any such maker or makers shall convey away any common glass bottles, or other vessels or utensils of common bottle metal, from any annealing arch or oven before the proper officer of Excise shall have weighed the same, or shall neglect or refuse to produce any such common glass bottles, vessels, or utensils to such officer, that he may weigh the same, according to the directions of this act, every such maker or makers of glass shall, for each and every such offence, forfeit and lose the sum of 100*l*."

Sect. 21. "That all and every maker and makers of common glass bottles, or of other vessels or utensils of common bottle metal, having delivered such declaration as first aforesaid, shall from time to time, and at all times, keep all common glass bottles, and all other vessels or utensils of common bottle metal, in his, her, or their custody or possession (and which shall not have been weighed by the officer of Excise, according to the directions of this act), separate and apart from all common glass bottles, and other vessels or utensils of common bottle metal, which shall have been weighed, and from all other glass wares whatsoever, upon pain of forfeiting for every such offence the sum of 50*l*."

Sect. 22. "That if any maker or makers of common glass bottles, or other vessels or utensils of common bottle metal, having delivered such declaration as first aforesaid, shall, for the annealing of any common glass bottles or other vessels or utensils of common bottle metal, make use of any private or concealed annealing arch, oven, utensil, or place whatever, other than his, her, or their known annealing arch or arches entered for that purpose, or if any such maker or makers shall fraudulently remove or convey away any common glass bottles, or other vessels or utensils of common bottle metal, before the same shall have been weighed by the proper officer or officers of Excise, or shall fraudulently hide or conceal any common glass bottles, or other vessels or utensils of common bottle metal, each and every such maker and makers so offending shall, for each and every such offence, forfeit and lose the sum of 500*l*."

## II. PARTICULAR LAWS, &c. (11.) *Glass.*

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Sect. 23. "That no maker or makers of common glass bottles, or of other vessels or utensils of common bottle metal, having delivered such declaration as first aforesaid, shall make or manufacture, within the same glass-house or building by him, her, or them entered or used for the making or manufacturing of common glass bottles, or in any glass-house or building adjoining thereto, any phials, or any other sort or species of glass or glass wares whatever, except common bottles, and other vessels and utensils of common bottle metal, which vessels and utensils shall be such only as were, immediately before the passing of this act, usually made of common bottle metal; and if any such maker or makers of common glass bottles, or of other vessels or utensils of common bottle metal, shall make or manufacture, within the same glass-house or building by him, her, or them entered or used for the making or manufacturing of common glass bottles, or in any glass-house or building adjoining thereto, any phials, or any other sort or species of glass or glass wares, except common bottles, or other vessels or utensils of common bottle metal as aforesaid, every such maker or makers respectively shall, for each and every such offence, forfeit and lose the sum of 200*l*."

Sect. 24. "That if any officer or officers of Excise shall have cause to suspect that any common glass bottles, or other vessels or utensils of common bottle metal, which have been fraudulently removed or conveyed away before the same shall have been weighed by the proper officer or officers of Excise, according to the directions of this act, shall be deposited, lodged, hid, or concealed, in any place or places whatsoever, then and in such case, if such place or places shall be within the cities of London or Westminster, or within the limits of the chief office of Excise in London, upon oath made by such officer or officers before the commissioners of Excise in England for the time being, or any two or more of them, or, in case such place shall be in any other part of Great Britain, upon oath made by such officer or officers before one or more justice or justices of the peace for the county, riding, division, or place where such officer or officers shall suspect the same to be deposited, lodged, hid, or concealed (which respective oaths they the said commissioners of Excise, or any two or more of them, and justice or justices of the peace respectively, are hereby authorized and empowered to administer), setting forth the ground of his or their suspicion, it shall and may be lawful to and for the said commissioners of Excise, or any two or more of them, or the justice or justices of the peace respectively (as the case may require) before whom such oath shall be made, if they or he shall judge it reasonable, by special warrant or warrants under his and their respective hands and seals, to authorize and empower such officer or officers by day or by night, but if in the nighttime in the presence of a constable or other lawful officer of the peace, to enter into all and every such place or places where he or they shall so suspect such common glass bottles or other vessels or utensils of common bottle metal to be deposited, lodged, hid, or concealed, and to seize and carry away all such common glass bottles, or other vessels or utensils of common bottle metal, which he or they shall then and there find so deposited, lodged, hid, or concealed, as forfeited; and if any person or persons whatsoever shall let, obstruct, or hinder any such officer or officers so authorized or empowered, or any other person or persons acting in his or their aid or assistance, in the execution of such warrant, from entering any such place or places where such officer or officers shall so suspect such common glass bottles, or other vessels or utensils of common bottle metal, to be so deposited, lodged, hid, or concealed, or in seizing or carrying away the same, or in the due execution of any such warrant, the person or persons so offending shall for each and every such offence severally forfeit the sum of 200*l*."

Sect. 25. "That if any person or persons shall obstruct or hinder any officer or officers of Excise in the execution of any of the powers or authorities to him or them given or granted by this or any other act or acts of

### 11. *Glass.*

No phials, &c. to be made in any building entered for making common glass bottles, or in any adjoining building, on penalty of 200*l*.

On oath of ground of suspicion that any bottles have been removed before being weighed, officers may by warrant search suspected places, and seize the bottles, &c.

and persons obstructing them to forfeit 200*l*.

Penalty of 200*l*. on persons obstructing officers in any part of their duty.



## 11. Glass.

Act not to prevent officers from gauging metal before it is put into pots, or taking samples.

Officers of Excise may take a sample of the materials out of each pot, &c.

Penalty on obstructing them.

Makers of glass,

when to make their entries.

Penalty.

Oaths by whom to be administered.

Glass-makers in London monthly, and elsewhere in G. B. every six weeks, to make entry of weight of glass on oath.

parliament relating to glass, the person or persons so offending therein shall, for each and every such offence (other than those for which any penalty is hereinbefore specially imposed or provided), severally forfeit the sum of 200l."

Sect. 26. "That nothing in this act contained, relative to ascertaining and charging the duty on the materials or metal or other preparations used in the making common bottles, or other vessels or utensils of common bottle metal, by and according to the weight of such common bottles, or other vessels or utensils of common bottle metal, shall extend, or be construed to extend, to make it unlawful to or for any officer or officers of Excise, from time to time, and at all times, to inspect, examine, gauge, or otherwise take account of the metal and materials mixed and prepared for the making of glass in any such glass-house or building as aforesaid, as well before such metal or materials shall be put into any pot or pots, as after the same shall be put into any pot or pots, or to take a sample or samples, not exceeding four ounces in the whole, out of each such pot, or any other vessel or utensil containing such preparation for making glass."

And by 17 Geo. III., c. 39, s. 34. "That it shall and may be lawful to and for the gaugers, or other officers of Excise, to take a sample or samples, not exceeding four ounces in the whole, out of each of the said pots, or any other thing containing such preparations for making glass as aforesaid, paying for such sample or samples (if demanded) the sum of one half-penny for each ounce; and in case any person or persons shall obstruct or hinder the gaugers, or other officers of Excise, in taking such sample or samples, he, she, or they shall respectively forfeit for every such offence the sum of 50l."

By 19 Geo. II., c. 12, s. 13. "That from and after the said 25th day of March, 1746, during the continuance of the said duties on glass, all and every person or persons whatsoever, who shall make or cause to be made any glass in London, or in any parts within the limits of the weekly bills of mortality, shall monthly and every month, and all and every person or persons who shall make, or cause to be made, any glass in any other part of Great Britain, shall once in every six weeks, make a true entry in writing at the next office of Excise for the said duties, of the true quantities of the metals and materials mixed and used in each respective making of glass within such month or six weeks respectively, on pain of forfeiting for every neglect of entry 20l; which entries shall be made upon oath by the makers of such glass, or by their clerk, workman, or servant employed in making the same, according to the best of their knowledge and belief, unless such maker, clerk, workman, or servant be a known *quaker*, and the solemn affirmation of such maker, clerk, workman, or servant, to the same effect, in case he or she be a known *quaker*, shall and may be taken instead of such oath, and the said entries, oaths, and affirmations to verify the same shall, for such entries, oaths, and affirmations as shall be made within the limits of the weekly bills of mortality, be made with, and administered by, such officer or officers as shall be appointed by the commissioners of Excise in England, or the major part of them, for the time being, who shall attend at the general Excise office in London for that purpose; and for all such entries, oaths, and affirmations as shall be made in all other parts of Great Britain, with or by the respective collectors or supervisors of the district or division within which the respective makers of glass shall inhabit, without any fee or charge whatsoever to be demanded or taken for the same."

By 55 Geo. III., c. 113, s. 5. "That from and after the 1st day of March, 1815, all and every person or persons whatsoever who shall make or cause to be made in London, or in any parts within the limits of the weekly bills of mortality, any flint glass, or enamel, stained or paste glass, or phial glass, or any such window glass, or who, under the said declaration and regulations in that behalf prescribed by the said act of the 35th year of His said

11. *Glass.*

Majesty's reign, shall in London, or within the said limits, make or cause to be made any common bottles or other vessels or utensils of common bottle metal, shall monthly and every month, and all and every person or persons who shall make or cause to be made any such glass in any other part of Great Britain shall once in every six weeks, in lieu and instead of the therein recited oath or affirmation respectively, make a true entry in writing at the next office of Excise for the said duties of the true weight of all such flint glass, enamel, stained or paste glass, or phial glass, and also the weight of all such spread window glass, commonly called or known by the name of broad glass, and the weight of all window glass not being spread glass, whether flashed or otherwise manufactured, and commonly called or known either by the name of crown glass or German sheet glass, and the weight of all such common bottles or other vessels or utensils made of common bottle metal respectively, made by him, her or them within such month or six weeks respectively, on pain of forfeiting for every neglect of entry the sum of 100*l.*; which entries shall be made upon oath by the makers of such glass, or by their clerk, workman, or servant employed in making the same, according to the best of his, her, or their knowledge and belief, unless such maker, clerk, workman, or servant be a known quaker; and the solemn affirmation of such maker, clerk, workman, or servant, to the same effect, in case he, she, or they be a known quaker, shall and may be taken instead of such oath; and the said entries, oaths, and affirmations to verify the same shall, for such entries, oaths and affirmations as shall be made within the limits of the weekly bills of mortality, be made with and administered by such officer or officers as shall be appointed by the commissioners of Excise in England, or the major part of them, for the time being, who shall attend at the general Excise office in London for that purpose; and for all such entries, oaths, and affirmations as shall be made in all other parts of Great Britain, with or by their respective collectors or supervisors of the district or division within which such glass-houses shall be situated, without any fee or charge whatsoever to be demanded or taken for the same."

Penalty.

Oath.

Oaths, &c.  
where made.

Fee.

Glass-maker  
when to pay the  
duties.

By 19 Geo. II., c. 12, s. 15. "That all and every person and persons whatsoever, who shall make or cause to be made any glass in London, or within the limits of the weekly bills of mortality, shall within four weeks, and all and every person and persons whatsoever, who shall make, or cause to be made, any glass in any other part of Great Britain, shall within six weeks after he, she, or they shall make, or ought to have made, such entry as aforesaid, pay and clear off all the said duties for glass which shall be due from him, her, or them respectively; and that all and every such maker of glass, who shall refuse or neglect to make such payment as aforesaid, shall forfeit and lose for every such offence double the sum of the said duty, whereof the payment shall be so refused or neglected."

Penalty.

Sect. 11. "That in every case where the whole or any part of the materials shall be lost, or become unfit for making glass, by cracking or breaking of the pots as therein mentioned, upon due proofs thereof made to the satisfaction of the respective commissioners of Excise in Great Britain, where such glass-houses or workhouses shall be situated, such allowance shall be made to the said makers of glass in respect of such loss as aforesaid, as by the said commissioners of Excise respectively shall be judged proper and reasonable."

Pots breaking,  
&c. when  
charged,  
commissioners  
to make allow-  
ance for loss.

By 32 Geo. III., c. 40, s. 1. "That every maker of flint glass who shall have given any notice for beginning to fill or charge any pot or pots with metal or materials for the making of flint glass, in the manner required by law, shall be allowed the space of three hours next after the time and hour specified in such notice, before he, she, or they shall be required to begin to fill or charge such pot or pots with such metal or materials, and such beginning to fill or charge such pot or pots with such metal or materials, within three hours next after the time and hour specified in such

Makers of flint  
glass to be  
allowed three  
hours after the  
time specified  
in the notice  
for beginning  
to fill pots with  
materials.

11. Glass.

One-fourth at least of the metal specified in the notice to be put in'o pots within six hours after beginning to charge them, on penalty of 50*l*.

One hour's previous notice of unstopping pots to be given to the Excise officer, on penalty of 50*l*.

If pots are not begun to be unstopped pursuant to notice, fresh notice must be given.

Penalty not to extend to the unstopping pots which may happen to crack, &c.

nor to the unstopping them within thirty-six hours from the time of beginning to charge them.

On giving six hours previous notice, forty pounds of metal which has paid the duty may be put into any new pot, in the presence of the officer, for the purpose of glazing it,

notice, shall be deemed and taken to be a beginning to fill and charge such pot or pots, according to and under such notice, any thing in any former act or acts of parliament contained to the contrary thereof in anywise notwithstanding.

Sect. 2. "That every maker of flint glass who shall give any such notice for beginning to fill or charge any pot or pots for the making of flint glass shall, within six hours next after the time and hour at which he, she, or they shall begin to fill or charge such pot or pots, put into such pot or pots one-fourth part at the least of the true weight of the metal or preparation specified in such notice as being to be made use of in the making of flint glass, on pain of forfeiting the sum of 50*l*. for every neglect or refusal thereof."

Sect. 3. "That it shall not be lawful for any maker or makers of flint glass to unstop or take down any stopper from his, her, or their pot or pots, containing any metal or preparation for the making of flint glass, unless notice in writing shall, by the space of one hour next before he, she, or they shall so unstop such pot or pots, or take down any such stopper from any such pot or pots, be given to the officer or officers of Excise under whose survey he, she, or they shall then be, of his, her, or their intention so to do, specifying therein the particular time and hour when and at which any pot or pots is or are intended to be unstopped, or any such stopper or stoppers is or are intended to be taken down, on pain of forfeiting the sum of 50*l*. for every neglect or refusal to give such notice as aforesaid."

Sect. 4. "That if any such pot or pots, so intended to be unstopped, and whereof such notice shall have been given, shall not be begun to be unstopped pursuant to such notice, then, and in every such case and cases, such notice or notices respectively shall be null, void, and of no effect, and all and every maker and makers of flint glass, who, after the expiration of the time mentioned in such notice, shall unstop or take down any such stopper from any such pot or pots, without having first given a new or like notice as aforesaid of his, her, or their intention to unstop or take down any such stopper or stoppers from any such pot or pots, shall, in every such case, incur and be subject to the like penalty and forfeiture as if he, she, or they had not thereof given any notice at all."

Sect. 5. "That nothing hereinbefore contained shall extend, or be deemed or construed to extend, to subject any maker or makers of flint glass to the said penalty of 50*l*., for or by reason of his, her, or their unstopping or taking down any stopper from any such pot which may happen to crack or break whilst the same is filled or charged with any metal or preparation, for the sole purpose of preventing the loss of such metal or preparation, or from any other pot or pots, for the sole purpose of discovering such broken pot or pots, any thing hereinbefore contained to the contrary thereof notwithstanding."

Sect. 6. "That nothing hereinbefore contained shall extend, or be deemed or construed to extend, to subject any maker or makers of flint glass to the said penalty of 50*l*., for or by reason of his, her, or their unstopping or taking down any stopper or stoppers from any pot or pots, during the time of the filling or charging any such pot or pots, and within thirty-six hours from the time of his, her, or their having begun to fill or charge such pot or pots, any thing hereinbefore contained to the contrary thereof notwithstanding."

Sect. 7. "That it shall and may be lawful to and for all and every maker and makers of flint glass (on his, her, or their giving to the officer or officers of Excise under whose survey he, she, or they shall then be, six hours previous notice in writing of his, her, or their intention so to do) to glaze, or cause to be glazed, any new pot or pots previously gauged and taken an account of by the proper officer or officers of Excise, and specified in such notice, and for that purpose to take from and out of any

other pot any quantity of metal, on which the duty has been charged, not exceeding 40lbs. weight in the whole, and to put such metal immediately, in the presence of such officer or officers, into such new pot or pots for the sole purpose of glazing the same, without such maker or makers of flint-glass being liable to any further duty for or in respect of such metal so put into such new pot or pots for the purpose aforesaid, or without incurring any penalty for beginning to fill or charge such new pot without notice.

Sect. 8. "That it shall and may be lawful to and for all and every maker and makers of flint glass (on his, her, or their giving to the officer or officers of Excise, under whose survey he, she, or they shall then be, six hours previous notice in writing of his, her, or their intention so to do), to cleanse any pot or pots in which any stained glass hath been melted, and specified in such notice, by taking any quantity of unstained metal on which the duty has been charged, not exceeding 10lbs. weight in the whole, and by lading and unlading the same in the presence of such officer or officers into and from such pot for that purpose, and by repeating such operations in the presence of such officer or officers, until such pot shall be sufficiently cleansed, without incurring any penalty for beginning to charge such pot without notice."

By 51 Geo. III., c. 69, s. 7. "Provided always, nevertheless, that nothing in this act contained shall extend, or be construed to extend, to prevent any maker or makers of flint or phial glass from using a lear, in respect of which no licence has been taken out, for the purpose of annealing flint glass of the sort or description which is made for cutting; provided such lear, in respect of which no licence has been taken out, be immediately contiguous to a lear in respect of which a licence has been taken out, and the entrance of which shall be in the full view of any officer or officers of Excise, who shall at the same time observe and inspect the entrance of such contiguous lear, in respect of which a licence shall have been taken out, and the discharge hole of which shall be in the weighing room hereinafter mentioned, and not more than twelve feet from the discharge hole of such contiguous lear, in respect of which a licence shall have been taken out; any thing in this act contained to the contrary notwithstanding."

Sect. 11. "That it shall and may be lawful to and for all and every the officers of Excise, from time to time and at all times, to mark and number, in such manner as he or they shall think fit, all and every the workhouses, pot-chambers, pot-holes, lears, warehouses, rooms, and other places whatsoever, entered or made use of by any maker or makers of flint glass or of phial glass for the making or keeping of flint glass or phial glass, or for the preparing or keeping any material or preparation for the making of flint glass or phial glass; and if any person or persons whatsoever shall hinder or obstruct any such officer or officers in so marking or numbering any such workhouse, pot-chamber, pot-hole, lear, warehouse, room, or other place, or shall wilfully alter, deface, or obliterate any such mark, or cause or procure any such mark to be defaced or obliterated, or shall connive at any such mark being so defaced or obliterated, the person or persons so offending shall, for each and every offence, forfeit and lose the sum of 100l."

Sect. 12. "That all and every maker and makers of flint glass or of phial glass shall, and he, she, and they is and are hereby required to erect, build, make, and construct every lear by him, her, or them intended to be made use of for the annealing of flint glass, or of phial glass, in a rectangular form, with the sides and ends thereof perpendicular and parallel to each other respectively, and the bottom thereof level, and with only one mouth or entrance into the same respectively, and only one discharge hole out of the same, and which said discharge hole shall open into and communicate with the weighing room hereinafter mentioned, and no other room or place whatsoever; and all and every such maker and makers shall number all such lears progressively with a durable mark, and shall keep and con-

and on like notice, ten pounds of unstained metal may be used for the purpose of cleansing any stained glass pot.

In what case a lear may be used, though not licensed.

Officers of Excise to number and mark pot-holes, &c.

Penalty.

How flint and phial glass makers to construct their lears.

11. *Glass.*

## Penalty.

Flint or phial glass makers to affix iron grating to entrance of lear.

Lear to be locked by officer.

## Exception.

## Penalty.

Flint or phial glass maker to anneal flint or phial wares in lear.

## Penalty.

No flint or phial glass maker to have in his lear any other species of glass with phial glass.

## Penalty.

Notice of heating lears.

tinue the same respectively numbered in manner aforesaid, for so long time as the same respectively shall be made use of as aforesaid; and if any such maker or makers shall erect, build, make, or construct any lear contrary to the directions of this act, or shall neglect or refuse to number the same in manner aforesaid, or to keep or continue the same numbered as aforesaid, according to the directions of this act, or shall make use of any lear not constructed in the manner in that behalf hereinbefore directed, all and every such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 100*l*.

Sec. 13. "That all and every maker and makers of flint glass or of phial glass shall, at his, her, or their own expense, find, provide, and affix a good, sufficient, and secure iron grating to the mouth or entrance of every lear by him, her, or them intended to be made use of for the annealing of flint glass or phial glass; and each and every such lear, and the mouth or entrance and iron grating thereof, shall be securely locked, fastened and sealed by the officer or officers of Excise under whose survey such maker or makers respectively shall from time to time be, at all times, except when such maker or makers shall be actually at work in putting, placing, or depositing therein articles, vessels or utensils of flint glass or of phial glass, for the purpose of annealing the same therein, or when such lear shall be opened by the proper officer or officers of Excise, in pursuance of such previous notice as is hereinafter directed and prescribed for opening the same, for the purpose of lighting fire in or heating the same, for annealing articles, vessels or utensils of flint glass or of phial glass, or for the purpose of drawing or taking any such articles, vessels, or utensils as aforesaid from or out of such lear, or for the purpose of necessarily repairing the same; and if any such maker or makers shall neglect or refuse so to find or provide any such iron grating, or to affix the same in manner hereinbefore directed, he, she, or they shall, for each and every such offence, forfeit and lose the sum of 100*l*."

Sec. 14. "That all and every maker or makers of flint glass or of phial glass shall put, place, or deposit in one or more such lear or lears as aforesaid, for the purpose of annealing the same, and shall anneal therein all the flint glass and phial glass respectively which shall from time to time be by him, her, or them made or manufactured; and if any maker or makers of flint glass or of phial glass shall omit or fail to anneal in such lear or lears any portion of the flint or phial glass by him, her, or them manufactured, or shall put, place, or deposit in any kiln, stove or oven, or annealing arch or oven, other than such lear or lears as aforesaid, any flint glass or phial glass for the purpose of annealing the same, or shall anneal the same therein, he, she, or they shall, for each and every such offence, forfeit and lose the sum of 200*l*."

Sec. 15. "That no maker or makers of flint glass or of phial glass shall at one and the same time put, place, have, or keep, in any lear entered or made use of for the annealing of flint glass or of phial glass, any articles, vessels, or utensils of different makings, nor any sort or species of glass, or glass wares, other than flint glass or phial glass wares; and if any such maker or makers shall at one and the same time put, place, have, or keep in any lear, entered or made use of for the annealing of flint glass or of phial glass, any articles, vessels, or utensils of different makings, or any sort or species of flint glass, or glass wares, other than flint glass or phial glass, or flint glass wares, or phial glass wares, every such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 100*l*."

Sec. 16. "That when any maker or makers of flint glass, or of phial glass, shall intend and be desirous to prepare, light, or kindle any fire to heat his, her, or their lear, into which any flint glass or phial glass is intended to be put or deposited for the purpose of annealing the same, such maker or makers shall give to the officer of Excise under whose survey he, she, or they shall then be, six hours notice in writing of such his, her, or

their intention, and upon such notice being given, such officer shall attend at the time mentioned in such notice, and shall unlock and open such lear, and the mouth or entrance and iron grating thereof; and if any such maker or makers shall neglect or refuse to light or kindle such fire within one hour after such lear, and the mouth or entrance and iron grating thereof, shall be opened by such officer, then such notice shall be void, and such officer shall again, immediately after the expiration of such one hour, lock up, fasten, and seal such lear, and the mouth or entrance and iron grating thereof, in manner aforesaid; and such maker or makers shall give the like and a fresh notice in writing to such officer, before such lear, or the mouth or entrance or iron grating thereof, shall be again opened."

Sect. 17. "That it shall and may be lawful to and for the officer and officers of Excise under whose survey any glass-house for the making of flint glass or phial glass shall be, and such officer and officers is and are hereby required, when and so soon as any journey of flint glass or of phial glass making shall be finished, if the same shall be finished at or before six of the clock in the evening of Saturday in any week, and if such journey shall not be finished at or before six of the clock in the evening of Saturday in any week, then at six of the clock in the evening of such Saturday to lock, seal, fasten, and secure every lear of or belonging to such glass-house, and the mouth or entrance and iron grating thereof, and to keep the same locked, sealed, fastened, and secured from thenceforth, until such maker or makers shall give to such officer or officers such notice as is hereinbefore directed and required of such maker or makers' intention to prepare, light, or kindle a fire as aforesaid, to heat such lear, and in no case sooner than the hour of eight in the evening of the Sunday next following such locking, sealing, fastening, and securing of such lear; and if any person or persons shall obstruct or hinder any such officer or officers, or any person or persons by him or them employed in that behalf, in so locking, sealing, fastening, or securing any such lear, or the mouth, entrance, or iron grating thereof, in such manner as such officer or officers shall direct or think expedient to answer the purpose by this act in that behalf intended, or shall attempt or endeavour so to do, or shall by any means, art, device, or contrivance whatsoever open any such lear, or the mouth, entrance, or iron grating thereof respectively, after the same shall have been locked, sealed, fastened, or secured as aforesaid, before the same shall have been unlocked and opened by the proper officer or officers of Excise, or shall wilfully break or damage any such lock, seal, or fastening, then and in every such case the person or persons so offending shall, for each and every such offence, forfeit and lose the sum of 200*l*."

Sect. 18. "That all and every maker and makers of flint glass or phial glass shall, and he, she, and they is and are hereby required, at his, her, and their own expense, to find and provide, or erect, build, make, and construct a good, sufficient, and secure weighing room in each and every flint glass-house or phial glass-house to him, her, or them belonging, which room shall be near to and communicate with the lear or lears of such glass-house; and save and excepting the discharging hole or holes of the said lear or lears, no such room shall have more than one door or entrance into the same, and the said door or entrance shall open directly into and afford and form an immediate communication with the reweighing room hereinafter mentioned and required, and no discharging hole of any such lear shall open into any room or place other than such weighing room; and such weighing room and the door or entrance thereof shall be securely locked, fastened, and sealed by the officer or officers of Excise under whose survey such maker or makers shall from time to time be, at all times when there shall be any flint glass or phial glass therein, or in the lear or lears communicating therewith, save and except when the same shall be opened by such officer or officers for the purpose of weighing and taking an account of the articles, vessels, and utensils respectively of

Regulations for officers locking up and sealing mouths of flint glass lears.

Notice.

Obstructing officer.

Penalty.

Flint and phial glass makers to provide a weighing room, which is to be kept locked by officer.

11. *Glass.*

Notice of opening weighing room.

Neglecting to build weighing room.

Penalty.

Flint and phial glass makers to provide annealing pans or trays, with a windlass and machinery for carrying them with the glass wares therein, through the lear into the weighing room.

flint glass or of phial glass therein, and charging the duty thereon in pursuance of such notice as is hereinafter mentioned, or for the purpose of such maker or makers, or his, her, or their servants arranging or regulating the positions of the pans or trays of articles, vessels, or utensils hereinafter mentioned, which shall have been drawn, rolled, conveyed, or conducted through the lear or lears communicating with the said weighing room into the said weighing room; and when any such maker or makers shall be desirous of having the door or entrance of any such weighing room unlocked or opened for the purpose last aforesaid, such maker or makers shall give to the officer of Excise under whose survey he, she, or they shall then be, one hour's previous notice in writing of his, her, or their being so desirous, and specifying in such notice the particular weighing room which he, she, or they is or are so desirous to have unlocked or opened for the purpose last aforesaid, and the particular time and hour when he, she, or they is or are desirous to have the same so unlocked or opened; whereupon such officer shall attend pursuant to such notice, and shall unlock and open the said door or entrance, and shall keep and continue the same so unlocked or opened for the space of half an hour; during which time such maker or makers, or one of his, her, or their servants, shall be at liberty to arrange or regulate the positions of the said pans or trays in the said weighing room, in the presence and under the inspection of the said officer; and when the arrangement or regulation of the said pans or trays shall be finished, or at the end of the said half an hour (whichever of them shall first happen), such officer shall again lock, fasten, and secure the said door or entrance; and if any maker or makers of flint glass or phial glass shall neglect or refuse to find and provide or erect, build, make, or construct such weighing room as aforesaid in any such glass-house to him, her, or them belonging, the maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 200*l*. Provided always, nevertheless, that no such maker or makers shall be at liberty to give or shall give any such notice or notices as last aforesaid, for having the door or entrance of any weighing room opened more than once within the space of any twelve hours; nor shall any officer or officers of Excise, in pursuance or under pretence of any such notice or notices, unlock or open any such door or entrance more than once within the space of any twelve hours; any thing hereinbefore contained to the contrary in anywise notwithstanding."

Sect. 19. "That all and every maker and makers of flint glass or of phial glass shall also, at his, her, or their own expense, make and construct a proper and sufficient number of iron pans or trays to receive and contain, during the annealing thereof, in the lear or lears of or belonging to each flint glass-house or phial glass-house to him, her, or them belonging respectively, all the articles, vessels, and utensils of flint glass or of phial glass respectively, which shall from time to time be made or blown at or in such respective glass-house, and shall also find, provide, and apply to such iron pans or trays good and sufficient chains, rollers, instruments, apparatus, and machinery, fit and proper for working the said iron pans or trays, and conveying and conducting the same respectively, with such articles, vessels, and utensils of flint glass or of phial glass respectively therein or thereon, immediately from the mouth or mouths of such lear or lears, into the said lear or lears, for the purpose of annealing the same therein, and shall also, at his, her, and their own expense, find, provide, and erect, in the most convenient part of every such glass-house for using the same, a fit, proper, and convenient windlass, for the purpose of drawing, rolling, conveying, and conducting all and every such pans or trays, with the said articles, vessels, and utensils of flint glass or of phial glass therein or thereon, from the mouth or mouths of the said lear or lears, into the said lear or lears, and also for drawing, rolling, conveying, and conducting all and every such pans or trays, with the said articles, vessels, and utensils

of flint glass or of phial glass therein or thereon, through the said lear or lears, and for drawing, rolling, conveying, and conducting the said pans or trays, with the said articles, vessels, and utensils respectively therein or thereon, from and out of the said lear or lears into the said weighing room, when such articles, vessels, and utensils respectively shall have been sufficiently annealed in the said lear or lears, for the purpose of the officer or officers of Excise under whose survey such maker or makers shall from time to time be weighing and taking an account of such articles, vessels, and utensils respectively in the said weighing room, and charging the duty for or in respect thereof respectively; and if any such maker or makers of flint glass or of phial glass shall neglect or refuse so to make or construct a proper and sufficient number of iron pans or trays to contain and convey into and out of such lear or lears for the purpose of annealing all such articles, vessels, and utensils as aforesaid, which shall from time to time be made or blown at or in any such glass-house, or to find, provide, or apply to such iron pans or trays, or any or either of them, such good and sufficient chains, rollers, instruments, apparatus, and machinery, fit and proper for working the said iron pans or trays, or any or either of them, for any or either of the purposes in that behalf aforesaid, or shall neglect or refuse to find, provide, or erect, in manner in that behalf aforesaid, any such fit, proper, or convenient windlass as is in that behalf aforesaid, all and every such maker or makers of flint glass or of phial glass respectively so offending shall, for each and every such offence, forfeit and lose the sum of 200/."

Refusing to construct iron pans, &c.

**Penalty.**

Flint glass makers to deposit the wares on the trays, and when filled to convey them into the lear, and from thence into the weighing room.

Sect. 20. "That all and every maker and makers of flint glass or of phial glass shall from time to time, and at all times when and so soon as any article, vessel, or utensil of flint glass or of phial glass shall be made or blown, put, lay, and deposit the same on or in one of such pans or trays, which shall at that time be placed within the mouth or entrance of the lear for the purpose of receiving the articles, vessels, and utensils of flint glass or of phial glass so made or blown, and shall in like manner proceed and continue to put, lay, and deposit on or in the said pan or tray so placed as aforesaid such articles, vessels, or utensils as aforesaid, until the bottom or surface of the said pan or tray shall be filled or covered, and shall keep and continue all and every such articles, vessels, and utensils respectively on or in such pan or tray, until the said articles, vessels, and utensils shall be drawn, rolled, removed, conveyed, or conducted on or in such pan or tray into the lear of the said glass-house as hereinafter mentioned; and when and so soon as the bottom or surface of such pan or tray shall be filled or covered by or with such articles, vessels, or utensils as aforesaid, such maker or makers shall, by means of such chains, rollers, instruments, windlass, and machinery as aforesaid, draw, roll, remove, convey, and conduct the same with the whole of the said articles, vessels, and utensils therein or thereon into the said lear, for the purpose of annealing the said articles, vessels, and utensils respectively therein; and such maker or makers shall keep and continue each such pan or tray, with the said articles, vessels, and utensils respectively therein or thereon in such lear, until the said articles, vessels, and utensils shall be sufficiently annealed; and when the same shall be so annealed, shall in like manner draw, roll, remove, convey, and conduct the said pan or tray, with the said articles, vessels, and utensils therein or thereon, from and out of such lear directly unto and into the said weighing room, and shall, without altering or disturbing the positions of such articles, vessels, and utensils, or any or either of them, on or in such pan or tray, keep and continue the same in the said weighing room until the officer or officers of Excise under whose survey such maker or makers of flint glass or of phial glass shall then be shall have taken an account of and weighed the said articles, vessels, and utensils respectively, and charged the duty for or in respect thereof respectively; and if any maker or makers of flint glass or of phial glass shall neglect or refuse to put, lay, or deposit any article, vessel, or utensil of flint glass or

Refusing to place articles in pans, &c.



## 11. Glass.

of phial glass on or in one of such pans or trays so placed as aforesaid when and so soon as such article, vessel, or utensil shall be blown or made, or shall neglect or refuse to proceed or so to continue to put, lay, or deposit on or in the said pan or tray so placed as aforesaid such articles, vessels, or utensils as aforesaid, until the bottom or surface of the said pan or tray shall be filled or covered, or shall neglect or refuse to keep or continue any such articles, vessels, or utensils respectively on or in such pan or tray as aforesaid, or shall neglect or refuse so to draw, roll, remove, convey, or conduct any such pan or tray, with the whole of the said articles, vessels, and utensils therein or thereon, into the said lea, for the purpose of annealing the said articles, vessels, and utensils respectively therein; or if any such maker or makers shall neglect or refuse to keep or continue any such pan or tray, with the said articles, vessels, and utensils respectively therein or thereon, in any such lea, until the said articles, vessels, and utensils shall be so annealed, or shall neglect or refuse so to draw, roll, remove, convey, or conduct in manner in that behalf aforesaid, any such pan or tray with such articles, vessels, and utensils as in that behalf aforesaid, therein or thereon, from or out of such lea, directly unto and into the said weighing room, or shall neglect or refuse to keep or continue any such articles, vessels, or utensils as in that behalf aforesaid, without altering or disturbing the positions thereof, or the position of any or either of them, on or in any such pan or tray as in that behalf aforesaid, or to keep or continue the same in the said weighing room until the officer or officers of Excise under whose survey such maker or makers of flint glass or of phial glass shall then be shall have taken an account of, and weighed, the said articles, vessels, and utensils respectively, and charged the duty for and in respect thereof respectively, all and every such maker and makers of flint glass or of phial glass so offending shall, for each and every such offence, forfeit and lose the sum of 200*l*."

## Penalty.

Flint and phial glass makers to give officer a declaration of number of pans filled with glass of that journey.

Sect. 21. "That all and every maker and makers of flint glass or of phial glass shall, when and so soon as any journey or making of flint glass or of phial glass shall be finished, and before the mouth, entrance, or iron grating of the lea or leas, or any or either of them, into which the articles, vessels, or utensils of flint glass or of phial glass respectively of that journey or making shall have been put, shall be locked, fastened, or secured by the proper officer or officers of Excise, deliver to the proper officer of Excise a declaration in writing, specifying the true number of such iron pans or trays as aforesaid into or on which such articles, vessels, or utensils of flint glass or of phial glass, as the case may be, of that particular journey or making shall have been put, and which shall have been so filled with such articles, vessels, or utensils, and put or deposited in each such lea; and if any such maker or makers shall neglect or refuse to deliver such declaration in writing, such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 100*l*."

## Penalty.

Flint and phial glass makers to provide scales and weights at glass-house.

Sect. 22. "That all and every maker or makers of flint glass or of phial glass shall, and he, she, and they is and are hereby required to keep sufficient and just scales and weights at the place or places where he, she, or they shall make or manufacture any flint glass or phial glass, and shall, at his, her, or their own expense, find, provide, and affix within his, her, or their weighing room and reweighing room respectively fit and proper hooks or staples, and also permit and suffer any officer or officers of Excise to use the same, for the purpose of weighing and taking an account of and reweighing the flint glass and phial glass respectively which shall at any time be in the possession of such maker and makers; and if any such maker or makers shall neglect to keep such scales and weights, or either of them, or shall not at his, her, or their own expense find, provide, and affix in manner aforesaid such fit and proper hooks or staples as aforesaid, or shall not permit or suffer any officer or officers of Excise to use the same, such maker or makers shall, for each and every such offence, forfeit and lose the sum of 100*l*.; and if any such maker or makers shall, in the weighing or

Penalty.  
Making use of false scales.

reweighing of any flint glass or phial glass, make use of, or cause, or procure, or suffer to be made use of, any false, unjust, or insufficient scales or weights, or shall practise any art, device, or contrivance, by which any such officer or officers may be hindered or prevented from taking the just and true weight of any such flint glass or phial glass respectively, then and in every such case such maker or makers shall, for each and every such offence, forfeit and lose the sum of 800*l.*, with all such false, unjust or insufficient scales and weights respectively, and the same shall and may be seized by any officer or officers of Excise."

Sect. 23. "That all and every maker and makers of flint glass or of phial glass, being desirous to have any weighing room to him, her, or them belonging, unlocked and opened, for the purpose of weighing and charging with the duty any flint glass or phial glass therein, shall give to the officer of Excise under whose survey he, she, or they shall then be, six hours previous notice in writing of his, her, or their being so desirous, and specifying in such notice each particular weighing room which he, she, or they is or are so desirous to have unlocked or opened for the purposes aforesaid, and the particular time and hour at which he, she, or they is or are desirous to have the same so unlocked or opened; and upon such notice being given, such officer shall attend at the time mentioned in such notice, and shall unlock and open such weighing room for the purposes aforesaid, and such officer shall proceed to weigh, and shall weigh the whole of the flint glass and phial glass respectively (whether whole or broken), with such scales and weights as aforesaid, in the said weighing room, and shall charge such maker or makers with the duty for and in respect of such flint glass and phial glass respectively, according to such weight. Provided always nevertheless, that no such maker or makers shall be at liberty to give any such notice for having any such weighing room or the door or entrance thereof opened, for the purposes aforesaid, at any other time than between the hours of six in the morning, and six in the afternoon; and every notice given for having any such weighing room or the door or entrance thereof opened, at any other time or hour than between the hours in that behalf aforesaid, shall, and the same is hereby declared to be null and void to all intents and purposes whatsoever."

Sect. 24. "That if any officer or officers of Excise shall have cause to suspect that any flint glass, or phial glass, which shall, contrary to the directions of this act, have been fraudulently removed or conveyed away, before the same shall have been weighed by the proper officer or officers of Excise, according to the directions of this act, shall be deposited, lodged, hid, or concealed in any place or places whatsoever, then and in such case, if such place or places shall be within the cities of London or Westminster, or within the limits of the chief office of Excise in London, upon oath made by such officer or officers before the commissioners of Excise in England for the time being, or any two or more of them, or in case such place shall be in any other part of Great Britain, upon oath made by such officer or officers before one or more justice or justices of the peace for the county, riding, division, or place, where such officer or officers shall suspect the same to be deposited, lodged, hid, or concealed (which respective oaths they the said commissioners of Excise, or any two or more of them, and justice or justices of the peace respectively, are hereby authorised and empowered to administer), setting forth the ground of his or their suspicion, it shall and may be lawful to and for the said commissioners of Excise, or any two or more of them, or the justice or justices of the peace respectively (as the case may require) before whom such oath shall be made, if they or he shall judge it reasonable, by special warrant or warrants under his and their respective hands and seals, to authorise and empower such officer or officers by day or by night, but if in the night, then in the presence of a constable or other lawful officer of the peace, to enter into all and every such place or places where he or they shall so suspect such flint glass or phial glass to be deposited, lodged, hid, or concealed,

11. *Glass.*

Making use of false scales.

Penalty.

Flint and phial glass makers to give six hours notice for having weighing rooms opened.

In what case notice void for opening weighing room.

Warrant to search for glass fraudulently conveyed away.

## 11. Glass.

Obstructing  
execution of  
search warrant.

## Penalty.

Enamel, &c.  
deemed flint  
glass.

Turn of scale in  
favour of the  
crown.

Glass makers to  
provide a re-  
weighing room,  
for depositing  
flint glass  
weighed and  
charged by  
officer for a  
certain time,  
unless re-weighed  
in the interim  
by supervisor.

and to seize and carry away all such flint glass and phial glass which he or they shall then and there find so deposited, lodged, hid, or concealed, as forfeited: and if any person or persons whatsoever shall let, obstruct, or hinder any such officer or officers so authorised or empowered, or any other person or persons acting in his or their aid or assistance in the execution of such warrant, from entering any such place or places where such officer or officers shall so suspect such flint glass or phial glass to be so deposited, lodged, hid, or concealed, or in seizing or carrying away the same, or in the due execution of any such warrant, the person or persons so offending shall, for each and every such offence, severally forfeit the sum of 200*l*."

Sect. 25. "That all enamel, stained or paste glass, which shall be made in Great Britain, shall be deemed and taken to be flint glass within the meaning of this act."

Sect. 26. "That in every such weighing of any such flint glass or phial glass, the turn of the scale shall be given in favour of the crown, and in lieu thereof there shall be allowed to such maker or makers of such flint glass or phial glass respectively one pound weight upon each and every hundred pounds of such flint glass or phial glass so weighed."

Sect. 27. "That all and every maker and makers of flint glass shall, and he, she, and they is and are hereby required, at his, her, and their own expense, to find and provide, or erect, build, make, and construct a good, sufficient, and secure reweighing room, in or adjoining to each and every flint glass-house or phial glass-house, as the case may require, to him, her, or them belonging, which room shall be contiguous and next adjoining to the said weighing room, and shall be separated or divided therefrom only by a wall not more than two feet in thickness, and the door of communication shall be in such wall between the said weighing room and reweighing room, and no such reweighing room shall have more than two doors or entrances into the same, one thereof being the said door of communication between the said weighing room and reweighing room, and the other thereof opening into or communicating with any part of the premises appertaining to the glass-house to which such reweighing room may belong; and each and every such reweighing room, and the doors or entrances thereof, shall be securely locked, fastened, and sealed by the officer or officers of Excise, under whose survey such maker or makers of flint glass or of phial glass respectively shall from time to time be, whenever any glass which shall have been weighed and charged by such officer or officers shall be or remain, put, placed, or deposited therein, for and during the space of six hours after the same shall have been weighed, unless the same shall have been sooner reweighed by the surveyor or supervisor of Excise, according to the directions of this act; and when and so soon as any flint glass or phial glass shall be weighed by the proper officer or officers of Excise, the maker or makers thereof shall, with a sufficient number of his, her, or their workmen or servants, without delay or interruption, and with all due diligence and despatch, remove and convey the same and every part thereof from and out of the said weighing room unto and into the said reweighing room, and shall there place and deposit the same in the said reweighing room separate and apart from all other glass or glass wares whatsoever; and such flint glass or phial glass respectively shall remain in such reweighing room where so placed or deposited for the full space of six hours after the same shall have been so weighed as aforesaid, unless the same shall have been sooner reweighed by the respective surveyors or supervisors of Excise, to the end that the said surveyors or supervisors respectively may have an opportunity to weigh or reweigh the same; and the said respective surveyors or supervisors are hereby authorised and empowered to weigh or reweigh all such flint glass and phial glass respectively accordingly; and if upon the reweighing thereof any additional weight shall be discovered or found, such additional weight of flint glass and phial glass respectively shall be chargeable and charged with the respective duties by law payable for

or in respect of such flint glass or phial glass respectively; and in case any such flint glass or phial glass so removed and conveyed into any such reweighing room shall not be reweighed by any surveyor or supervisor of Excise within the said space of six hours, then and in every such case the officer of Excise under whose survey such maker or makers of glass shall then be, shall lock, seal, and fasten the said weighing room, and the said door of communication between the same and the said reweighing room, and shall unlock and open the said other door or entrance into the said reweighing room; and if any such maker or makers of flint glass or of phial glass shall neglect or refuse to find and provide, or erect, build, make, or construct such reweighing room as aforesaid, or shall neglect or refuse, when and so soon as any flint glass or phial glass shall be weighed by the proper officer or officers of Excise, with a sufficient number of his, her, or their workmen or servants, to remove or convey any such flint glass or phial glass without delay or interruption, and with all due diligence and despatch from or out of the said weighing room, unto and into the said reweighing room, or shall neglect or refuse to place or deposit the same or any part thereof in the said reweighing room as aforesaid, separate and apart from all other glass or glass wares whatsoever, or shall remove or convey, or cause, procure, or suffer to be removed or conveyed from or out of such reweighing room, any flint glass or phial glass before the end or expiration of six hours next after the same shall have been so weighed as aforesaid by the proper officer of Excise, unless the same shall have been sooner weighed or reweighed by the respective surveyors or supervisors of Excise, the person or persons so offending shall, for each and every such offence, forfeit and lose the sum of £200. Provided always, nevertheless, that no iron grating, weighing room, or reweighing room, shall be deemed or taken to be a good, sufficient, or secure iron grating, weighing room, or reweighing room, unless the same shall be approved of by the respective surveyors or supervisors of Excise of the division or district within which the lear to the mouth or entrance of which such iron grating shall belong, or for which the same is intended, shall be situate, or within which such weighing room, or reweighing room, as the case may be, shall be situate."

Sect. 28. "That proper locks, keys, and all other necessary fastenings for securing and sealing every such lear, and the mouth or entrance and iron grating thereof, and for securing and sealing every such weighing room and reweighing room respectively, and the door or entrance thereof respectively, shall be provided by the respective surveyors and supervisors of Excise of such division or district, at the expense of such maker or makers of flint glass or of phial glass respectively, as the case may require; and if any such maker or makers shall neglect or refuse to pay for any lock, key, or other necessary fastenings, which shall be provided by any surveyor or supervisor of Excise, according to the directions of this act, or if any person or persons shall obstruct or hinder any officer or officers of Excise, or any person or persons by him or them employed in that behalf in the fixing or placing any such fastening in such manner as such officer or officers shall direct, or think expedient to answer any of the purposes by this act in that behalf intended, or in the locking, sealing, or securing any such lear, or the mouth or entrance, or iron grating thereof, or in the locking, sealing, or securing any such weighing room, or reweighing room, or the door or entrance of the same respectively, or any such fastening as aforesaid, or by any means, art, device, or contrivance whatsoever shall open any such lock or lear, or the mouth, entrance, or iron grating thereof, or any such weighing room, or reweighing room, or the door or entrance of the same respectively, or shall clandestinely enter or gain admittance, or make any hole or opening into any such lear, after the same or the mouth or entrance or iron grating thereof shall have been locked, sealed, fastened, or secured as aforesaid, or into any such weighing room, or reweighing room, after the same, or the door or entrance of the same, respectively shall

11. *Glass.*

Neglecting to build reweighing room, &c.

Penalty.  
Iron grating, &c.  
to be approved  
of by officer.

Supervisors to  
provide locks  
and fastenings  
at glass maker's  
expense.

Neglect, &c.

11. *Glass.*

## Penalty.

Locks and fastenings to be altered and kept in repair by flint and phial glass makers.

have been locked, sealed, fastened, or secured as aforesaid, before the same respectively shall have been unlocked and opened by the proper officer of Excise, or shall wilfully break or damage any such door, lock, seal, iron grating or fastenings, every such maker or makers, or other person or persons so offending, shall, for each and every such offence, forfeit and lose the sum of 200*l.*"

Sect. 29. "That where any locks, keys, or fastenings shall be provided in pursuance of this act, all and every maker and makers of glass, to whom such locks, keys, and fastenings respectively shall then belong, shall at his, her, or their own expense, from time to time and at all times when required so to do by the respective surveyors or supervisors of Excise, of the division or district in which such his, her, or their glass-house shall be situate, immediately set about altering, repairing, and amending, and shall also, within a reasonable time then next following, alter, repair, and amend the same respectively according to such requisition; and if any such maker or makers of glass to whom any such locks, keys, and fastenings, or any or either of them shall belong, shall neglect or refuse immediately to set about altering, repairing, or amending the same, or to alter, repair, or amend the same when thereunto required, according to the directions of this act, he, she, or they shall, for each and every such neglect or refusal, forfeit and lose the sum of 100*l.*"

## Penalty.

Flint and phial glass makers to assist officers in weighing and reweighing.

Sect. 30. "That all and every maker or makers of flint glass or of phial glass shall, when and so often as he, she, or they shall be thereunto required by the officer or officers of Excise under whose survey he, she, or they shall then be, with a sufficient number of his, her, or their workmen or servants, aid and assist to the utmost of his, her, or their power, such officer or officers, or surveyor or supervisor, in weighing and taking an account, or in reweighing all flint glass or phial glass of such maker or makers, on pain of forfeiting for every neglect or refusal the sum of 100*l.*"

## Penalty.

Unweighed flint and phial glass to be kept apart.

Sect. 31. "That all and every maker or makers of flint glass or of phial glass shall, from time to time and at all times, keep all flint glass and phial glass respectively in his, her, or their custody or possession, and which shall not have been weighed by the officer of Excise according to the directions of this act, separate and apart from all flint glass and phial glass respectively which shall have been weighed, and from all other glass wares whatsoever, on pain of forfeiting for every such offence the sum of 100*l.*"

## Penalty.

Flint glass makers conveying away flint or phial glass before weighed.

Sect. 32. "That if any maker or makers of flint glass or phial glass shall fraudulently remove or convey away any flint glass or phial glass from any lea or other place before the proper officer of Excise shall have weighed the same, or shall neglect or refuse to produce any such flint glass or phial glass to such officer that he may weigh the same, all and every maker and makers shall, for each and every such offence, forfeit and lose the sum of 500*l.*, together with all such flint glass or phial glass respectively; and the same respectively shall and may be seized by any officer or officers of Excise."

## Penalty.

Flint and phial glass makers not to use any but an entered lea.

Sect. 33. "That if any maker or makers of flint glass or of phial glass shall, for the annealing of any flint glass or phial glass, make use of any private or concealed lea, annealing arch, oven, utensil or place whatsoever, other than his, her, or their known lea or leas entered for that purpose, or shall practise any art, device, or contrivance for answering the purpose of a lea, or annealing arch or oven, for the purpose of annealing any flint glass or phial glass; or if any such maker or makers shall make use of any art, device, or contrivance, other than an entered lea, to answer the purpose of a lea for the annealing of any flint or phial glass; each and every such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 200*l.*"

## Penalty.

Makers to charge pots with fresh materials at six in the evening of Saturday, in presence of officer.

Sect. 34 was repealed by 6 Geo. IV., c. 117, sect. 8, *post*, 424.

Sect. 35. "That all and every maker or makers of flint glass or of phial glass shall, when and so soon as any journey shall be finished, if the same shall be finished at or before the hour of six in the evening of Saturday in

11. *Glass.*

any week, or if the same shall not be finished at or before such hour, then all and every such maker and makers shall at such hour, in the presence of the officer of Excise under whose survey such maker or makers shall then be again charged, each and every pot from or out of which any glass wares shall have been worked in such journey with fresh materials or preparations (other than cullet or broken glass), not less in quantity than fifty pounds weight; and if any maker or makers of flint glass or phial glass shall not, in the presence of such officer, when and so soon as any journey shall be finished, if the same shall be finished before the hour of six in the evening of Saturday in any week, or if the same shall not be finished at or before such hour, then if such maker or makers shall not at such hour, in the presence of such officer again, charge each and every such pot or pots with fresh materials or preparation as aforesaid, then and in every such case the person or persons so offending shall, for each and every such offence, forfeit and lose the sum of 200*l*. Provided always, nevertheless, that nothing hereinbefore contained shall extend, or be deemed or construed to extend, to subject any maker or makers of flint glass or of phial glass, to the said last mentioned or any other penalty for or by reason of his, her, or their not charging with such fresh materials or preparations as aforesaid, any such pot from or out of which such maker or makers shall, in the presence of such officer, and under a previous notice in writing given by such maker or makers of glass to such officer, by the space of two hours, have laded out into water the whole of the metal remaining in any such pot or pots at the time of such lading as aforesaid."

Penalty.  
In what case  
penalty not in-  
curred.

Sect. 36. "That no maker or makers of flint glass or of phial glass shall make or manufacture within the same glass-house or building, by him, her, or them entered or used for the making or manufacturing of flint glass or phial glass, or in any glass-house or building adjoining thereto, any sort or species of glass or glass wares whatever, other than flint glass and phial glass; and if any such maker or makers shall make or manufacture within the same glass-house or building by him, her, or them entered or used for the making or manufacturing of flint glass or phial glass, or in any glass-house or building adjoining thereto, any species of glass or glass wares other than flint glass and phial glass, all and every such maker or makers respectively so offending shall, for each and every such offence, forfeit and lose the sum of 100*l*."

No flint or  
phial glass  
maker to ma-  
nufacture any  
other sort of  
glass in his flint  
glass-house, &c.

Sect. 37. "That no maker or makers of glass shall make of common bottle metal any bottle or bottles smaller or of less size or content than what is commonly deemed and reputed a half pint bottle; and if any maker or makers of glass shall make of common bottle metal any bottle or bottles smaller or of less size or content than aforesaid, the maker or makers of glass so offending shall, for each and every such offence, forfeit and lose the sum of 50*l*."

Penalty.

Making  
common bottle  
metal, any  
bottles less than  
a reputed half  
pint.

Sect. 38. "That if any person or persons shall obstruct or hinder any officer or officers of Excise in the execution of any of the powers or authorities to him or them given or granted by this or any other act or acts of parliament relating to flint glass or phial glass, the person or persons so offending therein shall, for each and every such offence (other than those for which any penalty is hereinbefore specially imposed or provided) severally forfeit the sum of 300*l*. Provided always, nevertheless, that nothing in this act contained shall extend, or be construed to extend, to make it unlawful to or for any officer or officers of Excise, from time to time and at all times, to inspect, examine, gauge, or otherwise to take an account of the metal and materials mixed and prepared, or founded or founding for the making of glass in any such glass-house or building as aforesaid, as well before such metal or materials shall be put into any pot or pots, as after the same shall be put into any pot or pots, or to take a sample or samples, not exceeding eight ounces in the whole, out of each such pot, or any other vessel or utensil, containing such preparation for making glass."

Penalty.  
Obstructing  
officers.

Penalty.

Broken glass,  
&c. entered for  
exportation on  
drawback.

Sect. 41. "That if any person or persons shall knowingly enter, or cause

## 11. Glass.

## Penalty.

Former acts to  
extend to this  
act.

Continuance of  
acts.

Makers of flint  
or phial glass  
to provide  
boxes or ves-  
sels, and put  
therein all the  
chest metal  
and waste glass  
and skimmings  
of each weekly  
making; and  
so keep the  
same, except  
when taken out  
to be picked in  
the presence  
of the officer,  
who shall take  
an account of  
every weekly  
making, &c.  
Maker offend-  
ing as herein  
mentioned.

or suffer to be entered, any broken or waste glass for exportation, with intent that any drawback or allowance shall be obtained, such broken or waste glass respectively shall be forfeited, and shall and may be seized by any officer or officers of Excise."

Sect. 43. "That all the powers, authorities, methods, rules, directions, regulations, penalties, forfeitures, provisos, clauses, matters, and things, which in and by any act or acts of parliament relating to the duties on glass, or on the materials or metal, or other preparation made use of in Great Britain in the making of glass, or to the paying or allowing of any drawback on the exportation of glass, in force immediately before the said first day of August, 1811, are contained, provided, settled, or established, for managing, assessing, raising, levying, collecting, recovering, adjudging, mitigating, ascertaining, enforcing, and securing the said duties, or for paying or allowing any drawback of the said duties, and for preventing, detecting, and punishing frauds relating thereto, except where the same are expressly repealed or altered by this act, shall be and remain in full force and effect, to all intents and purposes; and the said powers, authorities, methods, rules, directions, regulations, penalties, forfeitures, provisions, clauses, matters, and things, except as before excepted, shall continue and be duly observed, practised, applied, used, and put in execution throughout the whole kingdom of Great Britain, as fully and effectually to all intents and purposes (except as before excepted) as if the said powers, authorities, rules, directions, regulations, penalties, forfeitures, provisions, clauses, matters, and things had been expressly inserted and re-enacted in this present act."

By 58 Geo. III., c. 21, the 49 Geo. III., c. 63, and 51 Geo. III., c. 69, (relating to spread window-glass, crown-glass, and flint and phial-glass) are respectively continued to 5th July, 1819; and from thence, by 59 Geo. III., c. 104, and 1 & 2 Geo. IV., c. 13, until 25th July, 1824. 59 Geo. III., c. 104, is continued by 5 Geo. IV., c. 40, until 10th Oct., 1827, and by 7 & 8 Geo. IV., c. 40, until the 10th Oct., 1830.

By 59 Geo. III., c. 104, s. 3. "That all and every maker and makers of flint glass and phial glass shall, and he, she, and they is and are hereby required, at his, her, and their own expense, to find and provide and make lawful entry of proper and sufficient boxes or vessels, for the purpose of containing all the chest metal and waste glass and skimmings produced on each weekly making of flint glass and phial glass, and shall from time to time, as the same is produced on such weekly making, forthwith put and place in such boxes or vessels all the chest metal and waste glass and skimmings of each particular weekly making of flint glass and phial glass, and keep and continue the same in the particular box or vessel, boxes or vessels, in which the same shall be so put and placed, except when taken out daily for the purpose of being picked and sorted, in which case the same shall be so taken out in the presence of and weighed by the proper officer of Excise, and shall be kept separate and apart from all other glass of any other weekly making until the same is weighed, taken account of, and reweighed as provided by law for and in respect of manufactured flint glass; and when and so soon as each such weekly making of glass shall be finished, shall produce the same to be weighed and taken account of by the proper officer, and reweighed by the supervisor of Excise, as provided by law for and in respect of manufactured flint glass, and shall reflux the same and every part thereof in the next, or next but one, succeeding charge of his or their pot or pots for making flint or phial glass; and if any maker or makers of flint glass or phial glass shall neglect or omit to find or provide proper and sufficient boxes or vessels for the purpose in that behalf aforesaid, or to put or place as aforesaid in one or more of such boxes or vessels all the chest metal and waste glass skimmings of each particular weekly making of flint glass or phial glass, or to keep or continue the same and every part thereof in such box or vessel, boxes or vessels, in which the same shall be put and placed as aforesaid, as and when the same are produced in the

manufacture of the glass of such weekly making, except as aforesaid, until the same shall be weighed and taken account of by the proper officer, and reweighed by the supervisor of Excise, as provided by law for and in respect of manufactured flint glass; or shall neglect or omit, when and so soon as any weekly making of flint glass or phial glass is finished, to produce the same, together with the metal laded out at the end of every such weekly making of such glass, to the proper officer, to be so weighed and taken account of, and reweighed by the supervisor as aforesaid; or shall mix, put, or place any other chest metal, or broken or waste glass, or skimmings or other thing, with the chest metal or waste glass and skimmings of any particular weekly making of such glass; or shall produce to the officer to be weighed and taken account of, or to the supervisor to be reweighed as aforesaid, any other chest metal, or broken or waste glass, or other thing, except such skimmings and laded metal as aforesaid with the chest metal or waste glass and skimmings and laded metal of that particular weekly making of glass; or shall produce to be weighed or reweighed as aforesaid any chest metal or waste glass or skimmings or laded metal which has before been weighed and taken account of, or reweighed as aforesaid; or shall convey away or conceal or not reflux such chest metal or waste glass, skimmings or laded metal, or any part thereof, at such time and in such manner as aforesaid, all such chest metal, broken or waste glass, and skimmings, laded metal, and other thing shall be forfeited, and shall and may be seized by any officer or officers of Excise; and all and every maker and makers of glass so offending shall, for each and every such offence, severally forfeit and lose the sum of 200*l.*"

Sect. 4. "That whenever any officer or officers of Excise shall weigh the vessels, articles, and utensils of flint glass or phial glass of any particular weekly making, he and they shall also weigh the chest metal and waste glass and skimmings of that weekly making, and also the metal laded out at the end thereof; and if the weight of the articles, vessels, and utensils of flint glass or phial glass of any particular weekly making of flint glass or phial glass respectively, together with the weight of the chest metal and waste glass, skimmings and laded metal aforesaid, of the same weekly making, so produced and weighed or reweighed as aforesaid, shall not amount to ninety-eight parts of every hundred parts of the gross quantity of all the metal, materials, and preparations which shall have been in the pot or pots made use of in that weekly making, according to the best and highest gauge which shall or may have been taken of the fluxed metal thereof by any officer or officers of Excise, the maker or makers of such glass shall be deemed and taken to have made and manufactured articles of flint glass and phial glass of equal weight to the weight of such deficiency below ninety-eight hundred parts of the gross quantity of such fluxed metal as last aforesaid, and shall be charged with and pay duty for the same as if such last-mentioned article had been produced to and weighed by the proper officer of Excise. Provided always, that no such deficiency shall of itself, and without any proof of the fraudulent removal or concealment of any part of the glass of any weekly making of glass, subject any such maker as aforesaid to any penalty for having fraudulently removed or concealed the glass so deficient."

Sect. 5. "That all and every maker or makers of flint glass or phial glass shall, and he, she, and they is and are hereby required to keep sufficient and just scales and weights at the place or places where he, she, or they shall make or manufacture any flint glass or phial glass, and shall at his, her, or their own expense find, provide, and affix fit and proper hooks or staples, and also permit and suffer any officer or officers of Excise to use the same for the purpose of weighing and taking an account of and reweighing the chest metal, broken and waste glass, which shall at any time be in the possession of such maker and makers, and shall at all times (when requested by the officer so to do), by himself or themselves, or by

Penalty 200*l.*

If in weighing vessels of flint or phial glass of weekly making, and chest metal, &c. weight produced shall not amount to 98 parts of 100 parts of gross quantity of metal put into pot, deficiency charged with duty.

Proviso.

Makers to keep sufficient scales and weights for officers taking account, and assist them in weighing metal.



11. *Glass.*

Maker neglect-  
ing, &c.

or hindering  
officer, &c.

Penalty 100*l*.

Using false  
weights, &c.

Penalty 500*l*.

No penalty for  
not refluxing  
chest metal,  
&c. declared to  
supervisor to be  
refuse glass;  
or for not re-  
fluxing coloured  
or stained  
glass till next  
making, or the  
next but one  
following.  
No duty for  
deficiency of  
glass occasioned  
by unavoid-  
able loss of  
metal.

No penalty for  
not refluxing  
metal laded  
out of the pot,  
if kept separate,  
&c.

Continuance  
of act.

The whole of  
flint glass  
fluxed in each  
week to be  
worked out by  
time herein  
mentioned.

a sufficient number of his, her, or their servants, give all needful and necessary help and assistance to any officer or officers of Excise in weighing and taking a just and true account of or reweighing such chest metal, broken or waste glass; and if any such maker or makers shall neglect to keep such scales and weights, or either of them, or shall not, at his, her, or their own expense, find, provide, and affix, in manner aforesaid, such fit and proper hooks or staples as aforesaid, or shall not permit or suffer any officer or officers of Excise to use the same, or shall at any time refuse or neglect to give such help and assistance as aforesaid, every such maker or makers of glass shall, for each and every such offence, forfeit and lose the sum of 100*l*.; and if any maker or makers of glass, or his or their servants, shall in the weighing or reweighing of any chest metal or waste glass, make use of, or cause or procure or suffer to be made use of, any false, unjust, or insufficient scales, weight, or weights, or shall practise any art, device, or contrivance by which any officer or officers of Excise shall or may be hindered in or prevented from taking and ascertaining the just and true weight of any such chest metal, broken or waste glass, then and in every such case such maker or makers shall for each and every such offence forfeit and lose the sum of 500*l*., with all such false, unjust, or insufficient scales and weight or weights respectively, and the same shall and may be seized by any officer or officers of Excise."

Sect. 6. "Provided always, that no such maker as aforesaid shall be compelled to reflux or incur any penalty for not refluxing any chest metal, skimmings, or broken or waste glass that shall be mixed with and constitute part of the weighed and reweighed chest metal, skimmings, or broken or waste glass of any weekly making of glass as aforesaid, and which such maker or his foreman or principal servant shall show and declare to the supervisor, at the time of the reweighing of the chest metal, skimmings, broken, or waste glass of such weekly making of glass, to be refuse glass, and unfit for immediate manufacture, and shall afterwards pick and separate from the rest of the chest metal, skimmings, broken or waste glass of such weekly making of glass; and that no such maker as aforesaid shall be compelled to reflux or incur any penalty for not refluxing any coloured or stained glass so reweighed as aforesaid, until his or her next making, or next making but one, of the like coloured or stained glass; and that no such maker as aforesaid shall be subject or liable to pay duty for any deficiency of glass produced, weighed, and reweighed, as the produce of any weekly making of glass as aforesaid, which has arisen and been occasioned by the unavoidable loss of the metal through the sudden cracking or breaking of any pot at the time the same is charged with and contained such metal, and which shall be satisfactorily shown and proved to the officer at the time the same shall so happen; and that no such maker as aforesaid shall incur any penalty by reason of his or her not refluxing at the time aforesaid any metal laded out of the pot into water, provided such metal shall be weighed and reweighed separate, and be lodged in and kept in some room or place separate and apart from all other broken or waste glass, and under the immediate survey and inspection of the officer of Excise, until all such laded metal shall be, under notice in writing, delivered to the proper officer, and in his presence put into the pot to be refluxed as aforesaid; any thing herein contained to the contrary notwithstanding."

Sect. 7. "That this act shall continue in force until the 5th day of July, 1820."

By 6 Geo. IV., c. 117, s. 8. "That from and after the said 5th day of July, 1825, the same or so much of the said last-mentioned acts respectively as are above recited, shall be and are hereby repealed; and that from and after the said 5th day of July, 1825, all and every maker or makers of flint glass shall, and he, she, or they, is and are hereby required, at or before the hour of six o'clock in the evening of Saturday, in each and every week, to

work out into wares, or to cause and procure to be worked out into wares, the whole of the materials, metal, or other preparations, which at any time during that week shall have been fluxed or melted in any pot or pots to him, her, or them belonging, for the purpose of making flint glass, or upon a notice for that purpose given by such maker or makers of glass to the proper officer of Excise, six hours before he, she, or they shall commence to lade out any part of such metal, to lade out, in the presence of the supervisor or officer attending upon such notice for that purpose, the whole of such materials, metal, or other preparations as aforesaid, which may remain in such pot after such maker or makers shall have ceased to work out any wares therefrom, and the gauged weight of such laded fluxed materials, metal, or preparations, as taken by the supervisor or officer in the pot, shall be deducted from the weight of glass for or in respect of which such maker or makers shall at that time be chargeable with duty, upon the gauge thereof taken in the pot, according to the provisions of this act; and if any such maker or makers of glass as aforesaid shall neglect or refuse so to do, he, she, or they shall, for every such pot in respect of which he, she, or they shall commit or make such neglect or refusal, forfeit the sum of 200*l*."

Sect. 9. "That from and after the said 5th day of July, 1825, at the end of every round or period of six weeks, an account shall be taken and made out by the supervisor, surveyor, or officer of the district or place in which the glass-house of any maker or makers of flint glass shall be situate, of the whole quantity of flint glass for or in respect of which such maker or makers of glass as aforesaid shall have been charged with duty upon the fluxed materials or metal, or other preparations from which such glass as aforesaid shall have been made, after deduction of the gauged weight of all fluxed materials, metal, or other preparations taken account of by the officer, and laded out of the pot, according to the provisions of this act, and of the whole weight of manufactured flint glass and flint glass wares weighed, or which shall have been made by such maker or makers of glass as aforesaid, within such round or period of six weeks as aforesaid; and if, upon such account being taken and made out as aforesaid, the weight of such manufactured glass and glass wares as aforesaid shall exceed the quantity of such glass as aforesaid, with which such maker or makers of glass as aforesaid shall have been so charged with duty, after such deduction as aforesaid, by any quantity greater than the quantity of fifty *per centum* of or upon the whole quantity of such glass as last aforesaid, every such maker or makers of glass as aforesaid shall be charged with and pay the sum of sixpence *per* pound upon each and every pound weight of such excess, over and above any duty which such maker or makers of glass as aforesaid shall have paid, or may have been charged with, upon the fluxed materials or metal, or other preparations from which such glass as aforesaid shall have been made."

Sect. 10. "That no pot for the making of flint glass shall be gauged, or the dimensions thereof taken by the officers of Excise, unless the maker or makers of flint glass to whom such pot shall belong shall give notice to the officer under whose survey he, she, or they shall then be, of his, her, or their intent or desire to have such pot examined and gauged, or the dimensions thereof taken as aforesaid; and no pot for the making of flint glass shall be set or put into any annealing arch, for the purpose of drying or hardening the same, until the supervisor or surveyor of the district or place in which the glass-house of any maker or makers of flint glass to whom such pot shall belong shall be situate shall have re-examined and regauged or taken the dimensions of such pot, and shall have marked the same with the initials of his name on the outside thereof; and if any maker or makers of flint glass shall set or put any pot for the making of flint glass into his, her, or their annealing arch, for the purpose of drying or hardening the same, before such supervisor or surveyor as aforesaid

**Penalty.**

Officer to make out an account at times herein mentioned of the whole quantity of glass charged with duty, and the whole weight of glass weighed within such period, and to charge additional duty upon every pound weight of such excess.

No pot to be gauged without notice, nor to be set in the annealing arch, without having been regauged and marked by officers.

11. *Glass.*

## Penalty.

Officer to give dimensions of each pot to maker, when he has ascertained gauge.

Makers not giving notice of setting pots in the furnace, or altering position of or changing pots.

## Penalty.

Pots upon notice to be unstopped shall be opened at once, and if any found, upon being opened, unfit for working, the whole to be stopped up again, and a fresh notice given.

shall have re-examined and regauged or taken the dimensions thereof, or before he shall have marked the same as aforesaid, or if any such maker or makers as aforesaid shall deface, or counterfeit, or alter, or cause to be defaced, or counterfeited, or altered, any such mark as aforesaid, he, she, or they shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 11. "That when and so soon as any pot for the making of flint glass shall be gauged, and the dimensions thereof ascertained and taken by the supervisor or surveyor of Excise, according to the rules and directions to him in that behalf given from time to time by the commissioners of Excise for the time being, such supervisor or surveyor shall and is hereby required to give such dimensions or calculation of the capacity and contents of such pot, according to the gauge by him in that behalf taken, to the maker or makers of flint glass to whom such pot shall belong."

Sect. 12. "That no pot or pots for the making of flint glass shall be set in the furnace, unless the maker or makers of flint glass to whom such pot or pots shall belong shall give six hours notice thereof in writing to the officer of Excise under whose survey he, she, or they shall then be, specifying in such notice the time and hour when he, she, or they intends or intend to set such pot or pots in the furnace, and the particular pot or pots, and marks and numbers on the same, by him, her, or them intended to be so set, and the particular hole in the furnace in which each such pot is intended to be so set; and if any maker or makers of flint glass shall set any pot for the making of flint glass in the furnace without having given such notice as aforesaid, or having given such notice, and after the Excise officer attending for such purpose shall have taken an account of and examined the same, shall change or alter the position of any pot of which he, she, or they shall have given such notice, except in any case of emergency, of which notice in writing shall be given by such maker or makers to the surveying officer within four hours after the making of such change or alteration, and before unstopping the pot, if any materials, metal, or other preparations be therein uncharged with duty, or shall set in the furnace any other pot in lieu or in place of any pot of which he, she, or they shall have given such notice as aforesaid, or in any different hole than the hole of the furnace mentioned in such notice for each such pot, every such maker or makers so offending shall for every such offence forfeit the sum of 100*l*."

Sect. 13. "That from and after the said 5th day of July, 1825, it shall not be lawful for any maker or makers of flint glass to unstop or take down any stopper from his, her, or their pot or pots, containing any materials or metal, or other preparation for the making of flint glass, (the same not being a pot cracking or breaking, whilst the same is filled with such materials, metal, or preparation as aforesaid,) without giving six hours notice, in such manner in other respects as by the said act, passed in the thirty-second year aforesaid, was and is in that behalf directed and required; and all such pots as aforesaid, which shall be charged with any such materials or metal, or other preparations as aforesaid, for any particular journey or making of flint glass, upon such notice to unstop the same, or take down the stopper thereof as aforesaid, being given, shall be opened altogether and at one and the same time, upon the attendance of the officer or supervisor of Excise (if he can be present) for that purpose, and in the presence of such officer or supervisor; and if, upon opening such pots as aforesaid, any pot or pots shall be found to contain materials or metal, or other preparation for the making of flint glass, then unfit for the making or working of the same out into glass wares, the whole of the pots charged with such materials or metal, or other preparations, of such particular journey or making, shall be stopped up again, and a fresh and like notice for unstopping the same, or taking down the stoppers thereof, shall be given as aforesaid; any thing in this or any other act or acts of

parliament to the contrary thereof notwithstanding; and if any maker or makers of flint glass shall commit any offence against any of the regulations aforesaid, he, she, and they respectively shall forfeit the sum of 100*l*."

Sect. 14. "That from and after the said 5th day of July, 1825, it shall and may be lawful for any maker or makers of flint glass, after the pots of any particular journey or making of flint glass to him, her, or them belonging, shall have been charged under a notice by him, her, or them, given according to the said act passed in the seventeenth year aforesaid, and after the expiration of the time mentioned in such notice, to fill or charge any fresh pot or pots (commonly called overtakers) with materials or metal, or other preparations for the making of flint glass, at any time during the making of such journey or making of flint glass, upon giving such or a similar notice in writing of his, her, or their intention so to do, according to the notice directed to be given by every maker or makers of glass, by the said act passed in the seventeenth year aforesaid; all which said pot or pots (commonly called overtakers) as aforesaid shall be opened in the same manner, and at one and the same time, as the pots of the same journey or making, for the making of flint glass, are hereinbefore directed to be opened, and shall be under and subject in every respect to the same penalties, rules, regulations, and directions, as any other pot or pots for the making of flint glass. Provided always, that if the filling or charging of such pot or pots (commonly called overtakers) as aforesaid, whereof such notice shall have been given as aforesaid, shall not be begun pursuant to such notice, then and in every such case such notice shall be void and altogether null, and of no effect whatsoever."

Sect. 15. "That where the metal contained in any pot or pots for the making of flint glass shall become unfit for use, or shall be incapable of being worked or manufactured into wares, the maker or makers of glass to whom any such pot or pots as aforesaid shall belong shall give notice thereof immediately to the officer of Excise under whose survey he, she, or they shall then be; and such pot or pots shall be thereupon allowed to remain and continue, until the end of the week in which such pot or pots shall have been charged, with all the materials or metal, or other preparation for the making of flint glass as aforesaid, therein, at which time the materials, metal, or preparations in such pot or pots, shall be laded out in the presence of the supervisor or the officer of Excise; and if such supervisor or officer be satisfied that no alteration has been made therein, the gauged weight of the fluxed materials, metal, or other preparations so laded out as aforesaid, shall be deducted from the weight of the glass with which such maker or makers shall be chargeable with duty upon the gauge thereof taken in such pot or pots as aforesaid; and if any maker or makers of glass shall, after giving such notice as aforesaid, take out any of the materials, metal, or other preparations as aforesaid, from any such glass pot, until the whole thereof shall be so laded out as aforesaid, or add any materials, metal, or other preparations thereto, or make any alteration therein, he, she, and they respectively shall for every such offence forfeit and lose the sum of 200*l*."

Sect. 16. "Provided always, that if the fluxed materials, metal, or other preparations contained in any such pot or pots, of which such notice shall be given as aforesaid, be coloured glass, and incapable of being used for white glass, or otherwise than as blue, green, or other coloured glass, it shall be lawful for any such maker or makers (on giving six hours notice thereof, and of such his, her, or their intention, to the surveying officer of Excise, specifying therein the particular pot or pots,) to lade out, in the presence of the supervisor or surveying officer, all such fluxed materials, metal, or other preparations as shall be therein, into water, and thereupon to make such alteration in such materials, metal, or other preparations as he, she, or they may think fit, for deepening or improving the colour thereof, as aforesaid, and forthwith to recharge such pot or pots with such materials, metal, or other preparations for the making of such coloured glass

11. *Glass.*

Penalty.

Makers may charge fresh pots or overtakers, after the expiration of the time mentioned in the former notice to charge, upon giving notice thereof, according to the 17 Geo. 3, c. 39, s. 22.

Proviso.

Where metal in any pot shall become unfit for use, notice given to officer.

Proceedings thereon.

Makers after notice unduly taking out materials from pot.

Penalty.

Makers on giving notice may lade out in presence of officer the fluxed materials into water, and make such alterations as they think fit for improving the colour.

11. Glass.

When pots un-  
stopped, duty  
charged.

Subject to the  
proviso herein  
mentioned  
for metal, &c.  
breaking, &c.

No materials to  
be added to pot  
after gauge  
taken.

Penalty.

Makers may  
manufacture  
flint glass not  
requiring to be  
annealed, upon  
notice to officer.

Omitting to  
give notice,  
penalty to  
remain.

Maker desirous  
of making flint  
glass not re-  
quiring to be  
annealed, to  
provide a secure  
room for de-  
positing the  
same therein.

Penalty.

as aforesaid only; and every such pot or pots so recharged shall be deemed and shall be subject to the same regulations as are hereinbefore provided with respect to such pots as are commonly called overtakers; and that when such pot or pots shall be again unstopped, duty shall be charged upon the gauged weight of all the fluxed materials, metal, or other preparations contained therein, and every such maker or makers shall be liable to pay the duty so charged as last aforesaid, the gauged weight of the fluxed materials, metal, or other preparations so laded out as aforesaid being deducted as aforesaid, any thing herein contained to the contrary notwithstanding."

Sect. 17. "That such clause or proviso, or so much of the said act passed in the thirty-second year aforesaid, as above recited, shall, from and after the said 5th day of July, 1825, remain and continue in force: provided always, that the metal, material, or preparation in such pot, which may so happen to crack or break as aforesaid, shall immediately be laded out by such maker or makers of glass as aforesaid, in the presence of an officer of Excise, in which case the amount of the gauged weight of metal, materials, or preparations so laded out of such pot as aforesaid, or inevitably and wholly lost by such cracking or breaking of the pot as aforesaid, shall be deducted from the gross gauge of such pot, by which the same, or the metal, materials, or preparation with which such pot was charged, were before charged with duty."

Sect. 18. "That if, from and after the said 5th day of July, 1825, any maker or makers of flint glass shall, after a gauge taken by the officer of Excise of the materials, or metal, or other preparations for the making of flint glass, in any pot set in the furnace to him, her, or them belonging, put into or add any materials, metal, or preparation whatsoever to such pot, he, she, or they so offending shall, for every such offence, forfeit and lose the sum of 200*l*."

Sect. 19. "That from and after the said fifth day of July, 1825, no maker or makers of flint glass shall incur such penalty of 200*l*. as aforesaid, by reason of his, her, or their not putting, placing, or depositing, in one or more of such lears as aforesaid, for the purpose of annealing the same, or for not annealing therein all the flint glass which shall from time to time be by him, her, or them made or manufactured; but that it shall and may be lawful for any maker or makers of flint glass to make or manufacture flint glass which shall not be so put, placed, or deposited as aforesaid in any lear or lears, or to be annealed therein as aforesaid, upon such maker or makers of glass as aforesaid giving six hours' notice in writing to the officer or officers of Excise under whose survey he, she, or they shall then be, of his, her, or their intention so to do, specifying in such notice the number and particular pot or pots from which he, she, or they intends or intend to make or manufacture such flint glass, and the particular kinds of wares to be made therefrom. Provided always, that if such maker or makers of flint glass as aforesaid shall neglect or omit to give such notice as in that behalf aforesaid, nothing herein contained shall in any wise extend or be deemed or construed to extend to prevent such maker or makers of glass as aforesaid from incurring such penalty as above mentioned."

Sect. 20. "That all and every maker and makers of flint glass who shall be desirous of making or manufacturing any flint glass which does not require to be put, placed, or deposited in any lear, or to be annealed therein, shall, and he, she, or they is and are hereby required to find and provide, or to build and construct in every glass-house in which such flint glass as aforesaid shall be intended to be made or manufactured into glass wares as aforesaid, a good and sufficient and well lighted room for the placing and depositing therein of such flint glass or glass wares, which room shall be next to and communicate with such glass-house; and all and every such maker or makers shall be, in respect of every such room, subject to all and every the penalties and regulations to which flint glass

makers are subject by the provisions of the said act made in the fifty-first year aforesaid, of or concerning the weighing or reweighing rooms therein mentioned, except so far as the same are altered by this act; and no such room shall have more than one door or entrance into the same, and the said door or entrance shall open directly into and afford and form an immediate communication with such glass-house; and such room, and the door or entrance thereof, shall be securely locked, fastened, and sealed by the officer or officers of Excise under whose survey such maker or makers of flint glass shall from time to time be, at all times when there shall be any such flint glass therein as aforesaid, save and except when the same shall be opened by such officer or officers for the purpose of putting or depositing such glass as aforesaid therein, or of weighing and taking an account of such flint glass or glass wares therein as aforesaid; and when any such maker or makers of flint glass shall be desirous of having the door or entrance of any such room unlocked or opened for any of the purposes aforesaid, such maker or makers shall give to the officer of Excise under whose survey he, she, or they shall then be, one hour's previous notice in writing of his, her, or their being desirous of depositing such glass in such room, and six hours' notice for weighing such glass for charge of duty, specifying in such notice the particular time and hour when he, she, or they is or are desirous to have the same so unlocked or opened; whereupon such officer shall attend pursuant to such notice, and shall unlock and open the said door or entrance, and shall keep and continue the same so unlocked or open for so long time as shall be necessary for the purpose specified in such notice; and such officer shall thereupon again lock, fasten, and secure the said door or entrance; and if any maker or makers of flint glass as aforesaid shall neglect or refuse to find and provide, or so build and construct such room as aforesaid, he, she, or they so offending shall for each and every such offence forfeit and lose the sum of 200*l.* Provided always, nevertheless, that no such maker or makers of flint glass as aforesaid shall be at liberty to give or shall give any such notice or notices as last aforesaid, for having the door or entrance of the said room opened for weighing glass as aforesaid more than once within the space of any twelve hours, or at any time, except between the hours of six in the morning and six in the afternoon, nor shall any officer or officers of Excise, in pursuance or under pretence of any such notice or notices, unlock or open any such door or entrance for weighing glass as aforesaid more than once within the space of any twelve hours, or at any other time than as aforesaid; any thing herein before contained to the contrary in anywise notwithstanding."

Sect. 21. "That all and every maker or makers of flint glass who shall make or manufacture any flint glass which does not require to be put, placed, or deposited in any hear, or to be annealed therein, such maker or makers of flint glass having provided such room as by this act required for placing and depositing the same therein, shall, as soon as such flint glass shall be made or manufactured into glass wares, lay or deposit all such flint glass, or the wares into which the same shall be made or manufactured, in trays or baskets to be by him, her, or them in that behalf provided, and shall immediately, or so soon as the same shall be filled, carry and convey all such trays or baskets, with the flint glass or wares laid or deposited therein as aforesaid, into the room by him, her, or them provided for such purpose, and shall place and deposit such trays or baskets, or the flint glass or wares therein, in such room, and keep and continue the same therein until the officer shall have finally weighed and taken an account thereof for charge of duty; and if any maker or makers of flint glass, who shall make or manufacture any such flint glass as aforesaid, shall not so lay or deposit all such flint glass, or the wares into which the same shall be made or manufactured, in such trays or baskets as aforesaid, or shall not immediately, or so soon as the same shall be filled, carry and convey every such tray or basket, with such glass therein, into such room as aforesaid, or shall not place or deposit such tray or basket, or the

11. *Glass.*

How such room to be constructed.

Regulations as to locks, &c.

Notice of desire to deposit such glass.

Proceedings thereon.

Penalty. Proviso as to hours and frequency of notice.

Makers to deposit the flint glass or wares not requiring to be annealed in trays or baskets, to be provided by them, and to convey the same into the room provided for that purpose as soon as filled.

## 11. Glass.

G. B. to be accompanied with certificate of payment of duty.

\* Sic.

Removing from Ireland flint glass without duty secured.

Using false certificate.

## Penalty.

Plate glass, broad glass, and crown glass, exported from Ireland to foreign parts on drawback, or brought from Ireland into G. B., shall be accompanied with certificate of the payment of the duty under this act.

every person and persons shipping, or being about to ship in Ireland any flint glass for exportation on drawback, or for the removal thereof to Great Britain, shall give notice thereof to the nearest collector or officer of Excise, and such collector and officer respectively is and are hereby authorized thereupon to attend and to cause all such flint glass to be weighed, and if such flint glass has not been made in Ireland, and charged with duty under the provisions of this act, to charge the same with duty after the rate of sixpence British currency for every pound weight thereof; and every collector and officer of Excise in Ireland so attending upon such notice as aforesaid, and so taking an account thereof, is hereby authorized, before any such flint glass shall be shipped in Ireland for exportation on drawback, or for removal to \*Great Britain, shall, upon payment thereon of the duty aforesaid to such collector, or if such glass shall have been made and charged with duty under the provisions of this act, to grant a certificate of the payment of such duty, or that it is duly secured to be paid, to accompany such glass upon such removal as aforesaid; and if, from and after the said 5th day of July, 1825, any person or persons shall export upon drawback, or shall remove from Ireland, or bring into Great Britain from Ireland, any flint glass, without such duty thereon being paid or secured as aforesaid, or when removed into Great Britain unaccompanied with such certificate, containing such particulars as aforesaid, or if any person or persons shall forge or counterfeit any such certificate, or shall make use of or deliver any false or untrue certificate, as and for the collector's certificate of such duty being paid or secured to be paid as aforesaid, on such glass, all such glass shall be forfeited, and shall and may be seized by any officer or officers of Excise; and the person or persons so offending shall forfeit the sum of 500/."

By 9 Geo. IV., c. 48, s. 7. "And whereas no Excise duty upon plate glass, broad glass, and crown glass has been payable in Ireland, under any act in force immediately before the passing of this act; but a drawback has been payable in Great Britain upon plate glass, broad glass, and crown glass made in Great Britain and sent to Ireland; for the preventing therefore of any evasion of payment of the duty on any such glass sent to Great Britain, or any undue claim of drawback in respect of any such glass exported from Ireland to foreign parts, on which duty shall not have been paid, be it enacted, That from and after the said fifth day of July, 1828, every person shipping or intending to ship, or being about to ship, in Ireland, any plate glass, broad glass, or crown glass, for exportation on drawback, or for the removal thereof to Great Britain, shall give twenty-four hours' notice of such intention, and of the place of shipping, to the nearest collector or officer of Excise; and such collector and officer respectively is and are hereby authorized and required thereupon to attend, and to cause all such plate glass, broad glass, and crown glass respectively, to be weighed and measured; and in case such plate glass, broad glass, or crown glass has not been charged with the respective duties under the provisions of this act, and is about to be removed to Great Britain, it shall be lawful for such collector or officer, and he is hereby authorized and required, to charge all such glass with duty at and after the respective rates of duty made payable by this act on such sort or kind of glass respectively; and upon payment of such duty it shall be lawful for such collector or officer, and he is hereby required, to grant a certificate of the payment of such duty, to accompany such glass upon such removal, and to be produced at the port of entry in Great Britain; and in case any such glass which shall have been duly charged with the respective duties payable by this act shall be entered for exportation to foreign parts, upon drawback, or to be sent and removed to Great Britain, it shall be lawful for such collector or officer, upon proof that such duties have been paid, or have been charged and duly secured to be paid, and he is hereby authorized and required to grant a certificate of the payment of such duty, or a certificate

that such duty has been charged and is duly secured to be paid, to accompany such glass upon such exportation to foreign parts, or such removal to Great Britain, and to be there produced as aforesaid; and if at any time after the said fifth day of July, 1828, any person or persons shall export or enter for exportation from Ireland upon drawback, or shall remove or send from Ireland to be brought into Great Britain, or shall bring into Great Britain, any plate glass, broad glass, or crown glass, unaccompanied by such certificate, containing such particulars as aforesaid; or if any person or persons shall refuse to produce such certificate at the port of entry in Great Britain, or shall forge or counterfeit any certificate required by this act, or shall make use of or deliver any false or untrue certificate as and for a certificate required by this act; all such glass respectively shall be forfeited, and shall and may be seized by any officer or officers of Excise; and the person or persons so offending shall forfeit the sum of 500*l.* Provided always, that if any plate glass, broad glass, or crown glass, which shall have been previously sent to Ireland from Great Britain on drawback, shall at any time afterwards be sent or removed to Great Britain, the rate of duty to be charged thereon as aforesaid shall be equal and according to the rate of drawback now payable thereon respectively when exported to foreign parts."

Sect. 8. "That where by the schedule to this act annexed any drawback is allowed or made payable on any sort of glass exported, such drawback shall not be allowed or paid or given on any glass exported to the islands of Jersey, Guernsey, Alderney, Sark, or Man, or any of them, except in cases where the names of the said islands are expressly respectively mentioned or set forth, nor on any glass exported to any of the said islands, the name of which shall not be expressly mentioned and set forth."

By 49 Geo. III., c. 63, s. 5, (which was made perpetual and extended to united kingdom by 9 Geo. IV., c. 48.) "That all and every maker or makers of spread window glass or of crown glass respectively shall, and he, she, and they is and are hereby required, to erect, build, make, and construct every annealing arch or oven by him, her, or them intended to be made use of for the annealing of spread window glass or crown glass respectively, in a rectangular form, with the sides and ends thereof perpendicular and parallel to each other respectively, and the bottom thereof level, and with only one mouth or entrance into the same, and shall number the same progressively with a durable mark; and if any such maker or makers shall erect, build, make, or construct any annealing arch or oven contrary to the directions of this act, or shall neglect or refuse to number or mark the same according to the directions of this act, or shall make use of any annealing arch or oven not constructed in the manner before directed, all and every such maker and makers so offending shall for every such offence forfeit and lose the sum of 100*l.*"

Sect. 6. "That all and every maker or makers of spread window glass, or of crown glass, shall at his, her, and their own expense find, provide, and affix a good and sufficient iron grating to the mouth or entrance of every annealing arch and oven by him, her, or them intended to be made use of for the annealing of spread window glass or crown glass respectively, such iron grating to be approved of in writing by and under the hand of the respective surveyors or supervisors of Excise of the division or district within which such annealing arch or oven shall be situate; and proper locks and keys, and all other necessary fastenings for securing and sealing every such annealing arch and oven, and the mouth or entrance and iron grating thereof, shall be provided by the respective surveyors and supervisors of Excise of such division or district at the expense of such maker or makers; and when and so soon as any such maker or makers shall have delivered or ought to have delivered the declaration of the number of tables put, or deposited, or contained in any such annealing arch or oven, as by this act is directed and required, the proper officer or officers of Excise shall

11. *Glass.*

Penalty for exporting without such certificate, 500*l.*

Proviso as to glass sent to Ireland from Great Britain on drawback

No drawback allowed on export to Jersey, &c. unless expressly mentioned.

Directions for the construction of the annealing arch or oven.

Penalty 100*l.*

Iron grating shall be affixed to entrance of annealing arch, with fastenings, &c. Penalty on opening same, unless unlocked by officer, &c. 100*l.*



11. *Glass.*

immediately lock, fasten, and seal every such annealing arch or oven, and the mouth or entrance and iron grating thereof, and shall keep the same locked, sealed, and fastened, from the time such declaration as aforesaid shall be or ought to have been given, until the glass contained in such annealing arch or oven shall be taken out in the presence of the proper officer or officers of Excise for the purpose of being weighed and charged; and if any such maker or makers shall neglect or refuse at his, her, and their own expense to find or provide such good and sufficient iron grating, or to affix the same in the manner herein directed, before such annealing arch or oven shall be made use of as aforesaid, or to pay for any lock, key, or other necessary fastening which shall be provided by any surveyor or supervisor of Excise, according to the directions of this act, or if any person or persons shall obstruct or hinder any officer or officers of Excise, or any person or persons by him or them employed in that behalf, in the fixing or placing any such fastening in such manner as such officer or officers shall direct or think expedient to answer the purposes by this act in that behalf intended, or in the locking, sealing, or securing any such annealing arch or oven, or the mouth or entrance or iron grating thereof, or any such fastening as aforesaid, or by any means, art, device, or contrivance whatsoever, shall open any such lock or annealing arch or oven, or the mouth, entrance, or iron grating thereof, after the same shall have been locked, sealed, fastened, or secured as aforesaid, before the same shall have been unlocked and opened by the proper officer of Excise, or shall wilfully break or damage any such lock, seal, or fastening, every such maker or makers or other person or persons so offending, shall for each and every such offence forfeit and lose the sum of 100*l*."

Locks and fastenings shall be altered and kept in repair when required.

Sect. 7. "That where any locks, keys, or fastenings shall be provided in pursuance of this act, all and every maker and makers of spread window glass or crown glass respectively, to whom such locks, keys, and fastenings respectively shall then belong, shall, at his, her, or their own expense, from time to time, and at all times when required so to do by the respective surveyors or supervisors of Excise of the division or district in which such his, her, or their glass-house shall be situate, immediately set about altering, repairing, and amending; and shall also, within a reasonable time then next following, alter, repair, and amend the same respectively, according to such requisition: and if any such maker or makers of spread window glass or crown glass respectively, to whom any such locks, keys, and fastenings, or any or either of them shall belong, shall neglect or refuse immediately to set about the altering, repairing, or amending the same, or to repair, amend, or alter the same when thereunto required, according to the directions of this act, he, she, or they shall, for each and every such neglect or refusal, forfeit and lose the sum of 50*l*."

Penalty 50*l*.

Notice of heating the annealing arch shall be given to Excise officer.

Sect. 8. "That when any maker or makers of spread window glass or crown glass respectively shall be desirous to prepare, light, or kindle any fire, to heat his, her, or their annealing arch or oven, into which any spread window glass or crown glass is intended to be put or deposited for the purpose of annealing the same, such maker or makers shall give to the officer of Excise under whose survey he, she, or they shall then be six hours' notice in writing of his, her, or their intention; and if any such maker or makers shall neglect or refuse to prepare, light, and kindle such fire within one hour after the time mentioned in such notice, then such notice shall be void, and such maker or makers shall give the like and a fresh notice in writing to such officer before he, she, or they shall prepare, kindle, or light a fire in any such annealing arch or oven; and if any such maker or makers shall light or kindle a fire in any such annealing arch or oven, without having given such previous notice as aforesaid, he, she, or they shall, for every such offence, forfeit the sum of 50*l*."

Penalty 50*l*.

Regulations for putting the glass when flashed into annealing arch.

Sect. 9. "That all and every maker and makers of spread window glass or crown glass respectively shall, when and so soon as the same shall be severally and respectively made or flashed, remove all

and singular the spread window glass and crown glass respectively by him, her, or them so made or flashed directly into such annealing arch or arches, or oven or ovens, and shall there place and deposit the same in such manner and form as the officer or officers of Excise under whose survey such maker or makers shall then be shall approve, and so that the same may, so far as the nature of the case will admit, be the most easily and securely viewed, inspected, and examined, and the numbers and kinds thereof respectively judged of in each and every such annealing arch or oven; and no such maker or makers shall at one and the same time put, place, have, or keep, in any such annealing arch or oven, any spread window glass and crown glass; nor shall any such maker or makers put, place, or keep any other sort or species of glass or glass wares whatever in any such annealing arch or oven entered or made use of for the annealing of spread window glass or crown glass respectively: and if any such maker or makers shall neglect or refuse to remove, when and so soon as the same shall be made or flashed, any such spread window glass or crown glass by him, her, or them made, directly into such annealing arch or arches, or oven or ovens, or to place or deposit any such spread window glass or crown glass in manner and form as aforesaid, or if any such maker or makers shall at one and the same time put, place, or keep, in any such annealing arch or oven, any spread window glass and crown glass, or shall put, place, have, or keep any other sort or species of glass or glass wares whatever in any annealing arch or oven entered or made use of for the annealing of spread window glass or crown glass, every such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 100*l*."

Sect. 10. "That before any such maker or makers of spread window glass or crown glass shall begin to close or stop up any annealing arch or oven containing any spread window glass or crown glass, he, she, or they shall deliver to the proper officer of Excise a declaration in writing, specifying the true number of tables of spread glass or crown glass respectively put or deposited and contained in each and every such annealing arch respectively; and if any such maker or makers shall neglect or refuse to deliver such declaration in writing as last aforesaid, every such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 20*l*."

By 51 Geo. III., c. 69, s. 47. "And whereas by a clause in the said last-mentioned act it is enacted, that before any maker or makers of spread window glass or crown glass as in that act mentioned shall begin to close or stop up any annealing arch or oven containing any spread window glass or crown glass, he, she, or they shall deliver to the proper officer of Excise a declaration in writing, specifying the true number of tables of spread glass or crown glass respectively put or deposited and contained in each and every such annealing arch respectively; and if any such maker or makers as in that act mentioned shall neglect or refuse to deliver such declaration in writing as last aforesaid, every such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 20*l*.: and whereas it may sometimes happen that, from errors in counting and otherwise, the true number of tables of spread glass or crown glass respectively put or deposited and contained in any such annealing arch may be mistaken, and it is therefore expedient to make such provision as is hereinafter mentioned; be it therefore enacted, that, from and after the said first day of August, 1811, no maker or makers of spread window glass or crown glass shall incur or be liable to the said penalty of 20*l*. for or by reason of any declaration by him, her, or them delivered as or for the declaration required by the said recited clause not specifying the true number of tables of spread glass or crown glass respectively put or deposited and contained in any such annealing arch, provided the number of tables of spread glass or crown glass respectively specified in such declaration so delivered shall not vary more than at and after the rate of five

Penalty 100*l*.

Before closing annealing arch, declaration of number of tables shall be delivered.

Penalty 20*l*.

Proviso for makers of spread window glass or crown glass as to penalty of 20*l*. by 49 Geo. 3, c. 63, s. 10.

## 11. Glass.

Scales and weights shall be provided at the glass-house.

Penalty 100*l*.

Notice before glass is drawn from the annealing arch, &c.

*per centum* from the true number of tables of spread glass or crown glass respectively put or deposited and contained in such annealing arch; any thing in the said act contained to the contrary in anywise notwithstanding."

By 49 Geo. III., c. 63, s. 11. "That all and every maker and makers of spread window glass or crown glass respectively shall, and he, she, and they is and are hereby required to keep sufficient and just scales and weights at the place or places where he, she, or they shall make or manufacture spread window glass or crown glass respectively, and shall, at his, her, and their own expense, find, provide, and affix, within such his, her, or their glass-house, and within view of the annealing arches or ovens thereof, a fit and proper hook or staple in a proper place to be approved of in writing by and under the hands of the respective surveyor or supervisors of Excise of the division or district in which such his, her, or their glass-house shall be situate, and also permit and suffer any officer or officers of Excise to use the same for the purpose of weighing and taking an account of the spread window and crown glass respectively which shall at any time be in the possession of such maker and makers of spread window glass or crown glass respectively; and if any such maker or makers shall neglect to keep such scales and weights, or either of them, or shall not, at his, her, or their own expense, find, provide, and affix in manner aforesaid a fit and proper hook or staple in a proper and convenient place to be approved of in writing by and under the hands of the respective surveyors or supervisors of Excise of the division or district in which such his, her, or their glass-house shall be situate, or shall not permit or suffer any officer or officers of Excise to use the same, such maker or makers shall, for each and every such offence, forfeit the sum of 100*l*.; and if any such maker or makers of spread window glass or crown glass respectively shall, in the weighing of any such spread window glass or crown glass make use of, or cause, or procure, or suffer to be made use of, any false, unjust, or insufficient scales or weights, or shall practise any art, device, or contrivance by which any such officer or officers may be hindered or prevented from taking the just and true weight of any such spread window glass or crown glass, then and in every such case such maker or makers shall for each and every such offence forfeit the sum of 500*l*., with all such false, unjust, or insufficient scales and weights respectively, and the same shall and may be seized by any officer or officers of Excise."

Sect. 12. "That all and every maker and makers of spread window glass or crown glass respectively, being desirous to draw or take any spread window glass or crown glass respectively from or out of any annealing arch or arches, or oven or ovens, to him, her, or them belonging, shall, by the space of twelve hours next before the beginning to draw or take any such spread window glass or crown glass respectively from or out of any such annealing arch or arches, or oven or ovens, give to the officer of Excise under whose survey he, she, or they shall then be a notice in writing of his, her, or their intention, specifying each particular arch or oven and the number thereof from and out of which it is intended to take such spread window glass or crown glass respectively, and the particular time and hour at which it is so intended to begin to draw or take the same from or out of such annealing arch or arches, or oven or ovens; and upon such notice being given, such officer shall attend at the time mentioned in such notice, and shall unlock and open such annealing arch or arches, and oven and ovens, for the purpose aforesaid; and such officer shall also attend to see the whole and all and every part of such spread window glass or crown glass respectively drawn or taken from and out of such annealing arch or arches, and oven and ovens; and such maker or makers shall immediately on such officer's attendance begin to draw and take, and shall proceed and continue without any unnecessary delay or interruption to draw and take from and out of such annealing arch and arches, or oven or

11. *Glass.*

ovens, the whole and all and every part of the spread window glass or crown glass respectively; and such maker or makers shall, immediately on such spread window glass or crown glass respectively being so drawn or taken from or out of such annealing arch or oven, proceed to weigh, and shall weigh, the whole and all and every part thereof with such scales and weights as aforesaid in the presence of such officer, and such maker or makers respectively shall be charged with and shall pay the duty for and in respect of such glass respectively according to such weight: and if any such maker or makers of spread window glass or crown glass respectively, having given such notice, and begun to draw or take any such spread window glass or crown glass respectively from or out of his, her, or their annealing arch or arches, or oven or ovens, shall not proceed and continue without any unnecessary delay or interruption to draw and take the whole and all and every part of such spread window glass and crown glass respectively from and out of such annealing arch or arches, and oven and ovens, and proceed and continue to weigh the same as hereinbefore directed, every such maker and makers so offending shall, for each and every such offence, forfeit and lose the sum of 100*l.*; and if any such maker or makers of spread window glass or crown glass respectively last aforesaid shall neglect or refuse to begin to draw or take such spread window glass or crown glass respectively from or out of his, her, or their annealing arch or arches, or oven or ovens, immediately after such annealing arch or arches, or oven or ovens, and the mouths or entrances and iron gratings thereof shall be opened by such officer, then such notice shall be void, and such officer shall again immediately lock up, fasten, and seal each and every such annealing arch or oven and the mouth or entrance and iron grating thereof in manner aforesaid, and such maker and makers shall give the like and a fresh notice in writing to such officer before any such annealing arch or oven, or the mouth or entrance or iron grating thereof, shall be again open. Provided always, that no such maker or makers of spread window glass or crown glass shall be at liberty to give any such notice to draw or take any such spread window glass or crown glass respectively from or out of any of his, her, or their annealing arches or ovens, except in the daytime, and that between the hours of six in the morning and six in the afternoon, and that every notice given for the drawing or taking any such spread window glass or crown glass respectively from or out of any annealing arch or oven at any hour or time other than in the daytime, and that between the hours of six in the morning and six in the afternoon, shall and the same is hereby declared to be null and void to all intents and purposes whatsoever."

Sect. 13. Provides "that in the weighing as aforesaid of any such spread window glass or crown glass respectively, the turn of the scale shall be given in favour of the crown, and in lieu thereof there shall be allowed to such maker or makers of such spread window glass or crown glass respectively 1*lb.* weight upon each and every 100*lbs.* of such spread window glass or crown glass respectively so weighed."

Sect. 14. "That when and so soon as any spread window glass or crown glass shall be weighed by the proper officer or officers of Excise, the same shall be forthwith placed or deposited in a convenient room or place separate and apart from all other glass or glass wares whatsoever, and such spread window glass or crown glass shall remain in such room or place where so placed or deposited for the full space of six hours after the same shall have been so weighed as aforesaid, unless the same shall have been sooner weighed or reweighed by the respective surveyors or supervisors of Excise, to the end that the said surveyors or supervisors respectively may have an opportunity to weigh or reweigh the same; and the said respective surveyors or supervisors are hereby authorized and empowered to weigh or reweigh all such spread window glass and crown glass accordingly; and if upon the reweighing thereof any additional weight shall be discovered or found, such additional weight of spread window glass and

Penalty on neglect, &c. 100*l.*

In weighing, turn of the scale shall be in favour of the crown, &c.

Regulations for weighing of glass after it has been deposited, &c.

## 11. Glass.

Penalty on  
makers for  
neglect, 100*l*.

Makers shall  
assist officers  
in weighing.

Penalty 100*l*.

Penalty on  
conveying glass  
from annealing  
arch before  
weighed, 100*l*.

Glass shall be  
kept apart till  
weighed.

Penalty 100*l*.

Penalty on  
using unentered  
annealing arch,  
or removing  
glass not  
weighed, 100*l*.

Penalty on  
makers manu-  
facturing dif-  
ferent sorts of  
glass in the  
same place, 50*l*.

crown glass respectively shall be chargeable and charged with the respective duties by law payable for such glass respectively; and if any such maker or makers of spread window glass or crown glass shall refuse or neglect to place and deposit such spread window glass or crown glass in such convenient room or place as aforesaid, separate and apart from all other glass or glass wares whatsoever, or shall remove or convey, or cause, procure, or suffer to be removed or conveyed from or out of such room or place as aforesaid any spread window glass or crown glass, before the end or expiration of six hours next after the same shall have been so weighed as aforesaid by the proper officer of Excise, unless the same shall have been sooner weighed or reweighed by the respective surveyors or supervisors of Excise, every such maker or makers of spread window glass or crown glass shall for each and every such offence forfeit 100*l*."

Sect. 15. "That all and every maker and makers of spread window glass or crown glass shall, when and so often as he, she, or they shall be thereunto required by the officer or officers of Excise under whose survey he, she, or they shall then be, with a sufficient number of his, her, or their servants, aid and assist to the utmost of his, her, or their power such officer or officers or surveyor or supervisor in weighing and taking an account or in reweighing and taking an account of all spread window glass or crown glass respectively of such maker or makers, on pain of forfeiting, for every neglect or refusal, the sum of 100*l*."

Sect. 16. "That if any maker or makers of spread window glass or crown glass should convey away any spread window glass or crown glass from any annealing arch or oven, before the proper officer of Excise shall have weighed the same, or shall neglect or refuse to produce any such spread window glass or crown glass to such officer, that he may weigh the same according to the directions of this act, he, she, or they shall, for each and every such offence, forfeit and lose the sum of 100*l*."

Sect. 17. "That all and every maker and makers of spread window glass or crown glass shall, from time to time, and at all times, keep all spread window glass or crown glass respectively in his, her, or their custody or possession, and which shall not have been weighed by the officer of Excise according to the directions of this act, separate and apart from all spread window glass and crown glass respectively which shall have been weighed, and from all other glass wares whatsoever, upon pain of forfeiting, for every such offence, the sum of 100*l*."

Sect. 18. "That if any maker or makers of spread window or crown glass shall, for the annealing of any spread window glass or crown glass, make use of any private or concealed annealing arch, oven, utensil, or place whatever, other than his, her, or their known annealing arch or arches entered for that purpose, or if any such maker or makers shall fraudulently remove or convey away any spread window glass, or crown glass, before the same shall have been weighed by the proper officer or officers of Excise, or shall fraudulently hide or conceal any spread window glass, or crown glass, each and every such maker or makers offending shall for each and every such offence forfeit and lose the sum of 100*l*."

Sect. 19. "That no maker or makers of spread window glass or crown glass respectively shall make or manufacture within the same glass-house or building by him, her, or them erected or used for the making or manufacturing of spread window glass, or in any glass-house or building adjoining thereto, any other sort or species of glass or glass wares whatever, nor shall make or manufacture within the same glass-house or building by him, her, or them entered or used for the making or manufacturing of crown glass, or in any house or building adjoining thereto, any other sort or species of glass, or glass wares, save and except plate glass; and if any such maker or makers of spread glass shall make or manufacture within the same glass-house or building by him, her, or them entered or used for the making or manufacturing of spread window glass, or in any glass-house or building adjoining thereto, any other species of glass or glass wares, or

if any maker or makers of crown glass shall make or manufacture within the same glass-house or building by him, her, or them entered or used for the making or manufacturing of crown glass, or in any glass-house or building adjoining thereto, any other sort or species of glass or glass wares, save and except plate glass as aforesaid, every such maker or makers respectively shall, for each and every such offence, forfeit and lose the sum of 50*l*."

Sect. 20. "That if any officer or officers of Excise shall have cause to suspect that any spread window glass or crown glass respectively shall have been fraudulently removed or conveyed away before the same shall have been weighed by the proper officer or officers of Excise, according to the directions of this act, shall be deposited, lodged, hid, or concealed in any place or places whatsoever, then and in such case, if such place or places shall be within the cities of London or Westminster, or within the limits of the chief office of Excise in London, upon oath made by such officer or officers before the commissioners of Excise in England for the time being, or any two or more of them, or in case such place shall be in any other part of Great Britain, upon oath made by such officer or officers before one or more justice or justices of the peace for the county, riding, division, or place where such officer or officers shall suspect the same to be deposited, lodged, hid, or concealed, which respective oaths they the said commissioners of Excise, or any two or more of them, and justice or justices of the peace respectively, are hereby authorized and empowered to administer, setting forth the ground of his or their suspicion, it shall and may be lawful to and for the said commissioners of Excise, or any two or more of them, or the justice or justices of the peace respectively, as the case may require, before whom such oath shall be made, if they or he shall judge it reasonable, by special warrant or warrants under his and their respective hands and seals, to authorize and empower such officer or officers by day or by night, but, if in the night-time, in the presence of a constable, or other lawful officer of the peace, to enter into all and every such place or places where he or they shall so suspect such spread window glass or crown glass respectively to be deposited, lodged, hid, or concealed, and to seize and carry away all such spread window glass and crown glass respectively which he or they shall then and there find so deposited, lodged, hid, or concealed, as forfeited; and if any person or persons whatsoever shall let, obstruct, or hinder any such officer or officers so authorized and empowered, or any other person or persons acting in his or their aid or assistance in the execution of such warrant, from entering any such place or places where such officer or officers shall so suspect such spread window glass or crown glass respectively to be so deposited, lodged, hid, or concealed, or in seizing or carrying away the same, or in the due execution of any such warrant, the person or persons so offending shall for each and every such offence severally forfeit the sum of 100*l*."

For recovering glass fraudulently conveyed away.

Penalty on persons obstructing the recovery, 100*l*.

Sect. 21. "That if any person or persons shall obstruct or hinder any officer or officers of Excise in the execution of any of the powers or authorities to him or them given or granted by this or any other act or acts of Parliament relating to glass, the person or persons so offending therein shall for each and every such offence, other than for those for which any penalty is hereinbefore specially imposed or provided, severally forfeit the sum of 300*l*. Provided always, nevertheless, that nothing in this act contained shall extend or be construed to extend to make it unlawful to or for any officer or officers of Excise, from time to time, and at all times, to inspect, examine, gauge, or otherwise to take an account of the metal and materials mixed and prepared or founded or founding for the making of glass in any such glass-house or building as aforesaid, as well before such metal or materials shall be put into any pot or pots, as after the same shall be put into any pot or pots, or to take a sample or samples, not

Penalty on obstructing officers, 300*l*.

## 11. Glass.

Penalties and forfeitures shall be levied under Excise laws.

Powers of former acts extended to this act.

No crown glass, &c. to be made of greater thickness than herein mentioned.

Penalty on fraudulently re-landing, &c. glass shipped for exportation ; (a)

exceeding four ounces in the whole, out of each such pot or any other vessel or utensil containing such preparation for making glass."

Sect. 22. "That all fines, penalties, and forfeitures by this act imposed shall be sued for, recovered, levied, or mitigated by such ways, means, and methods as any fine, penalty, or forfeiture is or may be sued for, recovered, levied, or mitigated by any law or laws of Excise, or by action of debt, bill, plaint, or information in any of His Majesty's Courts of Record at Westminster, or in the Court of Exchequer in Scotland; and that one moiety of every such fine, penalty, or forfeiture shall be to His Majesty, his heirs and successors, and the other moiety to him, her, or them who shall discover, inform, or sue for the same."

Sect. 23. "That all the powers, authorities, methods, rules, directions, regulations, penalties, forfeitures, provisos, clauses, matters, and things which, in and by an act or acts of Parliament relating to the duties on glass, or on the materials or metal or other preparation made use of in Great Britain in the making of glass, or to the paying or allowing of any drawback on the exportation of glass, in force immediately before the passing of this act, are contained, provided, settled, or established for managing, assessing, raising, levying, collecting, recovering, adjudging, mitigating, ascertaining, enforcing, and securing the said duties, or for paying or allowing any drawback of the said duties, and for preventing, detecting, and punishing frauds relating thereto, except where the same are expressly altered by this act, shall be and remain in full force and effect to all intents and purposes, and the said powers, authorities, methods, rules, directions, regulations, penalties, forfeitures, provisions, clauses, matters, and things (except as before excepted) shall continue and be duly observed, practised, applied, used, and put in execution throughout the whole kingdom of Great Britain as fully and effectually, to all intents and purposes (except as before excepted), as if the said powers, authorities, rules, directions, regulations, penalties, forfeitures, provisions, clauses, matters, and things had been expressly inserted and re-enacted in this present act."

By 56 Geo. III., c. 108, s. 6. "That no crown glass, or German sheet glass, or broad or spread window glass, shall be made in the united kingdom of greater thickness in the foot superficial, and exclusive of the centre or bullion and selvage or rim thereof, than one-ninth part of an inch, except the metal or glass shall, before the same or any part thereof be begun to be manufactured into wares, be declared by the maker thereof, by notice in writing to be delivered by him, her, or them to the proper officer of Excise, to be made for plate glass, and the duty imposed upon plate glass be charged thereon; and that if any such glass respectively, except as aforesaid, shall be made of any greater thickness than one-ninth part of an inch, the same shall be forfeited, and shall and may be seized by any officer or officers of Excise."

By 17 Geo. III., c. 39, s. 37. "That if, after the shipping of any glass to be exported pursuant to this present act, in order to obtain the respective

(a) Held that a *plea de scire facias* for breach of the condition of the usual bond given not to re-land, where the merchant claims *drawbacks* on goods intended for exportation, that defendant was prevented from shipping and exporting accordingly in consequence of seizure of part of the goods by revenue officers, was not answered by *replication*, that the glass had not been regularly so shipped, or intended so to be, nor agreed

in quantity with the notice given; imputing also a charge of fraud in attempting to obtain allowance of the drawbacks for a larger quantity than was actually shipped; and alleging, that the glass was lawfully seized for having a certain quantity of earthenware packed with it; and such replication was held insufficient on demurrer. *Attorney-General v. Polk*, 1 Price, 387.

allowances or drawbacks therein mentioned, the glass so shipped to be exported, or any part thereof, shall be fraudulently unshipped, unladed, re-landed, or put into any other ship, vessel, or boat within the kingdom of Great Britain, that then, and in every such case, over and above all other penalties and forfeitures, the exporter or exporters of such glass, and all and every person and persons who shall be any ways concerned, or aiding, or assisting in fraudulently unshipping, unlading, relanding, or putting into any other ship, vessel, or boat any part of the said glass, in any part of Great Britain, shall, for every such offence, forfeit and lose the sum of 100*l.*; and every person and persons who shall knowingly enter, or cause or suffer to be entered, any broken or waste glass for exportation, with intent that any drawback or allowance should be obtained, shall, over and above all other penalties and forfeitures, for every such offence also forfeit and lose the sum of 100*l.*" And see 19 Geo. II., c. 12, *post*, 442.

By 26 Geo. III., c. 77, s. 3. "That, from and after the 1st day of August, 1786, it shall be lawful for any person or persons who shall have actually paid all His Majesty's duties by any act or acts of Parliament payable for, or in respect of, any quantity of glass whatsoever made from any of the materials thereby respectively charged, and to and for any other person or persons who shall buy or be lawfully entitled to any such quantity of glass from the said person or persons who actually paid His Majesty's duties for the same, to export from any lawful quays, and in the lawful hours, any such glass, for which all the duties shall have been paid, to any foreign parts by way of merchandise, upon the terms, and according to the directions, hereinafter mentioned; that is to say, the person or persons so intending to export any such glass shall give twelve hours' notice within the limits of the chief office of Excise in London, and twenty-four hours' notice in other places in Great Britain, of his, her, or their intention to pack up, in order to be exported, any such glass, and of the time and place when and where the same is intended to be packed up, to the officer or officers of Excise who shall be appointed for that purpose by the respective commissioners of Excise in England and Scotland; and such officer or officers shall attend to see such glass packed up, and the same shall be packed up in the presence of such officer or officers, and shall be secured with such fastenings, and sealed with such seal or mark, or seals or marks, and in such manner, as the said respective commissioners shall direct; and if any person shall open such package, or wilfully destroy or deface such seal or mark, or seals or marks (save and except the officer of Excise at the port of exportation, as hereinafter mentioned), every person so offending shall forfeit and lose the sum of 20*l.* for every such offence; and the officer or officers who saw the said glass packed up shall take an account of the kind and quantities of the said glass so intended to be exported, and make a return thereof to the officer who shall be appointed by such commissioners, or the major part of them, to receive the same at the port of exportation, without any fee or reward for so doing. Provided always, that if the person or persons so intending to pack up such glass shall not begin and proceed to pack up the same at the time mentioned in such notice, or within one hour after such time, then such notice shall be void, and such person or persons so intending to pack up such glass shall be obliged to give a fresh notice to such officer or officers of the time and place when and where such glass is intended to be packed up in order to be exported; and the person or persons so intending to export such glass shall also give six hours' notice of the time and place of shipping such glass unto the officer of Excise of the place where the same shall be shipped, who shall attend and see the same put on shipboard; and the exporter of the said glass shall also, before the shipping the same, give sufficient security, to be approved by the respective commissioners of Excise, or any one or more of them, or the person appointed by them or the major part of them respectively for that purpose, in treble the value of the duty intended to

11. *Glass.*

or entering  
broken or  
waste glass.

From Aug. 1,  
1786, glass may  
be exported on  
the conditions  
herein specified.

Persons opening  
packages after  
being sealed by  
the officer to  
forfeit 20*l.*

If packing is  
not begun in  
an hour after  
notice, a fresh  
notice must be  
given.

Notice also to be  
given of the  
time of shipping,  
and security  
that the glass  
shall not be re-  
landed in Bri-  
tain, &c.



## 11. Glass.

Certificate to be given by the officer, which is to entitle the exporter to the drawback.

Officer may examine packages.

If glass be re-landed, to be forfeited.

Officers to be sworn.

Makers of glass to keep weights and scales, and to assist the officer.

Penalty.

be drawn back, that the particular quantity of glass so intended to be exported, and every part thereof, shall be shipped and exported, and shall not be unshipped, unloaded, or laid on land, or put on board any other ship or vessel in Great Britain, shipwreck, or other unavoidable accident, excepted; which security the officer of Excise of the port where the said glass shall be exported is hereby directed to take, in His Majesty's name, and to His Majesty's use; and the said exporter shall make oath that he believes the duties upon the materials whereof such glass is made had been fully paid, and that such glass is the same that is described in the account sent as aforesaid by the officer in whose presence the same was packed to the officer attending the shipping (which oath the surveyor or supervisor, or other officer appointed by the said respective commissioners, or the major part of them, for that purpose, is hereby authorized to administer); and the said surveyor or supervisor, or other officer aforesaid, and the officer who attended the shipping the said glass, being satisfied of the truth thereof, shall, within one month after the exportation of the said glass, give to the exporter, or his, her, or their clerk or manager, a certificate or debenture, expressing the quantities and kinds of such glass so shipped, and that all the duties have been paid in respect of the same, and that security hath been given, before the shipping the same, for the due exporting the same; and such certificate or debenture being produced to the collector of the port where the said glass was exported, he shall forthwith pay or allow the persons so exporting the same, or their agent, such drawback or allowance as by the said act, made in the 17th year of His present Majesty's reign, is given or allowed upon the exportation to foreign parts, by way of merchandise, of the several and respective species of glass in the said act mentioned; and if such collector shall not have money in his hands to pay the same, then the respective commissioners of Excise in England or Scotland are required to pay the said drawback or allowance out of the duties upon materials used in the making glass."

Sect. 4. "Provided always, that it shall be lawful for the officer attending the shipping such glass, if he thinks it necessary, to open or examine such glass at the port of exportation, in order that he may be satisfied that such glass is the same that is described in the account sent to him by the officer in whose presence the said glass was packed. Provided also, that if after the shipping any such glass, and the giving such security as aforesaid, in order to obtain a drawback or allowance of the duties before paid in respect thereof, the same glass, or any part thereof, shall be unshipped, unladed, or laid on land, or put into any other ship or vessel within Great Britain (shipwreck, or other unavoidable accident, excepted), that then, and in every such case, over and above the penalty of the bond, which shall be levied and recovered to His Majesty's use, all the said glass which shall be so unshipped, unladed, or laid on land, or put into any other ship or vessel within Great Britain (shipwreck, or other unavoidable accident, excepted), or the value thereof, shall be forfeited, and may be seized by any officer of the Customs or Excise."

By 19 Geo. II., c. 12, s. 10. "Provided always, that every officer who shall be empowered to make such charge as aforesaid shall in the first place be sworn for the due and faithful execution of his office, and the oath in that behalf shall and may be administered by all or any of the commissioners of Excise in Great Britain, or by any of His Majesty's justices of the peace, who shall give to such officer a certificate thereof; and all and every such maker and makers of glass respectively are hereby required to keep sufficient and just scales and weights at the place or places where he, she, or they do make such glass, and permit and assist the officer to make use thereof for the purposes of this act, under the penalty of 50*l.*, to be forfeited and lost for not keeping such scales and weights, or for not permitting and assisting the officer to use the same, as aforesaid." See 49 Geo. III., c. 63, s. 11, *ante*, 436.

And by 10 Geo. III., c. 44, s. 1. "That if at any time after the 24th day of June, 1770, any trader subject to the survey of any officer of Excise, and required by the laws concerning the duties under the management of the commissioners of Excise to keep sufficient and just scales and weights, shall, in the weighing his, her, or their stock or stocks, make use of, or cause, or procure, or suffer to be used, any false, unjust, or insufficient scales or weights, to the intent to defraud His Majesty of the duties by the said laws respectively granted, that then, and in every such case, the party or parties offending shall forfeit the sum of 100*l.* for every such offence."

By 26 Geo. III., c. 77, s. 8. "That if, at any time or times after the 1st day of August, 1786, any trader or traders subject to the survey of any officer or officers of the Excise or inland duties, and who is or are required, by any law or laws relating to the duties of Excise, or other duties under the management of the commissioners of Excise, to keep just scales and weights, shall, before or after or in the weighing of his, her, or their stock, or any part thereof, put or suffer or cause or procure to be put any other substance into the commodity or stock so to be weighed, whereby such officer or officers might be hindered or prevented from taking a just and true account of such stock, as is directed and prescribed by the several acts of Parliament in that case made and provided, or shall forcibly obstruct or hinder, or shall, by any art, device, or contrivance, prevent or impede such officer, or procure or suffer him to be prevented or impeded in taking such just and true account of such stock or commodities as aforesaid, the party offending therein shall, for every such offence, forfeit and lose the sum of 100*l.*"

By 54 Geo. III., c. 97, s. 8. "That if any person or persons whatsoever shall assault, resist, oppose, molest, obstruct, or hinder any officer or officers of Excise in the due execution of this act, or of any of the powers or authorities hereby given or granted to any such officer or officers, or shall by force or violence, after any such officer or officers shall have seized any common glass bottles, or other bottles, as or for common glass bottles, forfeited under or by virtue of this act, rescue, or cause to be rescued, or shall break, damage, or destroy any such bottles, or shall attempt or endeavour so to do, all and every such person or persons so offending shall, for each and every such offence, forfeit and lose the sum of 100*l.*"

By 17 Geo. III., c. 39, s. 38. "That no person whatsoever being a maker of glass, or who is or shall be any way interested in, or concerned in, the trade or business of making glass, or in any glass-house or glass-houses already or hereafter to be set up, shall, during such time as he shall be so concerned or interested in such glass manufacture, trade, business, or glass-house as aforesaid, or in any of the said trades or businesses, be capable or have any power to act as a justice of the peace in any matter or thing whatsoever which shall any ways concern the execution of the powers or authorities given or granted by this present act, or any other act of Parliament relating to the duty or duties imposed upon glass, or upon the materials for making of glass; and in case any such person or persons shall contrary to the true intent and meaning hereof presume to execute any such powers or authorities, it is hereby enacted and declared, that all and every such act so done by such person or persons shall be null and void to all intents and purposes whatsoever."

11. *Glass.*

After 24th June, 1770, trader using false weights and scales in weighing his stock in fraud of the duties, forfeits 100*l.*

Persons using any art to deceive officers in taking the weight of stocks, &c. to forfeit 100*l.*

Obstructing officers.

Penalty.

No glass-maker, &c. to act as a justice of peace in any matter relating to the duties on glass.

*Glass; Muriate of Potash.*

By 53 Geo. III., c. 97, s. 1. "That it shall and may be lawful for any maker or makers of glass in Great Britain to deliver from any such work-house, warehouse, storehouse, room, or other place entered by any such maker or makers of glass, to any maker or makers of alum, any muriate of pot-

*Glass; Muriate of Potash.*

Glass-makers may deliver from entered warehouses muriate of potash to be used in making of alum.

11. *Glass;  
Muriate of  
Potash.*

ash for the purpose of being used in the manufacture of alum, upon bond or security being given by such maker or makers of alum, in double the duty of such muriate of potash, that all such muriate of potash shall be really and truly employed, spent, and consumed by such maker or makers of alum in the manufacture of alum; which bond or security shall be discharged, upon the said maker or makers of alum, or his or their agent or chief workman, making oath before the collector of Excise of the collection in which the alum-works to which such muriate of potash shall be permitted shall be situated (which oath such collector is hereby authorized and empowered to administer), that all the said muriate of potash, for which such bond or security shall have been given, was made use of in the manufacture of alum there, and for no other purpose whatsoever; and the supervisor or officer of Excise under whose survey such maker or makers of alum shall then be at the same time certifying his belief of the truth of the matters sworn to by such maker or makers of alum, or his or their agent or chief workman."

Alum-makers to  
make entry of  
places for keep-  
ing potash.

Sect. 2. "Provided always, that before any maker or makers of alum shall be permitted to receive or to have delivered for him, her, or them any such muriate of potash, such maker or makers of alum shall make true and particular entry in writing of every workhouse, warehouse, storehouse, room, and other place by him or them respectively intended to be made use of in or for the keeping of muriate of potash, and in and for the using thereof in the manufacture of alum, at the office of Excise within the compass or limits whereof such workhouse, warehouse, storehouse, room, or other place respectively shall be situate; and if any maker or makers of alum shall receive or have delivered to or for him, her, or them any such muriate of potash, without having first made such entry as aforesaid, such maker or makers of alum so offending shall, for every such offence, forfeit and lose the sum of 100*l.*, together with all the muriate of potash which shall at any time be found in any workhouse, warehouse, storehouse, room, or other place by such maker or makers of alum made use of in or for the keeping of muriate of potash, whereof no such entry as last aforesaid shall be made."

Penalty.

Samples taken  
by officer.

Sect. 7. "That it shall and may be lawful to and for any officer or officers of Excise, and all such officers are hereby authorized and empowered to take, at any time or times, a sample or samples of any muriate of potash, or other materials alleged or pretended to be or passing under the denomination of muriate of potash, at any time in the custody or possession of any maker or makers of glass, or in the custody or possession of any maker or makers of alum, paying for the same (if demanded) the value thereof; and in case any maker or makers of glass, or any maker or makers of alum, shall refuse to permit any such officer or officers to take any such sample or samples as aforesaid, upon his or their paying for the same (if demanded), such maker or makers of glass, or maker or makers of alum, so offending, shall, for each and every such offence, forfeit and lose the sum of 100*l.*"

Penalty.

Permits granted  
for the removal  
of muriate of  
potash.

Sect. 8. "That where any maker or makers of glass shall have occasion to remove any muriate of potash from any such workhouse, warehouse, storehouse, room, or other place by him, her, or them entered as being intended to be made use of for the making or keeping mineral alkali or flux for glass, the officer or officers of Excise of the respective divisions or places where such entered workhouse, warehouse, storehouse, room, or other place shall be situated, shall, without fee or reward, from time to time, upon a request note being made and delivered by such maker or makers of glass, according to the directions of this act, grant and give a permit in writing, signed by the said respective officer or officers, expressing the quantity of all such muriate of potash so to be removed, and expressing the name and names of the person or persons from whom the same is intended to be removed, and to whom the same is to be removed,

## II. PARTICULAR LAWS, &c. (11.) *Glass; Muriate of Potash.*

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and that the duty for or in respect of such muriate of potash so intended to be removed has been paid; and all officers of Excise granting or giving any such permit shall therein limit and express the time within which the said muriate of potash in such permit mentioned shall be removed from the workhouse, warehouse, storehouse, room, or other place of the maker or makers of glass taking out such permit, and also the time within which the said muriate of potash shall be delivered and received into the workhouse, warehouse, storehouse, room, or other place of the maker or makers of alum to whom the same is permitted to be sent."

Sect. 9. "That no permit for the removal of any such muriate of potash shall be granted, or be valid, unless such maker or makers requiring the same shall make and send or deliver to the officer or officers of Excise hereby authorized to grant such permit a request note in writing, specifying the name of the maker or makers of alum to whom such muriate of potash is intended to be sent, the quantity of such muriate of potash intended to be removed, and for the removal of which such permit is required, and also the number and contents of the casks or other packages containing the same, and whether the same is to be removed by land or by water, and by what mode of conveyance such muriate of potash is intended to be sent."

Sect. 10. "That no muriate of potash shall be brought into any workhouse, warehouse, storehouse, room, or other place made use of by any maker or makers of alum, without an authentic permit granted and given according to the directions of this act, which permit shall be produced to and left with the officer of Excise under whose survey such maker or makers of alum shall then be, on pain of forfeiting all such muriate of potash so brought in without such permit."

Sect. 11. "That all and every maker and makers of alum shall, within six hours next after any such muriate of potash shall be received or delivered at or into any workhouse, warehouse, storehouse, room, or other place to him, her, or them belonging, give to the officer of Excise under whose survey he, she, or they shall then be notice in writing of the receipt and delivery thereof; and if any maker or makers of alum shall neglect or refuse to give any such notice, such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 50*l*."

Sect. 12. "That in case in the muriate of potash brought in to be used, stored, or deposited at any such alum work or works for the purpose of being used in the manufacture of alum, any decrease shall be found exceeding the rate of one pound in every one hundred-weight of such muriate of potash specified in the permit which shall accompany the same, the maker or makers of alum to whose use or to whose account the said muriate of potash was so delivered at such work or works as aforesaid shall forfeit and lose the sum of 50*l*."

Sect. 13. "That all and every maker and makers of glass shall respectively daily and every day enter in a book or on a paper to be provided for that purpose an exact and particular account of each and every parcel, quantity, or load of muriate of potash and the weight thereof, sold, delivered, or sent out by such maker or makers of glass, with the name of the maker or makers of alum to or for whom every such quantity of muriate of potash was so sold, delivered, or sent out, and the place where his, her, or their alum-works at which the same is to be or was delivered, and such book or paper shall be returned to the next office of Excise every six weeks, and the truth of the entries made therein shall be then and there verified upon the oath of such maker or makers, or his, her, or their chief workman or agent, before the proper collector or supervisor of Excise, and the several and respective collectors and supervisors of Excise are hereby authorized and required to administer such oath accordingly; and in case any such maker or makers of glass shall neglect or refuse to keep such book or paper, or to make such entries therein, according to the true intent and

### 11. *Glass; Muriate of Potash.*

Note specifying certain particulars delivered before permits granted.

Muriate of potash admitted into possession of alum-maker without permit.

Penalty.

On receipt of muriate of potash, notice to officer.

Penalty.

Decrease of one pound in 100 allowed.

Penalty.

Maker of glass to keep account of muriate of potash delivered to alum-works, and return same to Excise.

11. *Glass ;  
Muriate of  
Potash.*

Penalty.

Duty cleared in  
a certain time.

Penalty.

Officers may at  
all times enter  
premises.

Scales and  
weights pro-  
vided to take  
account of  
weight of mu-  
riate of potash.

Penalty.

Makers to assist  
officers in taking  
account of  
weight.

meaning of this act, or shall neglect or refuse to return the same as herein-before directed, or to verify the said entries or any of them upon oath, such maker or makers of glass shall, for each and every such offence, forfeit and lose the sum of 100*l*."

Sect. 14. "That all and every such maker or makers of glass shall, within one week after he, she, or they shall have or ought to have made such entry upon oath as last aforesaid, pay and clear off all the duties for and in respect of muriate of potash, which shall be due from him, her, or them respectively; and that every such maker or makers of glass, who shall neglect or refuse to make such payment as aforesaid, shall forfeit for every such offence double the sum of the said duties whereof the payment shall be so neglected as aforesaid."

Sect. 15. "That it shall and may be lawful to and for the officers of Excise, or any or either of them, from time to time and at all times, by day and by night, upon his or their request or demand (but if in the night, then in the presence of a constable or other lawful officer of the peace), to enter into all and every the workhouses, warehouses, storehouses, rooms, and other places made use of by any maker or makers of glass, or by any maker or makers of alum, in or for the storing or keeping of muriate of potash, or any other matter or material alleged or pretended to be or passing under the name or denomination of muriate of potash, and by weighing or otherwise to take an account of the quantity and quality of all the muriate of potash or other matters or materials alleged or pretended to be or passing under the name or denomination of muriate of potash which shall at any time be in the custody or possession of any such maker or makers of glass, or of any such maker or makers of alum."

Sect. 16. "That all and every maker or makers of glass, and all and every maker and makers of alum, shall, and he, she, and they respectively is and are hereby required to provide and keep proper, sufficient, and just scales and weights at the place or places where he, she, or they respectively shall have or keep any muriate of potash, and shall, at his, her, or their own expense, find, provide, and affix a fit and proper hook or staple in a proper place, to be approved of in writing by and under the hands of the respective surveyors or supervisors of Excise of the division or district in which such place shall be situate, and also permit and suffer any officer or officers of Excise to use the same for the purpose of weighing and taking an account of the muriate of potash which shall at any time be in the custody or possession of any such maker or makers of glass or maker or makers of alum respectively; and if any such maker or makers of glass, or any such maker or makers of alum, shall neglect or refuse to provide or to keep such scales and weights, or either of them, or shall not, at his, her, or their own expense, find, provide, and affix a fit and proper hook or staple in a proper and convenient place, to be approved as aforesaid, or shall not permit or suffer any officer or officers of Excise to use the same as aforesaid, or if any such maker or makers of glass, or any maker or makers of alum, shall, in the weighing of any muriate of potash, make use of, or cause or procure, or suffer to be made use of, any false, unjust, or insufficient scales or weights, or shall practise any art, device, or contrivance by which any such officer or officers shall or may be hindered or prevented from taking the just and true weight and ascertaining the true quantity of any such muriate of potash, then and in every such case such maker or makers of glass, or maker or makers of alum (as the case may be), shall, for every such offence, forfeit the sum of 100*l*., together with all such false, unjust, or insufficient scales and weights respectively."

Sect. 17. "That all and every maker or makers of glass, and all and every maker or makers of alum, shall, when and so often as he, she, or they shall be thereunto required by the proper officer of Excise, with a sufficient number of his, her, or their servants, aid and assist to the utmost of his, her, or their power such officer or officers in weighing and

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taking an account of his, her, or their muriate of potash, on pain of forfeiting, for every neglect or refusal thereof, the sum of 100*l*."

Sect. 18. "That if any person or persons shall take, remove, or carry away any muriate of potash, with intent to evade the duty by this act imposed, every person so offending shall forfeit the sum of 50*l*., and all the muriate of potash so taken, removed, or carried away shall be forfeited."

Sect. 19. "That in case any muriate of potash shall be deposited, hid, or concealed in any place or places whatsoever, with an intent to defraud His Majesty of any of the duties by this act imposed, such muriate of potash shall be forfeited, and shall and may be seized by any officer or officers of Excise, and the person or persons in whose custody the same shall be found shall forfeit the sum of 100*l*.; and, the better to enable such officer or officers to discover such muriate of potash so forfeited, if any such officer or officers shall have cause to suspect that any such muriate of potash shall be so deposited, hid, or concealed in any place or places whatsoever, then and in every such case, if such place or places shall be within the limits of the chief office of Excise in London, upon oath made by such officer or officers before the commissioners of Excise in England for the time being, or any two or more of them, or before one or more justice or justices of the peace of the county, city, or liberty where such place or places shall be, or in case such place or places shall be in any other part of Great Britain, upon oath made by such officer or officers before one or more justice or justices of the peace for the county, riding, shire, division, or place where such officer or officers shall suspect the same to be deposited, hid, or concealed, setting forth the ground of his or their suspicion, it shall and may be lawful to and for the said commissioners, or any two or more of them, or the justice or justices of the peace respectively, as the case may require, before whom such oath shall be made, if they or he shall judge it reasonable, by special warrant or warrants under his or their respective hands and seals, to authorize and empower such officer or officers by day or by night, but if in the night-time, then in the presence of a constable or other officer of the peace, to enter into all and every such place and places where he or they shall so suspect such muriate of potash to be so deposited, hid, or concealed, and to seize and carry away all such muriate of potash which he or they shall then and there find so forfeited."

Sect. 20. "That in case any maker or makers of alum, to whom or to whose use or on whose account any such muriate of potash shall be delivered from any workhouse, warehouse, storehouse, room, or other place belonging to or made use of by any maker or makers of glass, or in case any other person or persons shall make use of or employ such muriate of potash, or any part thereof, to or for any use or purpose other than in the manufacture of alum, or shall, after any such muriate of potash, or any part thereof, shall have been used in the manufacture of alum as aforesaid, make use of or employ the *residuum, caput mortuum*, or any remains thereof for any other purpose than in the manufacture of alum, the maker or makers of alum or other person or persons so offending shall, for each and every such offence, forfeit and lose the sum of 100*l*."

Sect. 21. "That if any question shall arise, whether any substance, matter, or material, substances, matters, or materials, which shall be seized as and for muriate of potash forfeited under or by virtue of this act, be muriate of potash, the proof of such substance, matter, or material, substances, matters, or materials, not being muriate of potash, shall lie upon the owner or claimer thereof."

Sect. 22. "That in all cases where any officer or officers of Excise is or are authorized, empowered, or required to ascertain the quantity of muriate of potash by weight, no less quantity of such muriate of potash shall be weighed at one draft than an hundred-weight; and every such

### 11. *Glass ; Muriate of Potash.*

Penalty.  
Removing muriate to evade duty.

Penalty.  
Concealing potash.

Penalty.

Muriate of potash from glass-houses used only in manufacture of alum.

Penalty.  
Proof of muriate of potash to lie on owner.

How muriate of potash weighed.

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Muriate of  
Potash.*

Obstructing  
officers.

Penalty.  
Bribing officers,  
&c.

Penalty.  
Glass-makers or  
alum-makers  
not to act as  
justices.

Penalties how  
recovered.

Former acts ex-  
tended to act  
12 Car. 2, c. 24.

officer or officers, in the weighing any muriate of potash, shall give the turn of the scale in favour of the crown, and in lieu thereof shall make an allowance at and after the rate of five pounds' weight in every half of a ton of such muriate of potash."

Sect. 23. "That if any person or persons whatsoever shall assault, resist, oppose, molest, obstruct, or hinder any officer or officers of Excise in the due execution of this act, or of any of the powers or authorities hereby given or granted to any such officer or officers, or shall by force or violence, after any such officer or officers shall have seized any muriate of potash, or any substance, matter, or material, substances, matters, or materials, as or for muriate of potash forfeited under or by virtue of this act, rescue or cause to be rescued any such muriate of potash, or substance, matter, or material, substances, matters, or materials, or shall attempt or endeavour so to do, all and every such person or persons so offending shall, for each and every such offence, forfeit and lose the sum of 100*l*."

Sect. 24. "That if any person or persons whatsoever shall give or offer to give any bribe, recompense, or reward whatsoever to any officer or officers of Excise, in order to corrupt, persuade, or prevail upon any such officer or officers either to do or perform any act or acts, thing or things whatsoever, contrary to the duty of such officer or officers in the execution of this act, or to neglect to do or perform any act or acts, thing or things whatsoever, belonging or appertaining to the business or duty of such officer or officers in the execution of this act, or to connive at or conceal any fraud or frauds relating to any of the regulations by this act prescribed, or not to discover the same, all and every the person or persons so offending shall, for each and every such offence (whether such offer or proposal be accepted or not), forfeit and lose the sum of 500*l*."

Sect. 25. "That no person whatsoever being a glass-maker or alum-maker, or who is or shall be in anywise interested or concerned in the trade or business of making or dealing in glass or alum respectively, shall, during such time as he, she, or they shall be so interested or concerned in the trade or business of making or dealing in glass or alum, act as a justice of the peace in any matter or thing whatsoever which shall in anywise concern the execution of the powers or authorities given or granted by this act; and if any person or persons shall, contrary to the true intent and meaning of this act, presume to exercise any such powers or authorities, or to do any act hereby authorized to be done by any justice or justices of the peace, all such acts so executed or done by such person or persons shall be utterly null and void to all intents and purposes whatsoever."

Sect. 26. "That all fines, penalties, and forfeitures imposed by this act shall be sued for, recovered, levied, or mitigated by such means, ways, or methods as any fine, penalty, or forfeiture may be sued for, recovered, levied, or mitigated by any law or laws of Excise, or by action of debt, bill, plaint, or information, in any of His Majesty's courts of record at Westminster, or in the Court of Exchequer in Scotland respectively; and that one moiety of every such fine, penalty or forfeiture, shall be to His Majesty, his heirs and successors, and the other moiety to him, her or them who shall inform, discover or sue for the same."

Sect. 27. "That all and every the powers, directions, rules, penalties, forfeiture, clauses, matters and things which in and by an act, made in the twelfth year of the reign of His late Majesty King Charles the Second, intituled *An Act for taking away the Court of Wards and Liveries, and Tenures in Capite, and by Knights Service and Purveyance, and for settling a Revenue upon His Majesty in lieu thereof*, or by any other law or laws now in force relating to His Majesty's revenue of Excise, are provided or established for managing, raising, levying, collecting, mitigating or recovering, adjudging or ascertaining the duties thereby imposed, or any of them, shall be practised, used and put in execution, in

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and for the managing, raising, levying, collecting, mitigating, recovering, and paying the duties of Excise by this act imposed, and for preventing, detecting, and punishing frauds relating thereto, as fully and effectually, to all intents and purposes, as if all and every the said powers, rules, directions, penalties, forfeitures, clauses, matters, and things were particularly repealed and re-enacted in this present act."

11. *Glass ;  
Muriate of  
Potash.*

(12.) *Hides.* (See title *Leather*, &c. *post*, 458.)

## (13.) *Hops.* (See also *Ale, Beer, and Brewers*, *ante*, 311.)

(13.) *Hops.*

[9 Anne, c. 12; 6 Geo. I., c. 21; 6 Geo. II., c. 37; 7 Geo. II., c. 19; 24 Geo. II., c. 42; 26 Geo. III., c. 5; 39 & 40 Geo. III., c. 81; 43 Geo. III., c. 69; 45 Geo. III., c. 94; 48 Geo. III., c. 134; 54 Geo. III., c. 123; 59 Geo. III., c. 52; 1 & 2 Geo. IV., c. 100; 4 Geo. IV., c. 46; 6 Geo. IV., c. 111; 7 & 8 Geo. IV., c. 53.]

By 43 Geo. III., c. 69; 45 Geo. III., c. 94; and 59 Geo. III., c. 52, in lieu of any duties of Excise then subsisting, new duties were imposed, and which duties are now collected and recoverable pursuant to the general regulations and provisions of the 7 & 8 Geo. IV., c. 53, *ante*, p. 227 to 310.

Duties.

Excise.

By 6 Geo. IV., c. 111, all former duties of *Customs* were repealed, and new duties imposed; *inter alia*, a duty of 8*l.* 11*s.* per cwt. upon hops imported, *ante*, 131.

Customs.

By 7 Geo. II., c. 19, s. 1. "That if any foreign hops shall be landed or put on shore out of any ship or vessel in Great Britain before due entry thereof shall be made at the Custom-house in the port or place where the same shall be imported, and before the duties charged or chargeable thereon shall be paid, or without a warrant for landing or delivering the same first signed by the commissioners, collector, or other proper officer or officers of the Customs respectively; or if any foreign hops, other than of British growth, shall be landed or put on shore out of any ship or vessel in Ireland; all such hops, of what kind soever, as shall be so landed or put on shore or taken out of any ship or vessel in Great Britain or Ireland, shall be forfeited and burnt within ten days after the same shall be lawfully condemned, and also the ship or vessel forfeited in which the same were imported, and the person or persons concerned in importing of the same, or that shall have been aiding and assisting in the landing or putting the same on shore, shall forfeit and pay the sum of 5*s.* for every pound weight thereof; and so in proportion for any greater or lesser quantity."

Foreign hops landed in Great Britain or Ireland, before entry and payment of duties, or signed warrant,

shall be burnt, the ship forfeited, and importer to pay 5*s.* for each pound of such hops.

By 26 Geo. III., c. 5, s. 1. "That from and after the 6th day of March, 1786, it shall be lawful for any person or persons to export, from any lawful quays, and in the lawful hours, any such hops to or for Ireland, upon the terms and according to the directions hereinafter mentioned; that is to say, the person or persons intending to export such hops to or for Ireland shall give six hours' notice of the time and place of shipping such hops unto such officer of Excise, of the place where the same shall be shipped, as shall be appointed for that purpose by the commissioners of Excise in England and Scotland respectively, or the major part of them, for the time being, and of the name of the ship or vessel in which the same are intended to be shipped and exported, and of the master or commander thereof, and of the particular port or place in Ireland to which such hops are intended to be exported; and such officer shall take an account of the quantities of such hops so intended to be exported, and of the mark of the weight or tare of each bag, pocket, and cask of such hops, marked on the outside of each such bag, pocket, or cask, and of the planter or planters'

British hops may be exported to Ireland before duties paid, on giving proper notice, &c.



## 13. Hops.

If not exported agreeable to notice, a fresh notice to be given.

Security to be given that the hops shall not be reloaded, &c.

Exporter to make oath that he believes the duties have been duly charged, &c.

Particulars to be complied with before any debenture shall be granted for a drawback.

Collector to pay the drawback.

name or names, and the place of his or their abode, together with the dates of the year in which such hops were grown, marked in manner aforesaid."

Sec. 2. " Provided always, that if the person or persons so intending to ship such hops shall not begin and proceed to ship the same at the time mentioned in such notice, or within one hour after such time, then such notice shall be void, and such person or persons, so intending to ship such hops, shall be obliged to give a fresh notice to such officer or officers of the time and place when and where such hops are intended to be shipped in order to be exported; and the officer of Excise of the place where the same shall be shipped shall attend and see the same put on shipboard; and the exporter of the said hops shall also, before the shipping the same, give sufficient security, to be approved of by the respective commissioners of Excise or the major part of them, or the person by them appointed for that purpose, in treble the value of the duty intended to be drawn back, that the particular hops so intended to be exported, and every part thereof, shall be shipped and exported, and shall not be unshipped, unladed, or laid on land, or put on board any other ship or vessel in Great Britain (except in case of shipwreck or other unavoidable accident); which security the officer of Excise of the port or place where the said hops shall be exported, appointed for that purpose by the commissioners of Excise in England or Scotland respectively, or the major part of them, for the time being, is hereby directed to take, in His Majesty's name, and to His Majesty's use; and the said exporter shall also, before the shipping of such hops, make oath (or affirmation if a Quaker) that he believes the duties upon such hops had been duly charged (which oath or affirmation the officer appointed for that purpose by the commissioners of Excise in England and Scotland respectively, or the major part of them, for the time being, is hereby authorized and required to administer); and before any debenture or certificate shall be granted for the repayment of the duty on any hops so exported as aforesaid, the exporter shall deliver to the officer who shall have taken such security as aforesaid, or to the officer who shall be then appointed to take such security as aforesaid for the exportation of the hops for which a debenture or certificate is claimed, a paper, containing the quantity of hops exported, and for which such security was given as aforesaid, together with the name of the ship or vessel in which such hops were exported, the name of the master or commander thereof, and the particular port or place in Ireland to which such hops have been exported, and containing also the weight or tare of each such bag, pocket, and cask of hops, and the planter or planters' name or names, and the place of his or their abode, together with the dates of the year in which such hops were grown; and the said exporter shall also make oath (or affirmation if a Quaker) before the officer appointed to take security as aforesaid, that he believes the duties upon such hops, mentioned and described in such paper, have been fully paid (which last-mentioned oath or affirmation such officer is hereby authorized and required to administer); and such officer being satisfied of the truth thereof shall, within one month after such last-mentioned oath or affirmation shall have been made, and after the actual exportation of such hops, give to the said exporter, or his clerk or agent, a certificate or debenture, expressing the quantities of such hops so shipped and exported, and the duties which have been paid for the same respectively, and that security hath been given before the shipping the same for the due exportation of the same; and such certificate or debenture being produced to the collector of Excise of the port or place from whence such hops were so exported, he shall forthwith pay or allow the person or persons so exporting the same, or their agents, a drawback or allowance of the duties before paid for such hops so exported, or of such part and so much of the said duties for such respective hops so exported as may now be drawn back or allowed on the exportation of such hops by any law or laws now in force; and if such

collector shall not have money in his hands to pay the same, then the respective commissioners of Excise in England or Scotland are required to pay the said drawback or allowance out of such duties as drawbacks or allowances granted upon the exportation of such hops are now payable by law."

Sect. 4. "Provided always, that if after the shipping any such hops, and the giving or tendering such security as aforesaid, in order to obtain a drawback or allowance of the duties before paid or charged thereupon, the same hops, or any part thereof, shall be again unshipped, relanded, or laid on land, or put into any other ship or vessel within Great Britain (except in case of shipwreck, or other unavoidable accident), that then, and in every such case, over and above the penalty of the bond which shall be levied and recovered to His Majesty's use, all the said hops which shall be so unshipped, relanded, or laid on land, or be put into any other ship or vessel within Great Britain (except in case of shipwreck, or other unavoidable accident), or the value thereof, shall be forfeited, and may be seized by any officer of the Customs or Excise."

By 1 & 2 Geo. IV., c. 100, s. 1. "That there shall be allowed for every pound weight avoirdupois of hops grown, cured, and made fit for use in Great Britain, and exported, from and after the 12th day of January, 1821, as merchandise to foreign parts, the whole of the Excise duty paid thereon."

Sect. 2. "That all such hops as aforesaid shall be exported as aforesaid in the original package and packages in which the same were charged with duty, each such package containing at the least one hundred-weight of such hops, under and subject to the several provisions contained in an act made in the 26th year of the reign of His late Majesty King George the Third, for regulating the exportation of hops to Ireland, and other acts touching or relating to the exportation of any goods subject to a duty or duties of Excise, upon drawback; and that all and singular the rules, regulations, restrictions, provisions, fines, penalties, and forfeitures contained, provided, settled, or established in or by the said act and acts respectively, shall also be used, applied, practised, and put in execution for and in respect of the exportation of hops to foreign parts, so far as such rules, regulations, restrictions, or provisions, fines, penalties, or forfeitures respectively, are or may be applicable or applied thereto, as fully and effectually as if the same were repeated and again enacted in this present act."

And by 43 Geo. III., c. 69, sched. (A) and 45 Geo. III., c. 94, for every pound weight avoirdupois of hops grown in Great Britain, which shall be cured and made fit for use, shall be paid by the owner or possessor thereof a duty of 2d.

In order whereunto, by 9 Ann. c. 12, s. 6. "That all and every person and persons whatsoever, who, on or before the 1st day of August, in the year of our Lord 1711, shall have any hops planted or growing within or upon any ground whatsoever in Great Britain, for sale or not for sale, shall, on or before the same 1st day of August, 1711, give or send notice in writing under his, her, or their hands, at the office of Excise next to the place, or to the officer for the said duties of the district where such hops are or shall be planted or growing, of all the hop-grounds then in his, her, or their possession, and of the name or names of the parish, township, or place, parishes, townships, or places wherein the same do lie, and the name or names of the owners, tenants, or occupiers thereof respectively; and that from and after the said 1st day of August, 1711, during the continuance of the said duties upon hops, all and every person and persons whatsoever who shall plant or cause to be planted or shall have growing any hops upon any ground whatsoever in Great Britain, for sale or not for sale, shall yearly, on or before the 1st day of August in every year, give or send like notice of all the hop-grounds wherein any hops shall be growing in every such year; and if any person or persons who shall plant,

13. Hops.

Hops relanded after giving security, &c. shall be forfeited.

Drawback of Excise duty on exportation of hops.

Hops to be exported in the original package containing not less than one cwt. subject to the regulations of 26 Geo. 3, c. 5, &c.

Home duty.

Planters to give notice to the proper officer by 1st August, 1711, of their hop-grounds, &c.

and afterwards yearly.

## 13. Hops.

on forfeiture of  
40s. an acre.

Notice to be  
given at the  
next market  
town, and  
officer to enter  
it in five days, on  
penalty of 40s.

No oust, store-  
house, &c. to be  
used without no-  
tice, on penalty  
of 50l.

Hops in six  
weeks after  
gathering to be  
brought to such  
oust, &c. on  
pain of 5s.  
per pound.

Officer may  
enter any oust,  
&c., to view,  
&c. on pain  
of 20l.

Planters of hops  
to give notice of  
the precise time  
of bagging and  
weighing hops.

24 hours' notice  
to be given of  
bagging or  
weighing in  
the first week,  
and 48 hours

or cause to be planted or grow, any hops within or upon any ground whatsoever in Great Britain, shall neglect to give or send such notice in writing, of his, her, or their hop-grounds as aforesaid, within such time as is before mentioned, contrary to the true meaning of this act, then and in every such case the offender therein, for every such offence, shall forfeit and lose the sum of 40s. for every acre, by estimation, of such ground, and after that rate for a greater or lesser quantity."

Sect. 7. "Provided always, that the person or persons who are to give such notice as aforesaid shall not be obliged, for the doing thereof, to go or send farther than the next market town to the place where the said hops shall be planted or growing; and the officer who shall receive the said notice shall, within five days after such notice shall be given or sent to him, from time to time, enter the same in a book to be kept at the said next office for that purpose, upon pain of forfeiting, for every neglect therein, the sum of 40s. to the party whose notice shall not be so entered."

Sect. 8. "That no person or persons whatsoever shall at any time or times, from and after the 1st day of August, 1711, during the continuance of the said duties upon hops, make use of any oust, store-house, or other place, or of any kiln, for curing or keeping of hops chargeable with any of the duties aforesaid, unless notice of such oust, store-house, place, or kiln shall have been before given or sent in writing as aforesaid, upon pain of forfeiting the sum of 50l. for every offence."

Sect. 9. "That all such hops as in any year, during the continuance of this act, shall grow in Great Britain as aforesaid, shall by the respective owners or planters thereof, within six weeks after the gathering or picking of the same, be brought to be cured and bagged at such ousts or other places to be notified as aforesaid, and none other, upon pain of forfeiting the sum of 5s. for every pound weight of the said hops which shall not be so brought, cured, and bagged as aforesaid."

Sect. 15. "That all and every the officers of the said duty shall at all times, by day or by night, and (if in the night) then in the presence of a constable, or other lawful officer of the peace, be permitted, upon his or their request, to enter into the oust, store-house, or other place made use of by any person or persons, within or during the said term, for the growing, curing, or keeping of hops, whereof such notice shall or ought to have been given as aforesaid, in order to his viewing the same, and discovering any frauds in relation to Her Majesty's duties thereupon; and if any planter or owner of hops shall obstruct or hinder any of the said officers in the execution of the powers and authorities given to him or them by this act for the ascertaining and securing the said duties upon hops, the person or persons offending therein shall for every such offence forfeit and lose the sum of 20l."

By 6 Geo. I., c. 21, s. 25. "That from and after the said 1st day of August, 1720, the respective planters or owners of hops to grow in Great Britain, before they respectively shall or do begin to bag or to weigh his, her, or their hops, or any part or parts thereof, shall respectively give or send notice in writing under his, her, or their hands to the next officer of Excise, or to the proper officer for the said duty, of the particular day, and of the precise hour of such day, as well of his, her, or their beginning to bag, as also of his, her, or their beginning to weigh such their respective hops, and every part and parts thereof, which notice, as well as to such bagging, as also to such weighing of such hops as shall be either bagged or weighed in the first week of each respective planter's or owner's bagging and weighing, or either of them, shall be given or set at least twenty-four hours before the particular time and times, when as well every such bagging, as also every such weighing, shall respectively begin; and such notice as aforesaid, as well as to every other bagging, as also as to every other weighing, of such hops as shall not be bagged and weighed in such first week, shall likewise be given or left by the space of at least forty-eight

hours, as well before every such other bagging, as also before every such other weighing shall respectively begin; and if, after such notice given, he, she, or they shall not proceed to bag and weigh, or to bag or weigh, according to each respective notice, that then and in every such case he, she, or they, before he, she, or they shall at any other time or times begin to bag and weigh, or to bag or weigh, his, her, or their hops, or any part or parts thereof, shall give or send the like notice as aforesaid; that is to say, twenty-four hours' notice of such bagging and weighing, or either of them, in such first week, and forty-eight hours' notice, as well of every such other bagging, as also of every such other weighing, or either of them respectively, under the pain of forfeiting and losing the sum of 50*l.* for every neglect and default of every such notice or notices, as aforesaid, in either of the respective cases before mentioned."

But by 39 & 40 Geo. III., c. 81, s. 6. "That no planter or owner of hops to grow in Great Britain shall at any time be obliged to give more than twenty-four hours' notice of his or her intention to weigh hops. Provided always, that the particular time to be specified in any such notice for the weighing of hops shall be between the hours of four in the morning and five in the evening, any thing in this or any other act of parliament to the contrary in anywise notwithstanding."

And by 9 Ann. c. 12, s. 11. "That the proper officer of Excise for the district in which the said hops shall grow, or some other sworn officer of Excise, by appointment of the commissioners of that revenue, shall attend and be present at the bagging of every parcel of such hops as aforesaid, and at the weighing of the same, and shall cause the true weight of every bag or pocket of the said hops, great or small (such tare of the bag as is allowable by this act only excepted), to be plainly and visibly marked in one or more places upon every bag of the said hops; and shall then also cause an entry of the said weight (the tare being abated) to be made in his book, and shall thereof make return or report in writing to the respective commissioners of Excise, or such as they shall respectively appoint to receive the same, leaving a true copy (if demanded) of such report in writing under his hand with or for such planter or owner respectively; and such return or report of the said officer or officers shall be a charge upon the said planters or owners respectively; and if the said officer or officers shall refuse or neglect to give or leave a true copy of such report in writing with or for such planters or owners respectively, at the time of taking such account (upon demand as aforesaid), every such officer for such offence shall forfeit and pay the sum of 5*l.* to every such planter or owner respectively."

By 39 and 40 Geo. III., c. 81, s. 8. "That all and every owner, planter, and grower of hops growing or to grow in Great Britain shall, and he, she, and they respectively is and are hereby required to keep sufficient and just scales and weights at his, her, or their ous, store-houses, or other places where such hops shall have been so weighed, and also to permit and suffer any supervisor of Excise to use the same for the purpose of reweighing such hops; and if any such owner, planter, or grower shall neglect to keep such scales and weights, or either of them, or shall not permit or suffer any supervisor of Excise to use the same for the purpose aforesaid, he, she, or they shall, for each and every such offence, forfeit the sum of 50*l.*; and if any such owner, planter, or grower shall, for the reweighing of any such hops, provide or make use of, or cause or procure or suffer to be provided or made use of, any false, unjust, or insufficient scales or weights, or shall practise any act, device, or contrivance by which any such supervisor of Excise may be hindered or prevented from taking the just and true weight of any such hops, then and in every such case such owner, planter, or grower shall, for each and every such offence, forfeit the sum of 100*l.*, together with all such false, unjust, or insufficient scales and weights respectively, and the same shall and may be seized by any supervisor or officer of Excise."

13. Hops.

for every other bagging, on pain of 50*l.*

Owner of hops shall not be obliged to give more than 24 hours' notice of his intention to weigh them.

Time of weighing between four in the morning and five in the evening.

Officer to attend the bagging and weighing, and mark the weight on the bag, and make entry and return accordingly.

A copy of the return to be left with the planter.

Officer not leaving return forfeits 5*l.*

Owners of hops shall keep scales and weights at the place of weighing, and permit any supervisor to use them, on penalty of 50*l.*

If unjust scales or weights, &c. shall be used, they shall be forfeited, and the owner shall forfeit 100*l.*

## 13. Hops.

Owners, when required by supervisor, shall put hops into the scale to be reweighed, and assist him therein, on penalty of 50*l*.

No officer inferior to a supervisor shall be suffered to weigh hops between five in the evening and four in the morning, on penalty of 20*l*.

Owners, &c. shall mark the bags with their names, &c. before they put in any hops, on penalty of 20*l*.

Hops shall not be bagged in bags of greater weight than in the proportion of 10*l*b. for every 112*l*b. of the gross weight of bag and hops, on penalty of 20*l*.

Officer of Excise shall mark on the bags the gross weight, with the year of growth, and the progressive number according to the number of bags charged to each owner for the season.

Persons counterfeiting the marks aforesaid shall forfeit 100*l*.: and for defacing marks shall forfeit 20*l*.

Sect. 9. "That all and every owner, planter, and grower of hops growing or to grow in Great Britain shall, when and so often as he, she, or they shall be thereunto required by any supervisor of Excise, bring or cause to be brought to, and be put into and taken out of, the scale, all hops belonging to such owner, planter, or grower, and which such supervisor shall be desirous to reweigh; and shall also, on the request of such supervisor, by themselves respectively, and with a sufficient number of their servants, aid and assist, to the utmost of their power, such supervisor of Excise in reweighing all such hops of such owner, planter, or grower, on pain of forfeiting, for every neglect or refusal thereof, the sum of 50*l*."

Sect. 7. "That no officer of Excise, inferior to the rank or degree of a supervisor of Excise, shall be at liberty to weigh or shall be permitted to weigh any hops at any ous, store-house, or other place of any owner, planter, or grower of hops, between the hours of five in the evening and four in the morning; and if any such owner, planter, or grower shall permit or suffer any such inferior officer to weigh any such hops between the hours aforesaid, contrary to the directions of this act, every such owner, planter, or grower so offending shall, for each and every such offence, forfeit and lose the sum of 20*l*."

By 39 and 40 Geo. III., c. 81, s. 1, 2, the 14 Geo. III., c. 68, is repealed, and in lieu thereof, after 28th July, 1800, "Every owner, planter, or grower of hops, before he, she, or they shall begin to put any hops into any bag or pocket, shall mark or cause to be marked on the outside of each and every such bag or pocket, in large, plain, and legible letters or characters, with durable ink or paint, his, her, or their name or names and place of abode; and if any owner, planter, or grower of hops shall begin to put any hops into any bag or pocket without having marked or caused to be marked, in manner hereinbefore directed, the several matters and things hereinbefore required and prescribed, every such owner, planter, or grower, or other person or persons so offending, shall, for each and every such offence, forfeit and lose the sum of 20*l*."

Sect. 3. "That no owner, planter, or grower of hops shall bag any hops in any bag, the weight of which bag shall be greater in proportion to the gross weight of such bag and the hops contained therein than 10*l*b. for every 112*l*b. of the said gross weight of such bag and hops contained therein; and if any owner, planter, or grower of hops shall bag any hops in any bag, the weight of which bag shall be greater in proportion to the gross weight of such bag and the hops contained therein than 10*l*b. for every 112*l*b. of the gross weight of such bag and the hops contained therein, then and in every such case every owner, planter, or grower so offending shall, for each and every such offence, forfeit the sum of 20*l*."

Sect. 4. "That when and as soon as any officer of Excise shall have weighed and taken account of any hops for the purpose of ascertaining and charging the duty thereon, such officer shall and he is hereby authorized and required to mark, or cause to be marked, in large legible figures, with durable ink or paint, on the outside of each and every bag or pocket containing such hops, the true gross weight of such bag or pocket of hops, together with the date of the year in which such hops were grown; and also with the true progressive number of such bag or pocket, according to the numbers of the bags or pockets of hops weighed and charged to each owner, planter, or grower of hops during the then current year or hop-season; such number to be taken progressively, beginning one, two, and so onwards, according to the number of bags or pockets of hops weighed and charged to each owner, planter, or grower as aforesaid in each such current year or hop-season; and if any person or persons shall counterfeit or alter, or cause, procure, or suffer to be counterfeited or altered, any or either of the matters or things hereinbefore directed to be marked, or caused to be marked, and so marked, or cause to be marked by any such owner, planter, or grower of hops, or so hereinbefore

directed to be marked and so marked by any such officer as aforesaid, the person or persons so offending shall, for each and every such offence, severally forfeit and lose the sum of 100*l.*; and if any person or persons shall wilfully deface or obliterate any or either of the matters or things hereinbefore directed to be marked, or caused to be marked, and so marked by any such owner, planter, or grower of hops, or hereinbefore directed to be marked, and so marked by any such officer as aforesaid, or shall cause or procure any such matter or thing to be defaced or obliterated, or shall connive at any such matter or thing being so defaced or obliterated, the person or persons so offending shall, for each and every such offence, severally forfeit and lose the sum of 20*l.*"

By 6 Geo. I., c. 21, s. 27. "That from and after the 1st day of August, 1720, it shall and may be lawful to and for such owners or planters of hops, if they shall think fit, to put the said hops into casks; such owner or owners, planter or planters, first giving the like notice of the time that he, she, or they intend to weigh, and put the said hops into casks, as he, she, or they are by law required to give of the bagging of hops respectively: and in case any owner or owners, planter or planters, shall put any hops into casks without such notice, then he, she, or they shall be liable to the like penalties as such owner or owners, planter or planters, would have been liable unto in case such hops so put into casks had been bagged without such notice."

Hops may be put into casks.

Sect. 28. "That the officers of Excise, and others appointed by the commissioners of that revenue, shall in like manner attend and be present at the putting hops into casks and barrels, as he is by law required to be at the bagging of hops; and shall cause every cask or barrel, into which hops shall be put, to be weighed, and the weight of each cask to be plainly and distinctly marked on such cask respectively; and shall likewise cause the weight of the hops contained in such cask to be plainly and distinctly marked on each cask respectively; and shall cause an entry of the weight of such hops to be made in his book (the weight of such cask or barrel being abated), and shall make the like report to the commissioners of that revenue, and leave a like copy with the owner or planter of such hops, and under the like penalties and forfeitures as in case such hops had been put into bags; and the owner or owners, planter or planters, of such hops shall, within six months after the putting hops into casks or barrels, pay and clear off the duties on hops so casked or barrelled under the like penalty as if the same had been bagged."

Officers of Excise to attend the putting hops into casks, &c.

By 48 Geo. III., c. 134, s. 1. "That from and after the 25th day of July, 1808, in addition to the particulars required by law to be marked on the outside of every bag and pocket of hops, there shall be marked by the owner, planter, or grower of hops, in the form and manner in which the before-mentioned particulars are required to be marked, the name of the parish and of the county in which the hops put into any such bags or pockets were or shall be grown; and if any owner, planter, or grower of hops shall presume to put hops into any bag or pocket before the same shall have been marked in the form and manner by this act directed and required, he, she, or they shall, for each and every such offence, forfeit 20*l.*"

Bags and pockets of hops shall be marked with the parish and county of their growth.

Sect. 2. "That if any person or persons shall counterfeit or wilfully remove, alter, erase, or obliterate, or cause, procure, or suffer to be counterfeited, removed, altered, erased, or obliterated, any of the marks directed and required by this act, or any other act or acts of parliament in force at and immediately before the passing of this act, to be put or marked on bags or pockets of hops, all and every person or persons so offending shall, for every such offence, forfeit 20*l.*"

Penalty 20*l.*

Penalty on counterfeiting or erasing marks, 20*l.*

Sect. 3. "That all fines, penalties, and forfeitures imposed by this act shall be sued for, recovered, levied, or mitigated by such ways, means, or methods as any fine, penalty, or forfeiture may be sued for, recovered,

Recovery and application of penalties.

## 13. Hops.

Growers of hops not to put any name or place of abode than their own on bags or pockets.

\* Sic.

Penalty.

Hop-planters packing different hops in bag.

Penalty.

Rebagging foreign hops in British bags, forfeits 10*l.* per cwt., &c.

Hops not to be removed before the duty is ascertained, on pain of 50*l.*

Hops shall not be removed from the place of weighing before the expiration of 12 hours, unless the same shall have been reweighed by the supervisor, on penalty of 50*l.*

levied, or mitigated by any law or laws of Excise, or by action of debt, bill, plaint, or information in any of His Majesty's Courts of Record at Westminster, or in the Court of Exchequer in Scotland respectively; and that one moiety of every such fine, penalty, or forfeiture shall be to His Majesty, his heirs and successors, and the other moiety to him or them who shall inform, discover, or sue for the same."

By 54 Geo. III., c. 123, s. 1. "That from and after the 5th day of July, 1814, every owner, planter, or grower of hops, before he, she, or they shall begin to put any hops into any bag or pocket, shall mark, or cause to be marked, on the outside of each and every such bag, in large, plain, and legible letters, of four inches in length at the least, and half an inch in breadth, and on the outside of every such pocket, in large, plain, legible letters of three inches in length and half an inch in breadth at the least, with durable ink or paint, his, her, or their name or names, and the parish and county in which the said hops, to be packed therein, were actually grown; and if any owner, planter, or grower of hops, or any other person or persons shall put any hops into any bag or pocket, without having marked or caused to be marked thereon in manner hereinbefore directed the several matters and things hereinbefore required and prescribed, or shall before or at any future time after such hops have been packed, or shall \* mark or cause to be marked thereon the name of any other person, parish, or county, than as is hereinbefore directed or prescribed, or the symbol appertaining to, or any thing denoting to be the symbol of any other county or place, every such owner, planter, or grower, or other person or persons so offending, shall, for every such offence, forfeit and pay the sum of 20*l.* for every such bag or pocket, to be recovered and applied in manner before directed."

Sect. 2. "That if any owner, planter, or grower of hops shall knowingly put or suffer to be put any hops of different qualities and value in the same bag or pocket, every such owner, planter, or grower shall forfeit and pay the sum of 20*l.* for every such bag or pocket, to be recovered and applied in manner before directed."

By 9 Ann. c. 12, s. 23. "That no person whatsoever shall, during the continuance of this act, take any hops of foreign growth out of the bags in which they are imported, and rebag the same in British bagging, in order to sell, dispose, or export the same as British hops, under the penalty of 10*l.* for every hundred-weight, and after that rate for a greater or lesser quantity; and if any person or persons shall endeavour to defraud Her Majesty of her duties hereby granted, by using twice, or oftener, the same bag, with the officer's mark thereupon, such person or persons, for every such offence, shall forfeit the sum of 40*l.*"

Sect. 16. "That no planter or owner of hops, after the said first day of June, 1711, during the continuance of the said duties upon hops, shall (under pain of forfeiting the sum of 50*l.* for every offence) remove, carry or send away, or suffer to be removed, carried or sent away, from his, her, or their out, store-house, or other place (whereof notice shall or ought to be given as aforesaid) any hops chargeable with the duty by this act imposed, until the same shall have been cured, bagged, and weighed, and the duties thereof shall be ascertained according to the true meaning of this act, unless in such cases where the officers of the said duties (having due notice first given or left as aforesaid) shall nevertheless neglect to attend the bagging and weighing of the same."

By 39 and 40 Geo. III., c. 81, s. 5. "That no owner, planter, or grower of hops growing or to grow in Great Britain shall remove or convey away, or cause or suffer to be removed or conveyed away, any hops from the out, store-house, or other place where the same shall have been weighed, for the purpose of charging the duty, before the expiration of twelve hours next after such hops shall have been so weighed, unless the same shall sooner have been weighed or reweighed by the supervisor of Excise, to

the end that such supervisor may have an opportunity to reweigh the same; and if, upon the reweighing of any such hops, any additional weight shall be found, such hops shall be liable to and chargeable with the duty of Excise imposed for or in respect of such hops, according to such last-mentioned weight; and if any such owner, planter, or grower shall remove or convey away, or cause or suffer to be removed or conveyed away, any such hops, contrary to the true intent and meaning of this act, the owner, planter, or grower of such hops so offending shall, for each and every such offence, forfeit the sum of 50*l*."

Sect. 10. "That if any person or persons whatsoever shall assault, oppose, molest, obstruct, or hinder any officer or officers of Excise in the due execution of this act, or of any of the powers or authorities given by this act, all and every such person or persons so offending shall, for every such offence, severally forfeit the sum of 100*l*."

13. *Hops.*

Persons obstructing officers in the execution of their duty shall forfeit 100*l*.

By 9 Ann. c. 12, s. 17. "That if any planters or owners of hops shall fraudulently hide or conceal, or cause or procure to be hid or concealed, any hops chargeable by this act, to the intent to deceive Her Majesty of the just duties by this act granted, that then, and in every such case, the party so offending shall, for every such offence, forfeit the sum of 20*l*., and all the hops so concealed and hid, to Her Majesty's use."

Fraudulently concealing forfeits 20*l*. &c.

Sect. 18. "That if any picker or gatherer of hops, or any other person or persons, shall privately carry off or convey any hops from the place of growing, or the place where the same shall be put in order to be cured, bagged, and weighed, with an intent to defraud Her Majesty of her said duties, and the owner of the said hops, then, and in every such case, the person or persons offending therein shall forfeit and lose the sum of 5*s*. for every pound of hops so clandestinely carried off and conveyed; and in every such case it shall and may be lawful for the officers of the said duties, not only to seize the hops so clandestinely carried off and conveyed, but also to apprehend the said offender or offenders, and carry him or them before one of Her Majesty's justices of the peace of the county or place where such offence shall be committed; and in case the said offence shall be proved before the said justice of the peace, and the offender or offenders shall not forthwith pay down the penalties by this act imposed on such offender or offenders for the offences so proved on him, her, or them respectively as aforesaid, and no sufficient distress can be found to levy the same, it shall and may be lawful for the said justice of the peace to commit such offender or offenders to the house of correction, there to be whipt and kept to hard labour, for any time not exceeding one month; and if any person or persons shall obstruct or hinder any officer or officers for the said duties in the execution of his or their offices, or the powers given them by this act, or shall beat or abuse the said officers, or any of them, in the execution of his or their offices, such person or persons shall, for every such offence, forfeit and lose the sum of 5*l*.; and in default of distress whereby to levy the same, it shall and may be lawful for any of Her Majesty's justices of the peace, upon due proof of such offence, to commit such offender or offenders to the house of correction, there to be whipt and kept to hard labour, for any time not exceeding one month."

Picker of hops carrying off any such hops forfeits 5*s*. per lb. or sent to hard labour for a month.

Persons obstructing officer forfeits 5*l*.

or sent to hard labour for a month.

Sect. 14. "That all and every person and persons whatsoever, who shall be the planters or owners of the said hops, shall, within six months after the time in which every parcel of the said hops shall or ought to be cured, bagged, and weighed as aforesaid, pay and clear off all the said duties of hops of the growth of Great Britain that shall be due from him, her, and them respectively; and that all and every such planters and owners, who shall refuse or neglect to make such payment as aforesaid, shall forfeit and lose to Her Majesty, for every such offence, double the sum of the said duty whereof the payment shall be so refused or neglected, that is to say, two-third parts of the said double duties to the use of

Planters to clear off in six months.



## 13. Hops.

5*l.* penalty on every hundred-weight of sophisticated hops.

the queen, and the other third part to the use of the informer or prosecutor."

By 7 Geo. II., c. 19, s. 2. "That if any person or persons in Great Britain or Ireland shall, from and after the said first day of May, 1734, mix with or put into any quantity of hops any drug or ingredient, or other thing whatsoever, to alter the colour or scent thereof, every person so offending, and being thereof lawfully convicted by the oath of one or more witness or witnesses, before one or more justice or justices of the peace of the county or place where the offence shall be committed, shall for every such offence forfeit and pay the sum of 5*l.* for every hundred-weight thereof."—*R. v. Pack*, 6 *T. R.* 374. The defendant was convicted on this fact for putting a quantity of sulphur and brimstone in the fire by which 100 cwt. of hops were drying, to alter the colour thereof, the vapour and fumes of which ascended to the hops placed over such fire, and, the hops being then in a moist state, fixed to the hops and made them appear brighter. Lord Kenyon, C. J. was clearly of opinion that this was an offence within the act of parliament, even though the vapours were a melioration of the hop (which was not the case, the vapour of the brimstone giving a false colour and a false value to the hops), and the conviction was affirmed.

By 9 Ann. c. 12, s. 24. "That during the continuance of this act, no common brewer, innkeeper or victualler shall use any 'broom, wormwood, or any other bitter ingredient (to serve instead of hops) in brewing or making any beer or ale to be brewed or made by him, her, or them for sale in any part of Great Britain, under the penalty of forfeiting the sum of 20*l.* for every such offence; the infusing of broom or wormwood into beer or ale by the retailer, after the same is brewed and tunned, to make the same broom or wormwood ale, or broom or wormwood beer, always excepted."

The penalties aforesaid (where not otherwise directed) shall be recovered and mitigated as by the laws of Excise, and distributed half to the king and half to him that shall sue. 9 Ann. c. 12, s. 26; 24 Geo. II. c. 42, s. 29; 26 Geo. III. c. 5, s. 8; 39 and 40 Geo. III. c. 81, s. 11; 7 and 8 Geo. IV. c. 53; *ante*, 227 to 310.

And by 9 Ann. c. 12, s. 19. "That all the hops in the custody of any planter or owner of hops, or any other person or persons to the use of or in trust for such planter or owner, shall be liable and subject to and are hereby made chargeable with all the debts and duties for hops in arrear and owing by such planter or owner respectively, and to all penalties and forfeitures incurred by such planter or owner for any offence against this act; and that it shall and may be lawful in all such cases to levy debts and penalties, and use such proceedings as may lawfully be done by this act, in case the debtor or offender were the true and lawful owner of the same."

The 6 Geo. II. c. 37, s. 6, and 4 Geo. IV., c. 46, s. 1, were repealed by 7 & 8 Geo. IV., c. 27, and the 7 & 8 Geo. IV., c. 30, s. 18, enacts, "That if any person unlawfully and maliciously cut any hop-binds growing on poles in any plantation of hops, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the Court shall so think fit) in addition to such imprisonment."

Brewer, &c. not to use broom, &c. on pain of 20*l.*

Exception.

Penalties how to be recovered.

Hops chargeable with all duties in arrear, &c.

Maliciously cutting hop-binds, felony, and transportation for life or seven years, or imprisonment and whipping.

(14.) *Leather, Hides, and Skins. (a)*

[2 Ann. c. 11; 9 Ann. c. 11; 5 Geo. II., c. 2; 5 Geo. III., c. 43; 10 Geo. III., c. 44; 15 Geo. III., c. 35; 24 Geo. III., sess. 2, c. 41; 26 Geo. III., c. 77; 28 Geo. III., c. 37; 31 Geo. III., c. 43; 34 Geo. III., c. 63; 35 Geo. III., c. 97; 38 Geo. III., c. 54; 41 Geo. III., (U. K.) c. 91; 43 Geo. III., c. 69; 52 Geo. III., c. 143; 55 Geo. III., c. 30; c. 69; 56 Geo. III., c. 110; 59 Geo. III., c. 32; 3 Geo. IV., c. 27; c. 83; 5 Geo. IV., c. 55; 6 Geo. IV., c. 111; 7 Geo. IV., c. 23; 7 & 8 Geo. IV., c. 53; and the repealing act, 11 Geo. IV., c. 16.]

All the then-existing regulations of Excise duties and licences relating to leather were repealed by 11 Geo. IV. & 1 Wm. IV., intituled *An act to repeal the duties of Excise and drawbacks on leather, and the laws relating thereto*, (passed 29th May, 1830), and by which, after referring to 43 Geo. III. c. 69, it is enacted, "That from and after the 5th July, 1830, the several duties of Excise payable by law for or upon hides and skins, and pieces and parts of hides and skins, tanned, tawed, or dressed in oil, and on vellum and parchment made, in any part of the united kingdom, and all duties upon licences for exercising the trades of tanner, tawer, currier, or dresser of hides and skins in oil, and all drawbacks for or in respect of the exportation of any hides or skins, or leather, unmanufactured, or manufactured into goods, wares, or merchandise, shall cease and determine, and be no longer paid or payable; and that all enactments, provisions, regulations, and restrictions in any act or acts in force immediately before the passing of this act, relating to any such duties, or such licences, or such drawbacks, from and after the said 5th July, 1830, shall be and the same are hereby wholly repealed, and shall then cease and determine, save and except as to the payment and recovery of any arrear of the said duties, or of any penalty or forfeiture in respect thereof, which shall have been incurred before the said 5th July, 1830."

SECT. 2. "That nothing in this act contained shall be deemed or construed to continue in force so much of an act passed in the forty-eighth year of the reign of His late Majesty King George the Third, for repealing an act passed in the first year of King James the First, intituled *An act concerning tanners, curriers, shoemakers, and other artificers occupying the cutting of leather*, and also for repealing and amending certain parts of several other acts of parliament relating thereto, as prohibits any person or persons using the trade or business of tanning of leather, during the time that he, she, or they shall so use or carry on the said trade or business of tanning, from using, occupying, or in any manner carrying on the trade or business of a shoemaker, currier, leather-cutter, or other artificer exercising the cutting or working of leather, or to revive the said act of King James the First, or any other act or acts relating to the damaging of hides in the flaying thereof, or to revive or continue any other provision, restriction, or regulation in any way relating to the flaying of raw hides, or the tanning or working of hides or skins, or manufacture of leather, parchment, or vellum, or to repeal any act, or any part or provision contained in any of the said acts hereby repealed, repealing any former act."

*As the prior laws are still in force with respect to any arrear of duty, it may be expedient to state the former enactments.*

By 43 Geo. III. c. 69, a duty was laid upon all hides and skins, vellum, and parchment tanned in Great Britain; and other duties were also imposed by 49 Geo. III. c. 98, and 52 Geo. III. c. 94.

By 3 Geo. IV. c. 83, s. 1. "That from and after the 5th day of July, 1822, the several additional duties of Excise on hides and skins, and

11 Geo. IV., c. 16.

Recites expediency of repealing the then-existing law, and repeals all duties and restrictions on the manufacture of leather in these words.

Nothing in this act shall be deemed to continue so much of 48 Geo. 3, c. 80, as prohibits tanners from carrying on the business of a shoemaker, currier, &c.

Duties.

Additional duties on hides and skins and on leather repealed.

14. *Leather,*  
*&c.*86 Geo. 3.  
c. 110, repealed.Instead of draw-  
backs repealed,  
the following  
to be paid.  
Drawbacks.

parts and pieces of hides and skins, and on vellum and parchment, and on leather manufactured into goods and wares, granted and imposed by the said act passed in the fifty-second year aforesaid, shall be and the same are hereby respectively repealed, and shall then cease and determine, and be no longer paid or payable, save and except any arrear thereof."

Sect. 2. "That from and after the said 5th day of July, 1822, the said several drawbacks granted and allowed by the said last-mentioned act of the fifty-sixth year aforesaid, and also the said act, shall be and the same respectively are hereby repealed, and such drawbacks respectively shall then cease and determine, and be no longer paid or payable; save and except any arrear thereof, and save and except any penalty or forfeiture imposed by the act last above mentioned, and which shall, on or before the said 5th day of July, 1822, be incurred."

Sect. 3. "That in lieu and instead of the several drawbacks hereby repealed, there shall, from and after the said 5th day of July, 1822, be allowed and granted the following drawbacks; that is to say,

"For every pound weight avoirdupois of all hides and skins, and parts and pieces of hides and skins, tanned or tawed in Great Britain, and duly marked, for which the duty imposed and payable thereon respectively shall have been paid, and which shall be duly exported from Great Britain to foreign parts as merchandise, two-thirds of the respective duty paid:

"For every pound weight avoirdupois of all hides and skins, and parts and pieces of hides and skins, tanned and curried in Great Britain, and duly marked, for which the duty imposed and payable thereon respectively shall have been paid, and which shall be duly exported from Great Britain to foreign parts as merchandise, two-pence:

"For every pound weight avoirdupois of all leather tanned or tawed in Great Britain, for which the duty imposed and payable thereon respectively shall have been paid, and which shall be manufactured and actually made into boots, shoes, saddles, or gloves in and duly exported from Great Britain to foreign parts as merchandise, three-pence:

"For every pound weight avoirdupois of all leather tanned or tawed in Great Britain for which the duty imposed and payable thereon respectively shall have been paid, and which shall be manufactured and actually made into goods and wares, other than boots, shoes, saddles, or gloves, in and duly exported from Great Britain to foreign parts as merchandise, two-pence:

"For all goat-skins tanned with sumack, or otherwise, to resemble Spanish leather, in Great Britain, duly marked, and all sheep-skins tanned for roans (being after the nature of Spanish leather), in Great Britain, duly marked, for which the duty imposed and payable thereon respectively shall have been paid, and which shall be duly exported from Great Britain to foreign parts as merchandise, the whole of the respective duty paid:

"For every pound weight avoirdupois of boots or shoes made in Great Britain, the upper leathers, vamps, and boot-legs of which are made of morocco, Spanish leather, or kid-skins, and for which the duty imposed and payable thereon respectively shall have been paid, and which shall be duly exported from Great Britain to foreign parts as merchandise, four-pence:

"For every pound weight avoirdupois of all buck, deer, or elk skins dressed in oil in Great Britain, for which the duty imposed and payable thereon shall have been paid, whether manufactured and actually made into goods or wares or not (but if not, then to be duly marked), and which shall be duly exported from Great Britain to foreign parts as merchandise, one shilling:

"For all other hides and skins, and parts and pieces of other hides and skins, dressed in oil in Great Britain, and duly marked, for which the duty imposed and payable thereon respectively shall have been paid,

## II. PARTICULAR LAWS, &c. (14.) *Leather, Hides, and Skins.*

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and which shall be exported from Great Britain to foreign parts as merchandise, the whole of the respective duty paid, according to the weight or number thereof respectively exported :

14. *Leather, &c.*

“ For every pound weight avoirdupois of all other hides and skins dressed in oil in Great Britain, for which the duty imposed and payable thereon respectively shall have been duly paid, and which shall be manufactured and actually made into goods and wares (except sheep and lamb skins dressed in oil, and made into goods and wares other than gloves) in and duly exported from Great Britain to foreign parts as merchandise, six-pence.

“ For every pound weight avoirdupois of all sheep and lamb skins dressed in oil in Great Britain, for which the duties imposed in respect thereof shall have been duly paid, and which shall be manufactured and actually made into goods and wares other than gloves in and duly exported from Great Britain to foreign parts as merchandise, four-pence.”

SECT. 4. “ That the said several drawbacks by this act allowed and granted shall and may be respectively paid and allowed in such and the like manner, and in or by any or either of the general or special means, ways, or methods, by which the former drawbacks hereby repealed, or the drawbacks of duties of Excise respectively, upon goods, wares, merchandise, or commodities of the same sorts or kinds respectively, were or might be paid or allowed, except so far as the same are altered by this act ; and the goods, wares, merchandise, or commodities so by this act respectively entitled to drawbacks of duties of Excise shall be and the same are hereby made subject to all and every the conditions, regulations, rules, restrictions, and forfeitures to which goods, wares, merchandise, or commodities in general, and also to all and every the special conditions, rules, regulations, restrictions, and forfeitures respectively, to which the like goods, wares, merchandise, or commodities, were subject and liable, except as aforesaid, by any act or acts of parliament in force immediately before the passing of this act, relating to the duties of Excise ; and all and every pain, penalty, fine, or forfeiture, of any nature or kind whatever, for any offence whatever committed against or in breach of any act or acts of parliament in force immediately before the passing of this act, made for securing the revenue of Excise, or for the regulation and improvement thereof, and the several clauses, powers, and directions therein contained, shall be and are hereby directed and declared to extend to, and shall be respectively applied, practised, and put in execution for and in respect of the several drawbacks of duties of Excise hereby allowed and granted, in as full and ample a manner, to all intents and purposes whatever, except as aforesaid, as if all and every the said acts, clauses, provisions, powers, directions, fines, pains, penalties, or forfeitures were particularly repeated and re-enacted in the body of this act.”

Drawbacks to be paid and allowed in manner herein mentioned.

Regulations for securing the revenue of Excise to extend to this act.

By 7 Geo. IV. c. 23, the duties and drawbacks of Excise upon hare and kid skins, sheep skins, and lamb skins, were repealed ; but it was provided that the laws requiring entry of premises, or authorising inspection of officers, should be continued.

By 5 Geo. IV., c. 55, s. 1, 2, 3, the duties and drawbacks on hides, skins, and leather, manufactured in Ireland are assimilated to those payable on the like articles in Great Britain, and are placed under the control of the Excise, s. 6.

By 6 Geo. IV. c. 111, all former duties of *Customs* were repealed, and new duties imposed, *ante*, 132.

Customs.

By 3 Geo. IV. c. 83, s. 5. “ That if any tanner, tawer, or dresser of hides and skins in oil, or maker of vellum or parchment, shall remove or conceal any hide or skin, or part or piece of any hide or skin, or any vellum or parchment, with intent to evade the duty or duties of Excise thereupon chargeable or payable, he, she, and they shall for every such offence severally forfeit and lose the sum of 200*l.*, to be sued for, mitigated, recovered, applied, and accounted for as any other penalty under or by any law or laws of Excise.”

Tanners, &c. removing or concealing hides, &c.

Penalty 200*l.*

14. *Leather,*  
    *&c.*

Notice to Ex-  
cise officer,  
before whom  
the hides, &c.  
shall be pro-  
duced to be  
weighed and  
stamped, &c.

Such hides to  
be kept separate  
from others for  
24 hours after  
charged with  
duty.

Penalty 200*l.*

Curriers, &c.  
not being tanners,  
using sumack  
in currying  
exception.

Penalty 100*l.*  
    *&c.*

After duty paid,  
skins, &c. to  
be marked.

Commissioners  
of Customs to  
provide stamps  
for hides, &c.  
imported.

Sect. 6. "That before any hides or skins, or pieces of hides or skins, or any vellum or parchment, shall be weighed or counted by any officer of Excise, and charged with duty, or stamped or marked to denote such charge, the tanner, tawer, or dresser of hides and skins in oil, or maker of vellum or parchment, desirous of having the same so charged and stamped or marked, shall give notice in writing to the proper officer of Excise, specifying the day and hour on which, and the number of hides and skins, parts or pieces of hides or skins, and skins or pieces of vellum or parchment, which he or she shall desire to be weighed or counted, and charged with and stamped or marked to denote the charge of duty, and shall deliver every such notice to the proper officer twenty-four hours at the least, if the entered premises of such trader where such goods are to be charged with duty are situate within a market town, and forty-eight hours at the least if such premises are situate without a market town, before the hour for weighing or counting any such goods as aforesaid mentioned in such notice, and shall, before such weighing or counting thereof as aforesaid shall be begun, place and produce all the hides and skins, parts and pieces of hides and skins, vellum and parchment, specified in such notice to be weighed or counted, and charged with duty, and stamped or marked as aforesaid, in an entered room by themselves, and in which no other hides or skins, or parts or pieces of hides or skins, vellum or parchment, shall then be, and shall from that time continue all such hides or skins, parts or pieces of hides or skins, vellum or parchment, alone in such room for the space of twenty-four hours next after the same shall have been charged with duty, or stamped or marked as aforesaid by the officer of Excise, unless the same shall have been weighed or counted, or be sooner reweighed or recounted by a surveyor or supervisor, and shall not, during the time aforesaid, conceal or remove any such hide or skin, or any such part or piece of any hide or skin, or any such vellum or parchment so weighed or counted, and charged with duty, or stamped or marked, out of such room, or bring into or cause or suffer to be brought into such room, any other hide or skin, or part or piece of any other hide or skin, or any other vellum or parchment, upon pain of forfeiting for every such offence, and for every refusal or neglect to observe any of the several provisions herein contained, the sum of 200*l.*, to be sued for, mitigated, recovered, applied, and accounted for as any other penalty under or by any law or laws of Excise."

Sect. 7. "That it shall not be lawful for any currier or curriers, or other person or persons not being an entered tanner, to use sumack in or about the currying of any hide or skin, or in the preparation or dressing of any leather, except only for the purpose of colouring leather for making boot-tops or saddles, upon pain of forfeiting for each and every such offence the sum of 100*l.*, to be sued for, mitigated, recovered, applied, and accounted for as any other penalty under or by any law or laws of Excise, together with the forfeiture of all such sumack, hides, skins, and leather respectively, which shall and may be seized by any officer or officers of Excise."

And by 9 Ann., c. 11, s. 6. "That from and after the duties hereby granted upon such imported hides or skins shall be paid and satisfied, the officer or officers of the Customs of the port or place where the same shall be imported shall cause every such hide or skin to be marked with such distinct mark as this act directs to be provided and used, to denote the payment of the duty of such imported hides or skins as aforesaid."

Sect. 44. "That the respective commissioners of Her Majesty's Customs in Great Britain shall, on or before the 24th day of June, 1711, provide such and so many marks or stamps of the same kind, with which all the hides and skins and pieces of hides and skins imported as aforesaid, during the continuance of this act, shall be marked or stamped, upon the payment of the duties thereof as aforesaid; and shall cause the said marks or stamps to be distributed amongst the respective officers of the Customs for that purpose; and that the respective commissioners to be appointed for ma-

## II. PARTICULAR LAWS, &c. (14.) *Leather, Hides, and Skins.*

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naging the said duties upon hides and skins tanned, tawed, or dressed in Great Britain, and the said duties upon vellum and parchment made in Great Britain, shall, on or before the said 24th day of June, 1711, provide such and so many marks or stamps of one and the same kind (but differing from the marks or stamps last before mentioned), with which all the hides and skins and pieces of hides and skins tanned, tawed, or dressed in Great Britain, and all the vellum and parchment made in Great Britain, during the continuance of this act, upon the charging of the said respective duties for the same, shall be stamped and marked; and also so many stamps and marks of one other kind, with which all the stock of hides and skins, and pieces of hides and skins, and all vellum and parchment in Great Britain, on the said 24th day of June, upon payment or securing the said duties as aforesaid, shall be stamped and marked; and shall cause the said respective marks or stamps to be distributed to the respective officers for the several purposes before mentioned; which officers are hereby enjoined and required, in using the same, to do no hurt or damage, or the least damage that may be, to the hide or skin, or the piece of an hide or skin, or to the vellum or parchment to be so marked; and the said respective commissioners, in providing the said respective marks or stamps, shall take care that they be so contrived, that the impression thereof may be durable, and so as the same may be least liable to be forged or counterfeited; and that the said marks and stamps, or any of them, shall or may be altered or renewed, from time to time, as Her Majesty, her heirs and successors, shall think fit; and if any person or persons whatsoever shall, at any time or times hereafter, counterfeit or forge any stamp or mark, to resemble any stamp or mark which shall be provided or made in pursuance of this act, or shall counterfeit or resemble the impression of the same upon any hide or skin, or piece of any hide or skin, or any vellum or parchment, thereby to defraud Her Majesty, her heirs or successors, of any of the said duties hereby granted, or shall utter, vend, or sell any hide or skin, or piece of any hide or skin, vellum or parchment, with such counterfeit mark or impression thereupon, knowing such mark or impression to be counterfeited, then every such person so offending, being thereof convicted in due form of law, shall be adjudged a felon, and shall suffer death, as in cases of felony, without benefit of clergy."

But by 15 Geo. III., c. 35. "That from and after the 20th day of June, 1775, it shall and may be lawful to and for any person or persons to import and bring into this kingdom, in British-built ships or vessels, navigated according to law, from any port or place whatsoever, any goat-skins raw or undressed, without paying any subsidy, Custom, or other duty whatsoever for the same, for the space of five years, from the said 20th day of June, 1775, or at any time thereafter before the end of the then next session of parliament, any law, custom, or usage to the contrary notwithstanding." This act is, by 31 Geo. III., c. 43, a. 7, made perpetual.

The said several duties for and upon all hides and skins, and parts and pieces of hides and skins, tanned, tawed, or dressed, to be paid by the tanners, tawers, and dressers of hides and skins respectively.

And the duties upon vellum and parchment to be paid by the respective makers thereof.

By *tanned* hides or skins, or pieces thereof, are meant only such as are tanned in woose made of the bark of trees or shumack; and by hides and skins *dressed in oil* are meant such as are made into leather in oil, or with any materials whereof the chiefest ingredient shall be oil; and by tawed hides or skins are meant such as are dressed or made into leather in alum and salt, or meal, or other ingredients properly used by the tawers of white leather. 9 Ann. c. 11, a. 3.

[N. B.—By 34 Geo. III., c. 63, Samuel Aston was allowed to tan hides and skins in a particular manner, as mentioned in his letters patent. And by 35 Geo. III., c. 97, all hides and skins tanned by the said method, or

### 14. *Leather, &c.*

Commissioners of this duty to provide stamps for hides, &c. tanned, &c. in Great Britain, and stamps to mark stock in hand.

Officers not to damage the hides, &c. in marking.

Stamps to be durable, &c.

Forging stamps, &c. felony.

After June 20, 1775, raw goat-skins may be imported from any place into this kingdom duty free for five years.

What is meant by hides tanned, dressed in oil, and tawed.

14. *Leather,*  
    *&c.*Duties on Ex-  
cise licences  
to cease.Proviso respect-  
ing arrears,  
penalties,  
bonds, &c.Instead of  
duties repealed,  
the following  
shall be levied.

by any method whatever, shall be deemed to be within the meaning of the acts relating to the duties on hides and skins.]

By 6 Geo. IV., c. 81, s. 1. "That from and after the 5th day of July, 1825, all and singular the respective duties and sums of money granted or payable for or upon any Excise licence in England, Scotland, or Ireland, or for or upon the granting thereof, by any act or acts of parliament in force at and immediately before the said 5th day of July, 1825, or by any other act or acts passed in this present session of parliament, shall cease and determine, save and except in all cases relating to the recovering, allowing, or paying any arrears of such duties and sums of money as aforesaid respectively which on the said 5th day of July, 1825, shall remain due and unpaid, and save and except as to any fine, penalty, or forfeiture, fines, penalties, or forfeitures, relating thereto respectively, which shall, on or before the said 5th day of July, 1825, have been incurred, and shall then remain due and unpaid, and save and except as to any Excise licence or licences theretofore granted, and any bond or bonds made or given by any Excise trader before the said 5th day of July, 1825, and which shall then remain in force and unexpired."

Sect. 2. "That from and after the said 5th day of July, 1825, in lieu and instead of the duties by this act repealed, there shall be raised, levied, collected, and paid unto His Majesty, his heirs and successors, in and throughout the united kingdom of Great Britain and Ireland, the several duties of Excise or rates and sums of money hereinafter following; (that is to say),

Every tanner	5 <i>l</i> .
Every tawer	2 <i>l</i> .
Every dresser of hides or skins in oil	4 <i>l</i> .
Every currier	4 <i>l</i> .
Every maker of vellum or parchment	2 <i>l</i> ."

Note.

And note, the several general regulations respecting the duties, fines, licences, &c. contained in statutes 6 Geo. IV., c. 81, and 7 & 8 Geo. IV., c. 53, are stated at length, *ante*, 227 to 310.

Collar-makers,  
&c. who dress  
skins, to be ac-  
counted tawers.

By 9 Ann. c. 11, s. 28. "Provided always, that all and every collar-makers, glovers, bridle-cutters, and others who dress any skins or hides, or pieces of skins or hides, in oil, alum, and salt, or meal, or with other ingredients, and who cut and make the same into wares, shall be accounted tawers or dressers within this act, and shall be subject to such rules and directions, and under such penalties and forfeitures for securing the duties of the hides and skins, or pieces of hides and skins, which they shall so dress, as are by this act prescribed in that behalf, and shall be charged with the duties for the same (by weight, tale, or *ad valorem*, as this act in the respective cases doth direct) before such hides and skins, or pieces of hides and skins, shall be respectively cut or converted into made wares."

Definition of  
tanned leather.Leather dressed  
in oil, and tawed  
leather.

Sect. 3. "That by tanned hides or skins, or by tanned pieces of hides or skins, are meant only such as are tanned in wooze made of the bark of trees or shomack; and that by hides and skins dressed in oil, or pieces of hides and skins dressed in oil, are meant such as are made into leather in oil, or with any liquor or materials whereof the chiefest ingredient shall be oil; and that by tawed hides or skins, or by tawed pieces of hides or skins, are meant such as are dressed or made into leather in alum and salt, or meal, or other ingredients properly used by the tawers of white leather; and that when Her Majesty's full duty by this act shall be paid for any hide or skin, or part of any hide or skin, under any one of the said denominations, to wit, as for tanned leather, tawed leather, or dressed leather, the same skin or hide, or piece of any skin or hide, is not to be further charged by this act under any other of the said denominations, any thing in this act contained to the contrary notwithstanding."

## II. PARTICULAR LAWS, &c. (14.) *Leather, Hides, and Skins.*

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Sect. 13. "That it shall and may be lawful to and for Her Majesty, her heirs and successors, or to and for the commissioners of the treasury, or any three or more of them now being, or the high treasurer, or any three or more of commissioners of the treasury for the time being, on Her Majesty's behalf, in writing to commissionate and appoint such and so many commissioners or persons as they shall think fit, by one or more commission or commissions, from time to time, to be Her Majesty's commissioners for the receipt and management of the said duties by this act set or imposed upon all hides and skins, and pieces of hides and skins, tanned, tawed, or dressed, or to be tanned, tawed, or dressed in Great Britain; which said commissioners, or the major part of them respectively, shall, and have hereby power, by commissions under their respective hands and seals, to substitute and appoint under them such receivers-general, collectors, comptrollers, surveyors, and other officers, as shall be requisite and necessary for the purposes aforesaid; and that the said commissioners so to be appointed, and all the officers for the said duties, shall have out of the same such salaries and rewards for their respective services in relation to the said duties, as the said commissioners of the treasury, or any three or more of them now being, or the high treasurer, or any three or more of the commissioners of the treasury for the time being, shall think reasonable to establish or allow in that behalf; and that the said commissioners for the said duties respectively, for the time being, shall from time to time cause all the moneys to arise by or for the said duties upon hides and skins, and pieces of hides and skins, to be tanned, tawed, or dressed in Great Britain, and for the said vellum and parchment to be made in Great Britain (the necessary charges of managing, collecting, and raising the same excepted), to be paid from time to time, as the same shall arise, into the receipt of Her Majesty's exchequer in England, under the penalties, forfeitures, and disabilities hereinafter expressed."

Sect. 38. "That such commissioners or persons as shall be appointed in pursuance of this act to be the commissioners for the said duties upon hides and skins, tanned, tawed, or dressed in Great Britain, shall and may have and exercise the same jurisdiction, power, and authority, and shall and may adjudge, determine, mitigate, and order in all cases and matters relating to the said duties on hides and skins, and pieces thereof, tanned, tawed, or dressed in Great Britain, and to the said duties on vellum and parchment, made in Great Britain, as the commissioners of Excise, upon beer, ale, and other liquors, may or lawfully can exercise, adjudge, determine, mitigate, or order, in the like cases and matters relating to the said duties of Excise, by any law or statute now in force."

Sect. 15. "That all and every tanner, bazil tanner, currier, tawer, Spanish leather dresser, and all other dressers of hides or skins, or pieces of hides or skins, to be tanned, tawed, or dressed in wooze, mill, alum, salt, oil, meal, or other materials whatsoever, and all and every maker of vellum and parchment in Great Britain, shall, before the 20th day of July, 1711, give notice in writing to some one or more of the proper officer or officers to be appointed for the next market to the place where any tanhouse, tanyard, workhouse, mill, or other place, shall be made use of for the tanning, tawing, or dressing any such hides or skins, or pieces of hides or skins, or making any such vellum or parchment as aforesaid, of their respective names and places of abode, and of every such tanhouse, tanyard, workhouse, mill, or other place, for the tanning, tawing, or dressing any such hides or skins, or pieces of hides or skins, vellum, and parchment as aforesaid, by them respectively used, and of the number and situation of pits and vats in them or any of them, and of the numbers and kinds of the hides and skins, or pieces of hides and skins, then being in the said pits and vats respectively; and that all and every such tanner, tawer, currier, dresser, and maker as aforesaid, as often as he, she, or they shall change their places of tanning, tawing, or dressing of such hides or skins, or pieces of hides and skins, or making such vellum or parchment, and all and every person and persons,

### 14. *Leather, &c.*

Her Majesty, or the commissioners of the treasury, to appoint commissioners duties; who may substitute other officers.

The money to be paid into the exchequer.

Commissioners to have the same power as the commissioners of Excise.

Tanners, &c. before 20th July, 1711, to give notice to the proper officer of their names and places of abode, &c. of their tanyards, and of their pits, &c.



14. *Leather, &c.*

on forfeiture of  
50*l*.

Officers may enter  
tanyard, &c.

Owner refusing  
entrance forfeits  
50*l*.

Tanner, &c. using  
private tanyard,  
&c.

or not giving  
timely notice,  
or not making due  
entries,

or removing, or  
concealing any  
skins, &c.

forfeits 50*l*. and  
things so con-  
cealed.

who shall at any time or times hereafter, during the continuance of this act, be the tanner, tawer, currier, or dresser of any such hides or skins, or pieces of hides or skins, or be the maker of any such vellum or parchment as aforesaid, shall give or leave the like notice of their respective names and places of abode, and of their tanhouses, yards, workhouses, mills, or other places where they shall tan, taw, or dress, or intend to tan, taw, or dress any such hides or skins, or pieces thereof, or make any such vellum or parchment as aforesaid, before they or any of them do presume to make use of such tanhouse, yard, workhouse, mill, or other place, or any pits or vats therein, to the end the said officers may, from time to time, have due knowledge of all such tanhouses, tanyards, workhouses, mills, or other places, with the number and situation of vats and pits where such hides or skins, or pieces thereof, shall be tanned, tawed, or dressed, and where the said vellum or parchment shall be made, and be the better enabled to take an account of all hides and skins, and pieces of hides and skins, vellum and parchment, chargeable by this act, that so Her Majesty may be the better answered the duties for the same; and if any such tanner, tawer, currier, dresser, or maker as aforesaid, shall neglect to give or leave such notice as is required by this act as aforesaid, he, she, or they shall, for every such offence, forfeit the sum of 50*l*.; one third part thereof to Her Majesty, her heirs or successors, and the other two thirds to him or them that shall inform or sue for the same."

Sect. 17. "That it shall and may be lawful to and for the officer and officers so to be appointed, at all seasonable times in the day-time, to enter into any tanyard, workhouse, warehouse, mill, or other house or place used by any such tanner, tawer, currier, or dresser of any hides or skins, or pieces of hides or skins, or by any maker of vellum or parchment, chargeable by this act, or where any such shall be lodged, to search and see what quantities of such hides and skins, or pieces of hides and skins, vellum and parchment are taken out of the woole, mill, liquors, or other materials as aforesaid, in order to be dried, or made fit for sale or use; and if any owner or occupier of any such tanyard, workhouse, or other place as aforesaid, shall at any time or times refuse entrance to the officer or officers as aforesaid, he, she, or they shall for every such refusal forfeit the sum of 10*l*.; one third part thereof to the use of Her Majesty, her heirs and successors, and the other two thirds to the use of him or them who will inform or sue for the same; and if any tanner, tawer, currier, or dresser of any hides or skins, or pieces of hides or skins, or any maker of vellum or parchment, chargeable by this act, shall endeavour to defraud Her Majesty, her heirs or successors, of any duty by this act payable, by using any private tanyard, workhouse, pit, vat, mill, or place, for the tanning, tawing, steeping, dressing, drying, or keeping the same, contrary to this act; or by not giving or sending such timely notice of taking his, her, or their hides or skins, or pieces of hides or skins, out of the woole, mill, liquor, oil, or other materials, as this act requires; or by not making due entries, and giving an account of the said hides and skins or pieces thereof as aforesaid; or by removing, sending, or carrying away the same, or any part thereof, contrary to this act; or shall fraudulently hide or conceal, or cause to be hid or concealed, any of the said hides or skins, or pieces thereof, vellum or parchment, chargeable by this act, to the intent to deceive Her Majesty, her heirs or successors, of her or their just dues for the same; that then and in every such case, for every such offence, the party so offending shall forfeit the sum of 20*l*.; one moiety whereof to the queen, and the other moiety to him or them who will inform or sue for the same; and moreover, in all such cases, all such hides and skins, and pieces of hides and skins, vellum and parchment, which shall be found in any such private tanyard, workhouse, warehouse, house, mill, or place, or for which no such entry shall be made, or that shall be so unlawfully removed, sent, or carried away, contrary to this act, or shall be fraudulently hid or concealed, or the value thereof, shall be forfeited; to wit, one

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moiety thereof to the use of Her Majesty, her heirs and successors, and the other moiety thereof to the person or persons who will seize, inform, or sue for the same."

And by 41 Geo. III., (U. K.) c. 91, s. 10. "That from and after the 5th day of July, 1801, if any hide or skin tanned, tawed, or dressed in oil shall be found in any place whatsoever in Great Britain (except on the entered premises of any tanner, tawer, currier, or dresser of leather in oil), without having thereon the mark or stamp to denote the charging of the duty for such hide or skin, the same shall be forfeited, and shall and may be seized by any officer or officers of Excise; and the person or persons in whose custody or possession the same shall be found shall, for every such offence, forfeit the sum of 100*l*."

By 9 Anne, c. 11, s. 16. "That the several tanners, tawers, dressers, and makers aforesaid, during the continuance of this act, shall not make use of any place or places for the drying or keeping the said hides or skins, or any pieces of hides or skins, vellum or parchment, chargeable by this act, other than such place or places whereof he, she, or they shall first have given notice to the proper officer of the said duties to be the usual place or places for his, her, or their drying and keeping the same; and that the respective tanners, tawers, dressers, and makers aforesaid shall, from time to time, give or send notice in writing to the proper officer for the said duties of the time when such tanner, tawer, maker, or dresser shall take his, her, or their hides or skins, or pieces of hides or skins, or any of them, or any vellum or parchment, out of the mill, wooze, liquor, oil, or other materials wherein the same shall be tanned, tawed, steeped, or dressed, in order to be dried; which notice shall, from time to time, be given or sent two days at the least before the taking such hides or skins, or pieces thereof, or the said vellum or parchment, out of the said wooze, mill, liquor, oil, or other materials, or before the hanging up or disposing the same to be dried; and that the respective tanners, tawers, dressers, and makers aforesaid shall from time to time permit and suffer the proper officers of the said duties, and they are hereby empowered, to take an account of the number and quality of all hides and skins and pieces thereof, vellum and parchment, which any such tanner, tawer, dresser, or maker, by or for himself or themselves, or by or for any other person or persons, shall (at any time or times from and after the said 24th day of June, 1711, during the said term of 32 years) take out of wooze, mill, liquor, oil, or other materials wherein the same shall have been tanned, tawed, steeped, dressed, or made, in order to be dried; and shall within two days after the taking out of the said wooze, mill, liquor, or other materials aforesaid, and before the carrying away the same from the usual place or places where such hides or skins or pieces thereof, or such vellum or parchment, are or shall be usually dried, make true entry, with the proper officer or officers, of the number and quality of the hides, skins, and the pieces of hides and skins so taken out to be dried, and shall verify such entry upon oath, which oath any justices of the peace, or the collectors or supervisors that shall be appointed for the said duty in their respective districts, are hereby empowered to administer, to the end the respective duties for the same may be answered, as is hereinafter directed; and that no tanner, tawer, dresser, or maker of such hides or skins, or pieces of hides or skins, or such vellum or parchment, so taken out of the wooze, mill, liquor, or materials aforesaid after the said 24th day of June, at any time or times during the term aforesaid shall remove, carry, or send away, or suffer to be removed, carried, or sent away, the same, or any part thereof, from their respective yards, workhouses, or other places where they shall usually dry such hides or skins, or pieces of hides or skins, or such vellum or parchment, unless the duty payable by this act for such hides and skins, and pieces of hides and skins, and for such vellum and parchment respectively, so to be removed, be first charged and entered, and a mark be put thereupon to denote the charge and entry thereof as this act directs."

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### 14. *Leather, &c.*

From July 5, 1801, hides or skins tanned, &c. found on any other than entered premises shall be forfeited, and the person in whose custody found shall forfeit 100*l*.

Tanners, &c. to give notice of their places for drying or keeping of hides, &c.

and when they take their skins, &c. out of the mill, &c.

and to permit the officers to take an account of their hides, &c.

and within two days to make entry on oath.

Goods not to be removed before entered and marked.

14. *Leather,*  
&c.

Penalty for neglect.  
Concealing to avoid the duty. (a)

Penalty on shaving hides before the same be thoroughly tanned.

Provision in repealed act prohibiting the shaving of hides repealed.  
Tanners may take out of the wooze and shave hides, &c.  
Notice to be given to the proper officer.

Tanners removing or concealing hides from view of officer. (b)

Penalty.

Sect. 17. "If any person shall not send such notice of taking the goods out of the wooze or other materials, or not make due entries, or remove any the said goods contrary to this act, he shall forfeit 20*l.* and such goods, or the value thereof." See *ante*, 466.

Sect. 17. "If any tanner or other such person shall conceal any hide or skin, vellum or parchment, or any part thereof, he shall forfeit 20*l.*, and also the goods concealed, or the value thereof." See *ante*, 466.

Sect. 12. "That if any tanner or other person or persons, from and after the said 20th day of June, 1711, shall shave or cause to be shaved any hide or calve-skin whatsoever, before the same be thoroughly tanned, whereby such hide or skin shall be impaired, and Her Majesty's duty thereby diminished, every such hide or skin, or the value thereof, shall be forfeited; one moiety to the queen, and the other moiety to him or them that will inform or sue for the same."

By 56 Geo. III., c. 110, s. 4. "The 9 Ann. c. 11, s. 1, was repealed, save and except as to the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures, incurred in any respect relating thereto before or upon that day; and that from and after the passing of this act it shall and may be lawful for any entered tanner or tanners to take out of the wooze and shave any hide or skin, or to cut and separate therefrom the thin parts thereof: provided always, that every such tanner or tanners shall give six days previous notice in writing to the officer of Excise under whose survey he, she, or they shall then be of his intention or desire so to do, specifying in such notice the day and hour when he, she, or they will take any such hides or skins out of the wooze, and the number of such hides or skins respectively to be taken out, and whether the same are to be so taken out for the purpose of being shaved, or for the thin parts to be cut and separated as aforesaid; and if any tanner or tanners shall take any hides or skins, or parts or pieces of hides or skins, out of the wooze for either of the purposes aforesaid respectively, or for any other purpose, except by shifting the same into other wooze in the same entered premises, or shall remove or conceal any hide or skin, or any piece or part thereof, not being the shaving thereof, from the sight or view of the officer, so that the duties payable thereon shall not be duly charged, accounted for, and paid, the tanner or tanners respectively so offending shall for each and every such offence forfeit and lose the sum of 200*l.*"

By 9 Anne, c. 11, s. 18. "That all and every person and persons whatsoever, who at any time or times within or during the said term of thirty-

(a) This statute is general, and extends to all tanners of every description; therefore, under 9 Anne, c. 11, a *shumack* tanner was held liable to the cumulative penalties for concealing hides from the view of the officer. *Attorney-General v. Kent*, E. 59 Geo. III. 7 Price, 533.

(b) Proof that a tanner, after certain hides had been taken out of the wooze, and weighed by the surveying officer, and marked by him as having been charged with the Excise duty, which was accordingly entered in his book, had substituted other hides of less weight, also so marked on a former day, which was detected by the supervisor on reweighing the hides, and who found the hides which had been withdrawn on unentered premises, was held to be sufficient evidence to sustain counts in an information

charging the manufacturer, under the 56 Geo. III., c. 110, s. 4, with, *first*, "taking hides out of the wooze, &c. so that the duties payable thereon might not be duly charged, accounted for, or paid," in the words of the act; 2dly, with concealing hides, so that, &c. (in the same words); and 3dly (under the 6th section), with not hanging up hides, taken out of the wooze to dry, separate and apart from hides taken out to dry on a former day; and a rule to set aside a verdict taken for the crown on those counts so charging the offence, and entering it on others, charging another offence, subjected to a smaller penalty, on objections taken that they were not proved by the evidence, discharged on cause shown. *Attorney-General v. Courtier*, 9 Price, 480.

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two years shall tan, taw, or dress any hides or skins, or pieces of hides or skins whatsoever, chargeable by this act, shall, at their several yards or places by them respectively used for drying the same, provide and keep, at their own costs and charges, sufficient and just scales and weights for weighing of all such hides and skins, and pieces of hides and skins, which they respectively shall tan, taw, or dress, and for which the said duties are to be paid by weight as aforesaid; and that such and so many sworn officers for the said duties as shall be sufficient and necessary for the weighing the said hides and skins, and pieces thereof, and performing such other matters and things as are to be performed by such officer or officers at every such yard or dressing-place, shall be appointed, and give due attendance for that purpose."

Sect. 26. "That if any tanner, tawer, dresser, or maker of any hides or skins, or pieces of hides or skins, chargeable by this act, shall not at their respective yards, or other places for drying the same, keep just scales and weights, as this act directs; or shall not permit his, her, or their hides or skins, or pieces of hides or skins, which are to be weighed at such yards or drying places as aforesaid, to be there weighed; or neglect or refuse to bring the same to the scales, or assist at the weighing of the same, as this act requires; or if any tanner, tawer, or dresser of hides or skins, or pieces of hides or skins, or any maker of vellum or parchment, chargeable by this act, shall remove or convey or cause or procure to be removed or conveyed from his, her, or their yard or drying place any of the said hides and skins, or pieces of hides and skins, or any such vellum or parchment, before the said duties shall be fully charged by weight, or tale, or *ad valorem*, as this act in the said respective cases doth require, and before the same hides or skins, or pieces of hides and skins, and such vellum and parchment respectively shall be marked, to denote the charging of the duty as this act directs; or if any buyer or contractor shall take or carry away or cause or procure to be carried away from any such yard or drying place any of the kinds of hides or skins, or pieces of hides or skins, vellum or parchment, before the same shall be marked as this act directs; that then, and in every such case, all and every such tanners, tawers, dressers, makers, buyers, contractors, or other persons respectively, shall for every such offence forfeit and lose the sum of 50*l.*—to wit, one moiety thereof to the queen, and the other moiety to him or them that will inform or sue for the same; and moreover, that all the hides and skins, and pieces of hides and skins, vellum and parchment, which shall be sold or removed, contrary to this act, shall be forfeited, and shall and may be seized, by any of Her Majesty's officers, for Her Majesty's use."

By 10 Geo. III., c. 44, s. 1. "That if at any time after the 24th day of June, 1770, any trader subject to the survey of any officer of Excise, and required by the laws concerning the duties under the management of the commissioners of Excise to keep sufficient and just scales and weights, shall, in the weighing his, her, or their stock or stocks, make use of, or cause or procure or suffer to be used, any false, unjust, or insufficient scales or weights, to the intent to defraud His Majesty of the duties by the said laws respectively granted, that then, and in every such case, the party or parties offending shall forfeit the sum of 100*l.* for every such offence." And by the 28 Geo. III., c. 37, s. 15, the same shall be forfeited, and may be seized by any officer.

And by 26 Geo. III., c. 77, s. 8. "That if at any time or times after the 1st day of August, 1786, any trader or traders subject to the survey of any officer or officers of the Excise or inland duties, and who is or are required, by any law or laws relating to the duties of Excise, or other duties under the management of the commissioners of Excise, to keep just scales and weights, shall, before or after or in the weighing of his, her, or their stock, or any part thereof, put or suffer or cause or procure to be put any other substance into the commodity or stock so to be weighed, whereby such officer or officers might be hindered or prevented from

### 14. *Leather, &c.*

Tanners, &c. to keep scales and weights.

Sworn officers to be appointed for weighing.

Tanner not to keep just scales, &c.

or removing his hides, &c. before the duty is charged,

or before marking.

and the buyer or contractor, to forfeit 50*l.* and the hides, &c. so removed.

Trader using false weights and scales in weighing his stock, in fraud of the duties,

forfeits 100*l.*

Persons using any art to deceive officers in taking the weight of stocks, &c. to forfeit 100*l.*

14. *Leather, &c.*

Tanners, &c. to give notice to the officers two days before removal of hides, &c.

and to permit and assist the officer in weighing or telling the same, and to ascertain the value.

• *Stc* in the act.

Officer to make a return in writing. See 6 Geo. 1, c. 3, s. 10.

And leave a copy thereof with the tanner, &c.

Officer to mark each hide, &c.

taking a just and true account of such stock, as is directed and prescribed by the several acts of parliament in that case made and provided, or shall forcibly obstruct or hinder, or shall, by any art, device, or contrivance, prevent or impede such officer, or procure or suffer him to be prevented or impeded, in taking such just and true account of such stock or commodities as aforesaid, the party offending therein shall, for every such offence, forfeit and lose the sum of 100*l*."

By 9 Ann., c. 11, s. 19. "That every such tanner, tawer, or dresser of any such hides or skins, or pieces of hides or skins, and every maker of vellum or parchment, shall from time to time, before any such hides or skins, pieces of hides or skins, or such vellum or parchment shall be removed from his, her, or their yards, workhouses, places of dressing, drying, or keeping the same respectively, give notice in writing, by the space of two days, to the proper officer or officers for the said duties, of all hides and skins, pieces of hides and skins, and all such vellum and parchment as he, she, or they shall intend to remove, to the intent that the officers for the said duties may ascertain the duties payable for the same (for the giving of which notice he, she, or they shall not be obliged to go farther than the next market town); and every such tanner or dresser shall permit all such hides or skins, for which the duties are to be charged and paid by weight, to be weighed by the proper officer or officers, at the yard or place where the same shall be dried or kept, before the same shall be removed as aforesaid; and shall bring or cause the same to be brought to the scales, and assist in weighing thereof; and shall also permit the officer for the said duties to take an account of the numbers and qualities of all such skins and hides, or pieces of skins and hides, vellum and parchment, so intended to be removed, whereof the duty is to be paid by tale; and shall likewise ascertain the value of all such skins and hides, or pieces of skins and hides, so intended to be removed, whereof the duty is to be charged and paid *ad valorem*, by the oath of the said respective tanners, tawers, dressers, or makers thereof as aforesaid; which oath any justice of the peace, for<sup>e</sup> the said respective officer or officers, are hereby empowered to administer, before any such skins or hides, or pieces of skins or hides, be removed from the places of drying or keeping the same respectively."

Sect. 20. "That from and after the duties of the said skins and hides, pieces of skins and hides, vellum and parchment, so intended to be removed, shall be ascertained by weight, tale, or *ad valorem* as aforesaid, the proper officer or officers for the said duties shall fairly enter in a book, to be kept by him or them for that purpose, the respective weights, tales, and value of all such hides and skins, pieces of hides and skins, vellum and parchment, whereof the duties shall have been so ascertained as aforesaid, and shall make thereof a return or report in writing to the respective commissioners, or the collectors, or other persons by them appointed to receive the same, leaving a true copy thereof under his hand with the respective tanners, tawers, dressers, and makers of such hides and skins, pieces of hides and skins, vellum and parchment; which return or report of the said officer or officers shall be a charge upon the tanners, tawers, dressers, and makers of such hides and skins, pieces of hides and skins, vellum and parchment respectively."

Sect. 21. "That immediately from and after the duty of the said hides and skins, pieces of hides and skins, vellum and parchment, so intended to be removed, shall be ascertained by weight, tale, or *ad valorem* as aforesaid, and an entry made thereof in a book to be kept by the said officer or officers as aforesaid, the said officer or officers who shall so have ascertained the same shall cause every hide or skin, and every piece of a hide or skin, and all vellum and parchment, whereof the duty shall be so ascertained, to be marked with such mark as this act directs to be provided and used, to denote the charging of such duty as aforesaid."

Sect. 22. "That in case any such tanner, tawer, dresser, or maker of

## II. PARTICULAR LAWS, &c. (14.) *Leather, Hides, and Skins.*

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such hides or skins, pieces of hides and skins, vellum or parchment, shall desire the said mark to be made upon any particular part thereof, then the officer or officers so appointed to mark the same shall mark the same accordingly." See sect. 26, *ante*, 469.

By 9 Ann., c. 11, s. 44; 5 Geo. I., c. 2, s. 9; and 36 Geo. III., c. 54, s. 10. "That if any person shall counterfeit the stamp, or the impression of the same, or knowingly sell any of the said goods with a counterfeit stamp or impression, he shall be guilty of felony without benefit of clergy."

By 53 Geo. III., c. 143, s. 1. "That in all cases where any act to be done or committed after the passing of this act, in breach of or in resistance to any part of the laws for collecting His Majesty's revenue in Great Britain, would by the laws now in force subject the offender to suffer death, as guilty of felony, without benefit of clergy, by virtue of the said laws, or any of them, such act, so to be done or committed, shall be deemed and taken to be felony with benefit of clergy, and punishable only as such, unless the same shall also be declared to be felony without benefit of clergy by this act."

To prevent frauds between the officers and dealers, by 5 Geo. II., c. 3, s. 10, all tanners, tawers, and dressers of hides, skins, vellum, and parchment shall keep those which have not been stamped from those which have, and also those which have been last stamped from those which have been stamped before, for twenty-four hours within the bills, and for two days elsewhere, unless they shall have sooner been weighed and taken account of by the surveyor or supervisor, on pain of 10*l*.

By 56 Geo. III., c. 110, s. 6. "That all and every tanner, tawer, or dresser of hides or skins, or pieces or parts of hides or skins, shall hang up such hides or skins, or parts or pieces of hides or skins, which he, she, or they shall take out of the wooze for that purpose, separate and apart from all hides or skins, and pieces or parts of hides or skins, hung up to dry, or taken out of the wooze for that purpose, on any former day, and shall keep and continue the same, and every of them, so separate and apart, until the surveying officer shall have taken an account thereof; and if any such tanner, tawer, or dresser shall refuse or neglect so to do, he, she, or they shall, for each and every such offence, forfeit and lose the sum of 100*l*."

And by 5 Geo. III., c. 43, s. 21. "That no tanner, tawer, or dresser of hides or skins, or pieces of hides or skins, chargeable with the respective duties by law payable for the same, shall at any time or times, from and after the 5th day of July, 1765, remove or convey, or cause, procure, or suffer to be removed or conveyed, from his, her, or their yard or drying-place, or from his, her, or their entered store-rooms, any hides or skins, or pieces of hides or skins, before the expiration of twenty-four hours next after the stamping thereof by the officers for the said duties, unless the same shall sooner have been weighed by the respective supervisors or surveyors for the said duties, to the end that the said respective supervisors and surveyors may have an opportunity to reweigh the same after the said officers: and if upon the reweighing any such hides or skins, or pieces of hides or skins, any additional weight shall be found, such hides or skins, or pieces of hides or skins, shall be liable to, and chargeable with, the respective rates and duties by law payable for such hides or skins according to such last-mentioned weight: and if any such tanner, tawer, or dresser of hides or skins, or pieces of hides or skins, shall remove, or cause or suffer to be removed, any such hides or skins, or pieces of hides or skins, from any of his, her, or their yards or drying-places, or entered store-rooms, contrary to the true intent and meaning of this act, he, she, or they shall, for every such offence, forfeit and lose the sum of 20*l*."

Sect. 22. "That from and after the said 5th day of July, 1765, all and every such tanners, tawers, and dressers of hides and skins, shall, at their respective yards or drying-places, be obliged to provide and keep, at their own costs and charges, sufficient and just scales and weights for

### 14. *Leather, &c.*

Officer to mark the hide, &c. where tanner, &c. desires. Counterfeiting stamp.

Offences against revenue laws.

Leather stamped to be kept separate.

Hides taken out of wooze to be hung up separate from others till account taken.

Penalty.

Tanners, &c. not to remove the hides or skins, &c. from the drying-places or store-rooms for 24 hours after the stamping thereof by the officer for the duties, on penalty of 20*l*. unless they shall have been sooner weighed by the supervisor; and any additional weight which shall be then found is to be charged with the duty.

Tanners to provide proper scales and weights in their drying-places, and to bring the skins to the scales, and

14. *Leather, &c.*

assist the supervisor in reweighing the same, and in examining their depending stocks, on penalty of 50*l.* (a)

Persons in London, &c. to discharge the duties in 14 days, in any other parts in 8 weeks.

Payment to be made at the next market town.

Penalty on non-payment, double the sum, &c.

the reweighing such hides and skins, and pieces of hides and skins; and to bring the same to the scales, and to assist the said respective surveyors and supervisors in the reweighing such hides and skins, and in examining, from time to time, the depending stock of every such tanner, tawer, or dresser of hides and skins, and pieces of hides and skins; and if any such tanner, tawer, or dresser of hides and skins, pieces of hides and skins, shall refuse or neglect to provide and keep, at their respective yards or drying-places, sufficient and just scales and weights for the reweighing such hides and skins, and pieces of hides and skins, or to bring the same to the scales, or to assist the said respective surveyors and supervisors in the reweighing such hides and skins, or pieces of hides and skins, or in the examining, from time to time, their respective depending stocks as this act directs, every such tanner, tawer, and dresser of hides and skins, or pieces of hides and skins, so refusing or neglecting, shall, in each and every such case, forfeit and lose the sum of 50*l.*" (a)

By 9 Ann., c. 11, s. 23. "That the respective tanners, tawers, dressers, and makers of such hides and skins, pieces of hides and skins, vellum and parchment, shall pay off and discharge all the duties of the said hides and skins, pieces of hides and skins, vellum and parchment, so marked as aforesaid, in manner hereinafter mentioned; (that is to say,) such of the said duties as shall arise within the cities of London and Westminster, and the limits of the weekly bills of mortality, to the receiver of the said duties at the head office of the said commissioners, within fourteen days after the same shall be marked as aforesaid; and such of the said duties as shall arise and be payable in the other parts of Great Britain, within six weeks after the same shall be so marked and stamped as aforesaid, to the respective collectors that shall be appointed to receive the same: and the officers to be appointed for collecting and receiving the duties hereby granted shall, and they are hereby required to give receipts under their hands *gratis*, and without delay, for all the moneys they shall from time to time receive by virtue of this act, to or for the use of such person or persons as shall pay the same."

Sect. 24. "Provided always, that no person or persons shall be obliged, for the payment of the said duties, to go farther than the next market town to the respective places where the same shall be so marked as aforesaid."

Sect. 25. "That every such tanner, tawer, dresser, or maker of such hides and skins, pieces of hides and skins, vellum and parchment, chargeable with the said duties, who shall neglect or refuse to make such payment as aforesaid, shall forfeit and lose for every such offence double the sum of the said duty whereof the payment shall be so refused or neglected; and that no such tanner, tawer, dresser, or maker, or other person, after such default made, shall send, deliver, or carry out any hides or skins, pieces of hides or skins, vellum or parchment, until he, she, or they have or hath paid and cleared off his, her, or their duty as aforesaid, on pain to forfeit double the value of such hides or skins, pieces of hides or skins, vellum or parchment, so delivered or carried out."

(a) The depending stock of a tanner, with respect to which the regulations of the 5th of Geo. III., c. 43, s. 22, apply, is not merely the stock of hides and skins, &c. which have been taken out of the wooze, and have been already weighed and marked by the inferior officer of Excise, but the whole of the stock which has been taken out of the wooze. Therefore the tanner is liable to the penalty for not providing scales and weights, and

for not assisting the officers of Excise in not only reweighing the stock already weighed by the officer, but in so providing weights and scales for reweighing, and in examining any part of his stock of hides and skins taken out of the wooze, and being on his premises from that time until the time when they might legally be removed. *Attorney-General v. Bevington and another*, 11 Price, 222.

## II. PARTICULAR LAWS, &c. (14.) *Leather, Hides, and Skins.*

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Sect. 27. "That every tanner, tawer, and dresser of any hides or skins, or pieces of hides or skins, and every maker of vellum and parchment, in Great Britain, shall once in every three months at the least make an account with the proper officer of every division or district respectively of and for all the hides and skins, and pieces of hides and skins, which such tanner, tawer, dresser, or maker respectively, by himself, or any other within the time of every such account, shall have taken out of the wooze, mill, liquor, or ingredients used for tanning, tawing, steeping, dressing, or making the same, and of his entries thereof with the officer, and shall at the same time balance the said account, by hides or skins, or pieces of hides or skins, vellum or parchment, for which the duty shall then have been charged as aforesaid, and by such hides and skins, and pieces of hides and skins, vellum and parchment, then remaining in his possession unmarked, for which the duty shall not have been charged as aforesaid; which account (if demanded) every such tanner, tawer, dresser, or maker shall truly and faithfully make, from time to time, under the penalty of 50*l*.—to wit, one moiety thereof to the queen, and the other moiety to him or them who will inform or sue for the same; and that every such officer, upon the taking of every such account, shall inform himself concerning the truth or falsehood thereof, to the end and purpose, that if such tanner, tawer, dresser, or maker shall have unlawfully conveyed away any of the said hides or skins, or pieces of hides or skins, vellum or parchment, contrary to this act, or shall have defrauded Her Majesty, her heirs or successors, of any part of the duties hereby payable for the same, he may be proceeded against in such manner and form, and for such penalties or forfeitures, as are by this act prescribed for such offence."

### 14. *Leather, &c.*

Tanner, &c. to account with the proper officer once in three months,

on penalty of 50*l*.

Sect. 36. "That it shall and may be lawful to and for any two or more of the justices of the peace for the time being, residing near to the place where any forfeiture upon this act shall be incurred, or any offence against this act shall be committed, in any wise relating to the said hides or skins, or pieces of hides or skins, vellum or parchment, chargeable by this act, or any the duties thereupon, or the powers and authorities hereby granted, or where any offence shall be committed against the said recited act of the first year of the reign of King James the First, to hear and determine the same: which said justices of the peace are hereby authorized and required, upon any information exhibited, or complaint made in that behalf, within three months after any seizure made, or such offence committed, to summon the party accused, and also the witnesses on either side, and upon the appearance or contempt of the party accused in not appearing (upon proof of notice given) to proceed to the examination of the witness or witnesses upon oath (which oath they are hereby empowered to administer), and to give judgment or sentence accordingly; and where the party accused shall be convicted of the offence alleged against him, to award and issue warrants under their hands for the levying any pecuniary penalty or penalties so adjudged on the goods of the offender, and to cause sale to be made thereof, in case they shall not be redeemed within six days, rendering the party the overplus (if any): and if either party shall find himself aggrieved, or remain unsatisfied in the judgment of the said justices, then he or they shall or may, by virtue of this act, complain or appeal to the justices of the peace at the next general quarter-sessions for that county, riding, or place, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same, and in case of conviction to issue warrants for levying the penalties as aforesaid."

Two justices may hear and determine.

1 Jac. 1, c. 22.

Appeal to quarter-sessions final.

Sect. 37. "Provided nevertheless, that it shall and may be lawful to and for the said respective justices, where they shall see cause, to mitigate or lessen any such penalties in such manner as they in their discretion shall think fit, the reasonable cost and charges in the officers, as well in making the discovery as in the prosecution of the same, being always allowed over and above such mitigation, and so as such mitigation do not reduce the penalties to less than one-fourth part thereof, over and above the said costs

Justices may mitigate penalties.



14. *Leather, &c.*

No information to be brought to Westminster in cases cognisable by justices, &c.

and charges; any thing contained in this act to the contrary notwithstanding.

Sect. 47. "Provided, that no bill, plaint, or information shall be brought or sued forth in any of Her Majesty's courts of record at Westminster for any offence against this statute touching or concerning the duties hereby granted for or upon any hides or skins, or pieces of hides or skins, vellum or parchment, tanned, tawed, dressed, or made in Great Britain, in cases where such offences are by this act cognizable by justices of the peace; nor shall any certiorari be brought or allowed to remove any the proceedings of the justices of the peace relating to the same offences, or any forfeitures or penalties for the same, but that the determination of the justices of the peace in the county where such offence or offences shall be committed shall, in manner and form aforesaid, be final, to all intents and purposes whatsoever; any thing herein contained to the contrary thereof notwithstanding."

See the general regulations for the recovery of Excise duties under the new Excise act. 7 & 8 Geo. IV., c. 53; *ante*, p. 327 to 310.

15. Linen Cloths, Silks, Cottons, and Calicoes.

(15.) *Linen Cloths, Silks, Cottons, and Calicoes.* (a)

[10 Ann., c. 19; 1 Geo. I., st. 2, c. 36; 5 Geo. I., c. 11; 7 Geo. I., st. 1, c. 7; 12 Geo. I., c. 28; 9 Geo. II., c. 4; 24 Geo. II., c. 40; 4 Geo. III., c. 37; 13 Geo. III., c. 56; 14 Geo. III., c. 72; 25 Geo. III., c. 72, c. 74; 27 Geo. III., c. 31; 28 Geo. III., c. 37; 43 Geo. III., c. 69; 49 Geo. III., c. 98; 51 Geo. III., c. 33; 59 Geo. III., c. 32, c. 52, c. 90; 3 Geo. IV., c. 27, c. 32; 6 Geo. IV., c. 81, c. 111; 7 Geo. IV., c. 53; 7 & 8 Geo. IV., c. 53.] (b)

From July 5, 1803, the present duties under the management of the commissioners of Excise, and the drawbacks, shall cease. This act shall not extend to malt duties under 43 Geo. 3, c. 8, nor to duties upon malt, tobacco, and snuff, continued by 43 Geo. 3, c. 4, except as to the duties on tobacco licences, and on tobacco of Spain and Portugal; nor to certain countervailing duties on importation from Ireland, &c.

By 43 Geo. III., c. 69, s. 1. "That from and after the 5th day of July, 1803, all and singular the duties, allowances, bounties, and drawbacks of Excise, and other duties under the management of the commissioners of Excise in England and Scotland respectively, granted by any act or acts of parliament now in force, shall cease and determine; save and except in all cases relating to the recovering, allowing, or paying any arrears thereof respectively, which may at that time remain unpaid, or to any fine, penalty, or forfeiture, fines, penalties, or forfeitures, relating thereto respectively, which shall have been incurred at any time before or on the said 5th day of July, 1803."

Schedule A., title "PAINTED GOODS," imposed the following duties:

For every yard square of paper which shall be printed, painted, or stained in Great Britain, to serve for hangings or other uses, over and above the duties payable for such paper before the printing, painting, or staining thereof	£. s. d. 0 0 1½
For every yard in length, reckoning yard wide, of foreign calico, and of foreign muslin, which shall be printed, stained, painted, or dyed in Great Britain, except such as shall be dyed throughout of one colour only	0 0 7
For every yard in length, reckoning yard wide, of all linens, and of stuffs wholly made of cotton wool wove in Great Britain, commonly called British manufactory, and of British muslins, and of all fustians, velvets, velverets, dimities, and other figured stuffs, made of cotton and other materials mixed,	

(a) See revision of the subject, *ante*, 310, 311.

(b) See some of these acts commented upon in the *Attorney-General v. Brandon*, 3 Price, 360. The scenes of the theatres, and all other canvas so painted, are liable to the duties of Excise as painted linen. Canvas is linen, within the statutes; but

where the canvas has been previously primed, it is not liable to any further duty for being afterwards painted, the primer having paid a duty in the first instance in respect of the colour necessarily laid on in that preparatory operation. *Attorney-General v. Brandon*, 3 Price, 360.

## II. PARTICULAR LAWS, &c. (15.) *Linen Cloths, Silks, &c.*

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### 15. *Linen Cloths, &c.*

or wholly made of cotton wool wove in Great Britain, and of all other stuffs whatsoever, which shall be printed, stained, painted, or dyed in Great Britain, except such as shall be dyed throughout of one colour only, and stuffs made of woollen, or whereof the greatest part in value shall be woollen	0	0	3½
For every yard in length, reckoning half-yard wide, of all silks which shall be printed, stained, or painted in Great Britain, silk handkerchiefs excepted, over and above the duties payable upon the importation of them or any of them	0	1	1½
For every yard square of silk handkerchiefs, which shall be printed, stained, painted, or dyed in Great Britain, over and above the duties payable upon the importation of them or any of them	0	0	4½
The said duties on printed, stained, painted, or dyed goods, to be paid by the printer, stainer, painter, or dyer thereof.			

#### Schedule C., drawbacks to the "PRINTED GOODS."

For every yard square of paper printed, painted, or stained in Great Britain, for hangings or other uses, for which the duties imposed in respect thereof shall have been paid, and which shall be duly exported as merchandize to foreign parts

For all linens, stuffs, fustians, velvets, velverets, dimities, figured stuffs, stuffs wholly made of cotton wool wove in Great Britain, commonly called British manufactory, calicoes, and muslins, and all silk handkerchiefs printed, stained, painted, or dyed; and for all silks printed, stained, or painted in Great Britain, for which the duties imposed in respect thereof shall have been paid, and which shall be duly exported as merchandize to foreign parts

The whole duty.

All the duties.

These duties are collected and recoverable pursuant to the general regulations and provisions of 7 & 8 Geo. IV., c. 53; *ante*, 227 to 310.

By 6 Geo. IV., c. 111, all former duties of Customs were repealed, and new duties are imposed; *ante*, 133.

By 7 Geo. IV., c. 53, s. 1. "That from and after the 5th day of July next, and until the 10th day of October, 1828, in lieu and instead of the duties imposed by the therein recited act on silk goods, and set forth in a table thereunto annexed, denominated 'Table of Duties of Customs Inwards,' the several duties set forth in figures in the table hereinafter contained, and denominated 'Table of temporary Duties on Silk Goods,' shall be raised, levied, collected, and paid unto His Majesty, in like manner as if the same had been imposed by the said act hereinbefore mentioned, and set forth in the said table thereunto annexed; that is to say,

From 5th July, 1828, until 10th October, 1828, the duties herein mentioned shall be paid upon importation of silks.

#### INWARDS.

Silk, viz.	Duty.
	£. s. d.
— Knubs or Husks of Silk . . . . .	the lb. 0 0 1
— Raw Silk . . . . .	the lb. 0 0 1
— Thrown, not dyed, viz.	
— Singles . . . . .	the lb. 0 2 0
— Tram . . . . .	the lb. 0 3 0
— Organsine and crape Silk . . . . .	the lb. 0 6 0
— Thrown Silk, dyed, viz.	
— Singles or Tram . . . . .	the lb. 0 4 0
— Organsine and Crape Silk . . . . .	the lb. 0 6 8
— Manufacturers of Silk only, or whereof nine-tenth parts are of Silk, and no part is of gold, silver, or other metal, viz.	
— Stuffs, viz.	
— plain . . . . .	the lb. 0 15 0
— figured . . . . .	the lb. 1 0 0

15. *Linen*  
*Cloths, &c.*Silk *continued.*

£. s. d.

— <i>Stuffs continued—</i>		
— Satin, plain	the lb.	0 16 0
— figured	the lb.	1 1 0
— Tissue, or brocaded	the lb.	1 0 0
— Gauze, plain	the lb.	0 17 0
— striped, figured, or brocaded	the lb.	1 7 6
Crape		the lb.
— Lisse	the lb.	0 16 0
— China, plain or figured	the lb.	0 17 4
— Velvet, plain	the lb.	0 18 0
— figured	the lb.	1 2 0
— Ribbons, <i>viz.</i>		the lb.
— plain	the lb.	0 15 0
— figured	the lb.	0 17 0
— Satin, plain	the lb.	0 16 0
— figured	the lb.	0 18 0
— of Gauze, plain or figured	the lb.	1 11 6
— of Velvet, plain	the lb.	1 2 0
— figured	the lb.	1 7 6
— Fancy Silk Net or Tricot	the lb.	1 4 0
— Stockings, <i>viz.</i>		
— the dozen pairs (or if half stockings, the two dozen pairs), not being of greater weight than nine ounces	the lb.	4 0 0
— the dozen pairs (or if half stockings, the two dozen pairs), being of greater weight than nine ounces, and not of greater weight than twelve ounces	the lb.	3 0 0
— the dozen pairs (or if half stockings, the two dozen pairs), being of greater weight than twelve ounces, and not of greater weight than one pound	the lb.	1 10 0
— the dozen pairs (or if half stockings, the two dozen pairs), being of greater weight than one pound, and not of greater weight than one pound and a half	the lb.	1 1 0
— the dozen pairs (or if half stockings, the two dozen pairs), being of greater weight than one pound and a half, and not of greater weight than two pounds	the lb.	0 16 0
— the dozen pairs (or if half stockings, the two dozen pairs), being of greater weight than two pounds	the lb.	0 12 0
— and further, if with figured or lace work, in addition to the above rates	the lb.	0 12 0
— Stocking Web	the lb.	0 12 0
— Gloves	the lb.	0 15 0
— Plain Silk Lace, called Net or Tulle	the square yard	0 1 4
— Manufactures of Silk mixed with other materials, <i>viz.</i>		
— Stuffs mixed with gold, silver, or other metals, <i>viz.</i>		
— plain	the lb.	1 10 0
— figured	the lb.	1 16 0
— Gauze, <i>viz.</i>		
— mixed with gold, silver, or other metal, plain or figured	the lb.	2 0 0
— mixed with cotton, thread, or worsted, <i>viz.</i>		
— plain	the lb.	0 15 0
— striped or figured	the lb.	1 0 0
— mixed also with gold, silver, or other metal, plain or figured	the lb.	1 10 0

Silk continued.		£.	s.	d.	15. <i>Linen Cloths, &amp;c.</i>
—	Velvets or Shags of Silk, viz.				
—	— mixed with gold, silver, or other metal	the lb.	2	4	0
—	— shot, with cotton or thread only, viz.				
—	— plain	the lb.	0	15	0
—	— figured	the lb.	0	18	0
—	— mixed with gold, silver, or other metal, plain or figured	the lb.	1	10	0
—	Ribbons of Silks, viz.				
—	— mixed with gold, silver, or other metal, viz.				
—	— plain	the lb.	1	10	0
—	— figured	the lb.	1	16	0
—	Ribbons of Gauze, mixed with gold, silver, or other metal, plain or figured	the lb.	2	10	0
—	the produce of and imported from places within the limits of the East India Company's charter, viz.				
—	— Bandannoes and all other Handkerchiefs, in pieces not exceeding six yards in length	the piece	0	6	0
—	— if more than six yards in length, and not exceeding seven yards in length	the piece	0	7	0
—	— and further, for every additional length not exceeding a yard		0	1	0
—	— taffaties and other plain or figured Silks, not otherwise described	the lb.	0	10	0
—	— Canton or China Crape	the lb.	0	10	0
—	— if flowered or tamboured with Silk	the lb.	1	4	0
—	— Manufactures of Silk, or of Silk and any other material, not otherwise charged with duty,				
	for every 100 <i>l.</i> of the value	30	0	0	
—	— all pieces of goods, whether otherwise enumerated or not, and however imported, if entered for home use before the 5th day of January, 1827,				
	for every 100 <i>l.</i> of the value	30	0	0	
—	— Millinery of Silk, or of which the greater part of the materials is of Silk, viz.				
—	— Turbans or Caps	each	0	15	0
—	— Hats or Bonnets	each	1	5	0
—	— Dresses	each	2	10	0
—	— or, and at the option of the officers of the Customs,				
	for every 100 <i>l.</i> of the value	50	0	0	
—	— Manufactures of Silks, or of Silk and any other material, not particularly enumerated, or otherwise charged with duty				
	for every 100 <i>l.</i> of the value	30	0	0	
—	— Articles of manufactures of Silk, or of Silk and any other material, wholly or in part made up, not particularly enumerated or otherwise charged with duty,				
	for every 100 <i>l.</i> of the value	30	0	0	

Sect. 5. "That from and after the 5th day of April, 1826, all duties of Excise imposed upon the printing of silks, save and except any arrears thereof, and all drawbacks in respect of such duties, shall cease and determine; and if any such duty shall have been paid before the commencement of this act, which shall have been charged after the said 5th day of April, the same shall be returned, under such regulations as the commissioners of Excise shall appoint."

Excise Duties on printing of silks to cease.

Sect. 6. "That from and after the 5th day of July, 1826, the said several duties and drawbacks hereinbefore recited, and so much and such parts of the said act passed in the said 10th year of the reign of Her said late Majesty as relates to gilt wire, silver wire, and big wire respectively, shall be and the same are hereby respectively repealed, save and except as to any arrear of such duties which shall at that time remain

Duties and drawbacks on gold and silver wire, and gold and silver thread and lace, of 10 Ann., c. 20, repealed.

15. *Linen  
Cloths, &c.*

## Licence.

None shall wear in Great Britain any garment of printed, &c. calico, under the penalty of *5l.* to the informer, on conviction before a justice, and complaint within six days after offence committed.

Appeal to sessions, whose judgment shall be final.

Mercer, &c. selling any printed, &c. calico, or any bed, &c. made thereof, unless for exportation, shall forfeit *20l.*

and officer of a corporation offending shall moreover lose his office.

How the forfeitures shall be applied and recovered.

unpaid, and as to any penalty or forfeiture theretofore incurred in respect of such duties and drawbacks, or under so much of such act of Her late Majesty Queen Anne as is hereby repealed."

By 6 Geo. IV., c. 81. "Every calico-printer, and every printer, painter, or stainer of linens, cottons, stuffs, or silks, shall pay annually for a licence *20l.*" *Ante*, 247.

By 7 Geo. I., stat. 1, c. 7, s. 1. "That from and after the 25th day of December which shall be in the year of our Lord 1722, it shall not be lawful for any person or persons whatsoever to use or wear in Great Britain, in any garment or apparel whatsoever, any printed, painted, stained, or dyed calico, under the penalty of forfeiting to the informer the sum of *5l.* of lawful money of Great Britain for every such offence, being lawfully convicted thereof by the oath or oaths of one or more credible witness or witnesses before any one or more justice or justices of the peace; which justice or justices is and are hereby respectively authorized and strictly enjoined and required, upon any complaint or information upon oath exhibited or brought of any such offence committed, contrary to this act, within six days after commitment thereof, to summon the party accused, and upon his or her appearance or contempt to proceed to examination of the matter of fact, and upon due proof thereof, either by voluntary confession of the party, or by the oath or oaths of one or more credible witness or witnesses (which oath or oaths the said justice or justices is and are hereby respectively empowered and required to administer), to hear and determine the same, and upon such conviction to cause the said penalty, by warrant under his or their hand and seal or hands and seals respectively, to be levied by distress and sale of the offender's goods and chattels, rendering to the party the overplus (the charge of such distress and sale being first deducted); nevertheless it shall be lawful for any party aggrieved to appeal to the justices of the peace at the next general quarter-sessions to be holden for the county, city, riding, or place where the said offence or offences shall have been committed, giving six days' notice at the least of such appeal to the prosecutor or prosecutors; which justices at such general quarter-sessions are hereby authorized and empowered to hear and determine the same, and their judgment therein shall be final."

Sect. 2. "That if any mercer, draper, upholder, or any other person or persons or corporation whatsoever, shall at any time or times after the said 25th day of December, 1722, sell, utter, or expose to sale any printed, painted, stained, or dyed calico, or any bed, chair, cushion, window-curtain, or other household stuff or furniture whatsoever, made up of or mixed with any printed, painted, stained, or dyed calico, unless for exportation thereof, and unless the same shall be cleared outwards accordingly, as is usual in case of sale for exportation, every such person or corporation so offending shall for every offence, being lawfully convicted thereof, forfeit and pay the sum of *20l.* of lawful money of Great Britain, to be recovered as is hereinafter directed; and every steward or other officer of such corporation, or his deputy, offending herein, and being lawfully convicted of such offence, shall, over and besides the forfeiture or penalty aforesaid, forfeit and lose his office and employment, and be incapable to hold the same."

Sect. 4. "That one moiety of all pecuniary penalties and forfeitures imposed by this act, where the same shall exceed *5l.*, shall be to the informer or prosecutor, and the other moiety to the poor of the parish or place where the offence shall be committed; and such penalties as are not herein directed to be otherwise recovered shall be recovered by action of debt, bill, plaint, or information in any of His Majesty's Courts of Record at Westminster, for offences committed in England, Wales, or Berwick-upon-Tweed, or in His Majesty's Court of Session, Court of Justiciary, or Court of Exchequer in Scotland, for offences committed in that part of Great Britain, together with full costs of suit, by any person or persons who shall sue for the same within six calendar months next after the of-

fence committed; and that in any such action or suit, no essoin, protection, privilege, or wager of law shall be allowed, nor any more than one imparlance."

Sect. 3. "That from and after the 25th day of December, 1722, it shall not be lawful for any person or persons to use or wear in Great Britain, in or about any bed, chair, cushion, window-curtain, or any other sort of household stuff or furniture, any printed, painted, stained, or dyed calico (except as hereinafter is excepted), under the penalty of forfeiting (being thereof lawfully convicted) the sum of 20*l.* of lawful money of Great Britain, to be recovered as hereinafter is directed."

Sect. 11. "Provided, that nothing in this act contained shall extend or be construed to extend to such calicoes as shall be dyed all blue."

Sect. 10. "That the prohibition of calicoes intended by this act and the penalties thereby inflicted for wearing or using printed, painted, stained, or dyed calico in apparel, household stuff, or furniture, after the 25th day of December, 1722, contrary to this act, shall respectively extend to prohibit, and shall be levied and recovered for wearing or using in apparel, household stuff, or furniture, after the said 25th day of December, 1722, any stuff made of cotton or mixed therewith, which shall be printed or painted with any colour or colours, or any calico chequered or striped, or any calico stitched or flowered in foreign parts with any colour or colours, or with coloured flowers made there (muslins, neckcloths, and fustians excepted), in such manner as the penalties inflicted by this act for wearing or using printed, painted, stained, or dyed calico in apparel, household stuff, or furniture after the said 25th day of December, 1722, contrary to this act, are to be levied or recovered; but under such limitations, and with such liberties, privileges, and advantages, as are mentioned and expressed in this act, or in any other act or acts of parliament now in force relating thereto, or relating to printed, painted, stained, or dyed calicoes."

By 9 Geo. II., c. 4. "It shall be lawful to use stuff made of linen yarn and cotton wool manufactured and printed or painted in Great Britain, provided the warp thereof be entirely linen yarn."

By 14 Geo. III., cap. 72, s. 1. "That no greater or higher duty than threepence for every yard in length, reckoning yard wide, and after that rate for a greater or lesser quantity, shall be imposed, raised, levied, collected, or paid unto and for the use of His Majesty, his heirs and successors, on the said new-manufactured stuffs, wholly made of cotton spun in Great Britain, when printed, stained, painted, or dyed with any colour or colours."

Sect. 2. "That it shall and may be lawful for any person or persons to use or wear, within the kingdom of Great Britain, either as apparel, household stuff, furniture, or otherwise, any new-manufactured stuffs, wholly made of cotton spun in Great Britain, when printed, stained, painted, or dyed with any colour or colours; any thing in the recited act of the seventh year of the reign of His late Majesty King George the First, or any other act or acts of parliament, to the contrary hereof in anywise notwithstanding."

Sect. 3. "That in each piece of the said new-manufactured stuffs, wholly made of cotton wool spun in Great Britain, there shall be wove in the warp, in both selvages, through the whole length thereof, three blue stripes, each stripe of one thread only (a); the first of which said stripes shall be the first or outermost thread of the warp of each selvage, the second of which said stripes shall be the third thread, and the third of which said stripes shall be the fifth thread of the warp from each selvage; and that each piece of the same stuffs, when printed, stained, painted, or dyed in England, Wales, or Berwick-upon-Tweed, be

15. *Linen Cloths, &c.*

No such calico to be used in any bed, chair, &c. on pain of 20*l.*

Not to extend to calicoes dyed all blue.  
The like penalties for wearing or using in apparel or household stuff any stuff made of or mixed with cotton printed, &c. except muslins, &c.

No higher duty than 3*d.* for every yard in length, yard wide, to be levied on the new stuffs.

All persons may wear and use the same.

Marks, to know that such stuffs are manufactured in Britain, to be wove in the warp.

(a) But see 51 Geo. III., c. 33, by which this regulation is repealed.

15. *Linen  
Cloths, &c.*

Cotton velvets, or  
fustians, excepted.

Commissioners to  
provide proper  
seals or stamps  
before July 5, 1774:

which may be  
renewed.

Persons counter-  
feiting stamps to  
suffer death.

Persons selling  
counterfeited  
stuffs to suffer  
death.

Persons importing  
such stuffs to for-  
feit such, and 10*l*.  
for every piece.

stamped at each end with a stamp, to be provided for that purpose by the commissioners of Excise in England for the time being, or by the officers employed or to be employed under them, and instead of the word *calico*, which stands for foreign calicoes, each piece be marked with the words *British Manufactory*; and that each piece of the same stuffs, when printed, stained, painted, or dyed in Scotland, be stamped at each end with a stamp, to be provided for that purpose by the commissioners of Excise in Scotland for the time being, or by the officers employed or to be employed under them, and instead of the word *calico*, which stands for foreign calicoes, each piece be marked with the words *British Manufactory*."

Sect. 5. "That nothing in this act contained shall extend to cotton velvets, velverets, or other fustians, manufactured in Great Britain."

Sect. 8. "That the respective commissioners to be appointed for managing the said duty upon the said new-manufactured cotton stuffs, when printed, stained, painted, or dyed in Great Britain as aforesaid, shall, on or before the 5th day of July, 1774, provide proper seals or stamps for marking such of the said new-manufactured cotton stuffs to be printed, stained, painted, or dyed in Great Britain as aforesaid as are to be stamped and marked for and in order to the charging of the said duty for the same; and shall cause the said seals or stamps to be distributed to the respective officers, for the several purposes before mentioned; which officers are hereby enjoined and required, in using the same, to do as little hurt or damage as may be to the stuffs to be so marked or stamped: and the said respective commissioners, in providing the said respective seals or stamps, shall take care that they be so contrived that the impression thereof may be durable, and so as the same may be least liable to be forged or counterfeited; and that the said seals or stamps, or any of them, shall or may be allowed or renewed from time to time, as His Majesty, his heirs or successors, shall think fit: and if any person or persons whomsoever shall, at any time or times hereafter, counterfeit or forge any stamp or seal, to resemble any stamp or seal which shall be provided or made in pursuance of this act, or shall counterfeit or resemble the impression of the same upon any of the stuffs chargeable by this act, thereby to defraud His Majesty, his heirs or successors, of the said duty thereupon to be chargeable or payable in respect thereof, then every such person so offending, and being thereof convicted in due form of law, shall be adjudged a felon, and shall suffer death as in cases of felony, without benefit of clergy."

Sect. 10. "That if any person or persons shall, at any time or times hereafter, sell any printed, painted, stained, or dyed stuffs, wholly made of cotton, with a counterfeit stamp thereon, knowing the same to be counterfeited, and with an intent to defraud His Majesty, his heirs or successors, all and every such offender and offenders, their aiders, abettors, and assistants, being thereof convicted in due form of law, shall be adjudged a felon, and shall suffer death as in cases of felony, without benefit of clergy." (a)

Sect. 9. "That if any person or persons, body or bodies corporate, shall import or bring into Great Britain, or into any port, harbour, haven, or creek thereof, any calicoes, muslins, or any other goods or stuffs whatsoever made of linen yarn only, or of linen yarn and cotton wool mixed, or made wholly of cotton wool, wherein shall be wove in the warp in either or both selvages only, through the whole or any part of the length of each piece, one or more blue stripe or stripes of one or more thread or threads, such person or persons, body or bodies corporate, shall not only forfeit and lose all and every such calicoes, muslins, goods, or stuffs which shall be so imported or brought into Great Britain, or into any port, harbour, haven, or creek thereof, but shall also forfeit the sum of

(a) *Vide* stat. 52 Geo. III., c. 143, s. 1.

## II. PARTICULAR LAWS, &c. (15.) *Linen Cloths, Silks, &c.*

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10*l.* for each piece thereof, to be recovered and applied in manner herein-after mentioned."

Sect. 11. "That at any time or times hereafter, upon oath made by any credible person or persons, that he, she, or they have reason to suspect or believe that any printed, painted, stained, or dyed stuffs, wholly made of cotton, for which a duty ought to have been paid or charged as aforesaid, are or shall be in the custody or possession of any draper, or other person or persons trading or dealing therein, or of any person or persons for the use or account of such draper or other trader or dealer for sale, without having thereupon such marks or stamps as are by this act required to denote the payment, or charging, of the said duties thereupon, it shall and may be lawful to and for the commissioners who shall be appointed for the duties upon silk, calicoes, linens, or stuffs printed, stained, painted, or dyed in Great Britain, or the major part of them, within the limits of the weekly bills of mortality, or any two justices of the peace in any other parts of the kingdom of Great Britain, from time to time, to issue their respective warrants or orders, thereby authorizing and requiring any officer or officers for the same duties (with the assistance of a constable, or other officer of the peace), in the day-time, to search for the same, and to open doors, trunks, chests, and package, and to seize such goods, and to bring them to the office for the said duties next to the place where they shall be so seized, in order to a further proceeding thereupon, according to this act; and that every such warrant and order shall and may be obeyed and executed accordingly."

Sect. 12. "That one moiety of the penalties and forfeitures which shall be incurred as aforesaid shall be to the use of His Majesty, his heirs and successors, and the other moiety to the use of such person or persons who shall inform or sue for the same, by action of debt, bill, plaint, or information, in any of His Majesty's Courts of Record at Westminster, or in the Court of Exchequer in Scotland, wherein no essoin, protection, or wager in law, or more than one imparlance, shall be allowed; such information or informations to be entered, filed, and prosecuted in the name of His Majesty's attorney-general, or in the name or names of some officer or officers of His Majesty's revenue of the Customs or Excise, according to the true intent and meaning of an act, passed in the twelfth year of the reign of his late Majesty King George the first, intituled, *An act for the improvement of His Majesty's revenues of Customs, Excise, and inland duties.*"

Sect. 14. "That if any question shall arise, whether any of the said new-manufactured stuffs, wholly made of cotton, have been manufactured in Great Britain, the proof of their having been manufactured in Great Britain shall lie upon the owner or owners of such stuffs, and not upon the prosecutor; any law, usage, or custom to the contrary notwithstanding."

By 61 Geo. III., c. 33, the provisions in 14 Geo. III., c. 72, for weaving the three blue stripes, and the penalties relating to the same, and the provisions of 25 Geo. III., c. 72, relating to the same subject, are respectively repealed.

By 10 Anne, c. 19, s. 71. "That all and every person and persons whatsoever, who on or before the 20th day of July, in the year of our Lord 1712, shall print, stain, paint, or dye any of the said goods, so that a duty shall be payable by this act upon the printing, staining, painting, or dyeing the same as aforesaid, shall, on or before the said 20th day of July, 1712, give or leave notice in writing at the next office for the same duties of their respective names and places of abode, and of the place or places where every such person or persons do usually print, paint, stain, or dye as aforesaid any such silks, linens, calicoes, or stuffs, or dry the same; and that all and every such printer, painter, stainer, or dyer, as often as he, she, or they shall change their places of printing, painting, staining, or dyeing any the said goods, or for drying the same, and all

### 15. *Linen Cloths, &c.*

Upon information of unstamped stuffs being in custody of any draper,

commissioners, or two justices, may cause the same to be seized.

One moiety of the penalties to the king, and the other to the informer.

Proof of the stuffs being manufactured in Britain to lie on the owner

Callico-printers before 20th July, 1712, to give notice to the proper officer of their names and places of abode, &c.



15. *Linen  
Cloths, &c.*

on forfeiture  
of 30*l*.

Penalty on  
printing linens,  
&c. without  
leaving notice  
thereof at the  
next office of  
Excise.

Persons printing  
silks, &c. at  
any other place  
than the place  
of their usual  
residence to  
make a parti-  
cular entry of  
the silks, &c.  
before printing,

and pay down  
duties,

on penalty  
of 50*l*.

Officers may enter  
such printers'  
houses at all times,  
to take account of  
silks, &c.

and make a report  
to the commis-  
sioners, leaving a  
copy with the  
printer, on pain of  
40*l*.

and every person and persons who shall, at any time or times during the continuance of this act, be a printer, painter, stainer, or dyer of any such silks, calicoes, linens, or stuffs, or shall print, paint, stain, or dye any such goods as aforesaid, shall give or leave the like notice of their respective names, and their places of abode, and the rooms and places where they shall respectively work or intend to work in such printing, painting, staining, or dyeing, and the places where they respectively shall dry or intend to dry any such goods as aforesaid, before they respectively do presume to work in any such new or other place or places, upon pain to forfeit the sum of 30*l*. for every neglect or default, by not giving such notice as aforesaid."

And by 25 Geo. III., c. 72, s. 7. "Provided always, that if any person or persons shall, after the 1st day of August, 1785, print, stain, paint, or dye any such linens or stuffs made of cotton mixed with other materials, stuffs wholly made of cotton wool, wove in Great Britain, British muslins or fustians, velvets or velverets, dimities, or other figured stuffs, made of cotton and other materials mixed, or wholly made of cotton wool, wove in Great Britain, foreign calicoes, and foreign muslins, without giving or leaving at the next office of Excise for the said duties such notice in writing as by the said act, in the tenth year of the reign of Queen Anne, is required, he, she, or they shall, for every neglect by not giving such notice, forfeit the sum of 50*l*."

And by 1 Geo. I., stat. 2, c. 36, s. 21. "That from and after the 1st day of June, 1716, where any person or persons shall take upon him, her, or them to print, paint, stain, or dye any silks, calicoes, linens, or stuffs at any other place than the place of his, her, or their usual residence, or exercise of his, her, or their trade, all such persons shall, before he, she, or they print, paint, stain, or dye any such silks, calicoes, linens, or stuffs, make a particular entry of all such silks, calicoes, linens, or stuffs so by him, her, or them intended to be printed, painted, stained, or dyed, with the officer for the said duties of the division or place where he, she, or they shall so intend to print, paint, stain, or dye the same, and pay down to the said officer all the duties charged or which would be due for such goods so intended to be printed, painted, stained, or dyed, upon printing, painting, staining, or dyeing the same, before he, she, or they proceed to print, paint, stain, or dye such goods, or any part thereof; and if such person or persons shall print, paint, stain, or dye any such silks, calicoes, linens, or stuffs, without making such entry, and paying down the duties thereof as aforesaid, the person or persons offending therein shall for every such offence forfeit the sum of 50*l*., to be recovered and levied as aforesaid; and moreover all such silks, calicoes, linens, and stuffs so printed, painted, stained, or dyed, without such entry and payment of duty as aforesaid, shall be and may be seized immediately by such officer; one moiety of such penalties and forfeitures to be paid to His Majesty, his heirs and successors, and the other moiety to the person or persons that shall sue or inform for the same."

By 10 Ann. c. 19, s. 75. "That all and every the officers of the said duties on the said printed, painted, stained, or dyed goods shall at all times, by day or by night, and if in the night, then in the presence of a constable, or other lawful officer of the peace, be permitted, upon his or their request, to enter into the house, workhouse, drying-place, warehouse, field, or other place belonging to or used by any person or persons who, within or during the term of years last mentioned, shall print, paint, stain, or dye any silks, calicoes, linens, or stuffs (except before excepted), and to take a just account of the kinds and quantities thereof which shall have been printed, painted, stained, or dyed by such person or persons, from time to time, and shall thereof make a report or return in writing to the respective commissioners for the duties last mentioned, or such as they respectively shall appoint to receive the same, leaving a true copy (if demanded) of such report in writing, under his hand, with or for the said printer,

## II. PARTICULAR LAWS, &c. (15.) *Linen Cloths, Silks, &c.*

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painter, stainer, or dyer respectively; and such report or return shall be a charge upon every such printer, painter, stainer, or dyer respectively: and if the said officer shall refuse or neglect to give or leave a true copy of his report at the time of taking such account, being demanded as aforesaid, every such officer, for every such offence, shall forfeit the sum of 40s. to every such printer, painter, stainer, or dyer respectively."

Sect. 78. "That if any person or persons, who shall print, paint, stain, or dye any the goods aforesaid, shall obstruct or hinder any the said officers in the execution of the powers given by this act for ascertaining and securing the duties thereupon, the offenders therein, for every such offence, shall forfeit the sum of 20l."

By 25 Geo. III., c. 72, s. 8. "That if any person or persons, who shall print, stain, paint, or dye any such commodities aforesaid, shall obstruct or hinder any officer for the said duties in the execution of the powers given by this act for ascertaining and securing the said duties, the offender therein, for every such offence, shall forfeit the sum of 200l."

By 10 Ann. c. 19, s. 72. "That from and after the said 20th day of July, 1712, during the continuance of this act, all and every person and persons who shall print, paint, stain, or dye in Great Britain, as aforesaid, any silks, calicoes, linens, and stuffs, upon the printing, painting, staining, or dyeing whereof a duty is chargeable by this act, shall once in every six weeks make a true entry in writing at the next office for the same duties of all such silks, calicoes, linens, and stuffs so by him, her, or them severally printed, painted, stained, or dyed within every such six weeks respectively; which entries shall contain the just kinds and quantities thereof: and if such printer, painter, stainer, or dyer be not the true owner of such goods or any of them, so printed, painted, stained, or dyed, then, and in every such case, he, she, or they, in every such entry, shall specify the names and places of abode of the persons who are the owners thereof, or for whose account they respectively do print, paint, stain, or dye the same, on pain to forfeit, for every neglect of such entry, the sum of 50l.; which entry shall be made upon the oath of the printer, painter, stainer, or dyer, or of his, her, or their chief workman employed, to the best of their knowledge or belief, unless he, she, or they be a known quaker, and the solemn affirmation of a known quaker to the same effect shall be taken instead of such oath; and the said oaths and affirmations to verify such entries shall and may be administered by the proper collector or supervisor of the district or division within which such printer, painter, stainer, or dyer doth inhabit, without any fee or charge whatsoever to be demanded or taken for the same."

Sect. 73. "That no person, for the making such entries, oaths, or affirmations as are last mentioned, shall be obliged to go or send further than the market-town where his or her silks, calicoes, linen, or stuffs are printed, painted, stained, or dyed, or the next market town to the place of printing, painting, staining, or dyeing the same."

Sect. 77. "That all and every the officers of the said duties on such printed, painted, stained, or dyed goods, as aforesaid, shall also be permitted to take an account of the quantities of silks, calicoes, linens, and stuffs which shall, at any time or times, be in the custody or possession of any printer, painter, stainer, or dyer, to be printed, painted, stained, or dyed; and in case such officer or officers shall miss any quantity or quantities of such silk, calicoes, linen, or stuffs, whereof he had taken an account at his last survey, and shall not, upon reasonable demand, receive satisfaction what is become of the same, then, and in every such case, it shall and may be lawful for such officer to charge such printer, painter, stainer, or dyer with the duties of such silks, calicoes, linens, or stuffs so missing, as if the same were printed, painted, stained, or dyed."

By 25 Geo. III., c. 72, s. 9. "That if any printer, stainer, painter, or dyer of any such commodities aforesaid, chargeable by this act, shall begin to print, stain, paint, or dye the same before the same shall have

### 15. *Linen Cloths, &c.*

Obstructing officer to forfeit 20l.

Penalty on persons obstructing officers in the execution of their duty.

Such printers to make entries, &c. once in 6 weeks, on forfeiture of 50l.

Entries, &c. to be made at the next market town.

Officers to take an account of the quantities of silks, &c. in the printer's hands.

Penalty on printing, &c. before the commodity has been measured and marked by Excise officer.

15. *Linen  
Cloths, &c.*

Penalty on de-  
facing the frame-  
mark.

Such silks con-  
cealed forfeit 20*l*.

Penalty on con-  
cealing commodi-  
ties with intent to  
evade the duties.

Penalty on keeping  
commodities in any  
place whereof no  
notice shall have  
been given to the  
officer.

Printers of silk,  
&c. once in six  
weeks to clear off  
the duties, on for-  
feiture of double  
duty, &c.

been measured and marked at both ends thereof by the officer of Excise, with a frame-mark, denoting the measure thereof, then, and in every such case, the said commodities so printed, stained, painted, or dyed before being so measured and marked by the officer shall be forfeited, and the printer, stainer, painter, or dyer in whose possession the same shall be found shall forfeit 20*l*. for every piece."

Sect. 11. "That in case any printer, stainer, painter, or dyer of such commodities aforesaid shall wilfully cut out, obliterate, or deface, or wilfully suffer to be cut out, obliterated, or defaced, the frame-mark put by the officer on any piece of such commodities aforesaid to denote the measure thereof, every such printer, stainer, painter, or dyer shall forfeit the sum of 50*l*. for every piece on which the said frame-mark shall be so wilfully cut out, obliterated, or defaced."

By 10 Ann. c. 19, s. 82. "That if any of the said printers, painters, stainers, or dyers shall fraudulently hide or conceal, or cause to be hid or concealed, any silk, calico, linen, or stuffs, before or after the same are printed, painted, stained, or dyed, with intent to deceive Her Majesty of her just duties by this act granted, then, and in every such case, the party so offending shall forfeit the sum of 20*l*. for every such offence; and all the silks, calicoes, linens, and stuffs which shall be found in any private workhouse or other place, whereof no notice shall have been given as aforesaid, or the value thereof, shall and may be seized and recovered—to wit, one moiety thereof to the use of Her Majesty, and the other moiety to the use of the seisor or informer as aforesaid."

By 25 Geo. III., c. 72, s. 13. "That if any printer, stainer, painter, or dyer shall fraudulently hide or conceal, or cause to be hid or concealed, any such commodities aforesaid, before or after the same are printed, stained, painted, or dyed, with intent to deceive His Majesty of his just duties by this act granted, then, and in every such case, the party so offending shall forfeit the sum of 50*l*. for every such offence; and all such commodities aforesaid, which shall be found in any private workhouse or other place, whereof no notice shall have been given to the officer of Excise, as by the said act, made in the 10th year of the reign of Queen Anne, is required, shall be forfeited, and may be seized by any officer of Excise."

Sect. 14. "That no printer, stainer, painter, or dyer shall keep any such commodities aforesaid, marked with a stamp or seal, or stamps or seals, denoting the charging the duties thereon, or unmarked, in any warehouse, room, or place whereof no notice shall have been given to the officer of Excise, as by the said act, made in the 10th year of the reign of Queen Anne, is required; and if any such commodities aforesaid, stamped or unstamped, shall be found in the possession of any printer, stainer, painter, or dyer, in any warehouse, room, or place whereof no notice shall have been given to the officer of Excise as aforesaid, then, and in every such case, the party so offending shall forfeit the sum of 50*l*. for every such offence; and all the commodities aforesaid so found shall be forfeited, and may be seized by any officer of Excise."

By 10 Ann., c. 19, s. 74. "That all and every person and persons who shall print, paint, stain, or dye as aforesaid any silks, calicoes, linens, or such stuffs as aforesaid in Great Britain shall, from time to time, within six weeks after he, she, or they shall make or ought to have made such entry as aforesaid, clear off all the said duties which shall be then due or remain unpaid for all such silks, calicoes, linens, and stuffs as shall have been printed, painted, stained, or dyed by him, her, or them respectively as aforesaid, upon pain of forfeiting, for every default therein, double the sum of the same duties whereof the payment shall be so neglected; and that no such person, after such default in payment made, shall deliver or carry out, or cause to be delivered or carried out, any such printed, painted, stained, or dyed goods, until he hath paid and cleared off his duty, on pain to forfeit double the value of the goods so delivered or carried out."

By 59 Geo. III., c. 90, s. 11. "That from and after the 31st day of July, 1819, all and every person and persons who shall print, paint, stain, or dye any silks, muslin, calicoes, linen, or stuffs, in Great Britain, shall, by or at the end of every six weeks, clear off and pay all the duties which shall during such six weeks have been charged upon such person or persons respectively, or shall then remain unpaid, for all such silks, muslin, calicoes, linens, and stuffs respectively as shall have been printed, painted, stained, or dyed by him, her, or them respectively, upon pain of forfeiting, for every default therein, double the sum of the said duties whereof the payment shall be so neglected; and that no such person, after making default of such payment, shall deliver or carry out, or cause to be delivered or carried out, any such printed, painted, stained, or dyed goods, until he has paid and cleared off the whole of such duties, upon pain of forfeiting double the value of the goods so delivered or carried out."

By 10 Ann., c. 19, s. 79. "That no person or persons who shall print, paint, stain, or dye any silks, calicoes, linens, or stuffs chargeable with the said duties by this act shall remove, carry, or send away, or suffer to be removed, carried, or sent away, any the silks, calicoes, linens, or stuffs by him, her, or them printed, painted, stained, or dyed respectively, until such time as the proper officer shall have taken an account of every particular quantity of such goods so to be carried away, and until every particular piece and parcel or remnant of such goods be duly marked with a stamp or seal, denoting the charging of the duty as this act directs, upon pain of forfeiting the sum of 20*l.* for every such offence; and that all the printed, painted, stained, or dyed silks, calicoes, linen, and stuffs, so carried away, without being marked with a stamp or seal, denoting the charging of the said duties, and being found in the possession of any draper, or other trader or dealer therein, or any person for the use of such draper, trader, or dealer for sale, shall and may be seized, or the value thereof shall and may be recovered—to wit, one moiety thereof for the use of Her Majesty, and the other moiety to the use of the seizer or informer."

And by 25 Geo. III., c. 72, s. 10. "That no person or persons who shall print, stain, paint, or dye any of the commodities aforesaid, chargeable with the said duties by this act, shall remove, carry, or send away, or suffer to be removed, carried, or sent away, any of the commodities aforesaid, chargeable by this act, by him, her, or them printed, stained, painted, or dyed, until such time as the proper officer shall have taken an account of any particular quantity of such commodities aforesaid so to be carried away, and until every particular piece or parcel or remnant of the same respectively be duly marked at both ends thereof with a stamp or seal, or stamps or seals, denoting the charging the duty as this act directs, on pain of forfeiting the sum of 50*l.* for every such offence; and that all such commodities aforesaid, so carried away, without being marked with a stamp or seal, or stamps or seals, denoting the charging the said duties, and being found in the possession of any draper, or other trader or dealer therein, or of any person for the use of such draper, trader, or dealer, for sale, shall be forfeited, and may be seized by any officer of Excise."

By 11 & 12 Wm. III., c. 10, s. 2. "That from and after the 29th day of September, 1701, all such wrought silks, bengalls, and stuffs mixed with silk or herba, of the manufacture of Persia, China, or East India as aforesaid, and all calicoes, painted, dyed, printed, or stained there, which are or shall be imported into this kingdom of England, dominion of Wales, or town of Berwick-upon-Tweed, shall, after entry thereof, be forthwith carried and put into such warehouse or warehouses as shall be for that purpose approved of by the commissioners of His Majesty's Customs for the time being, so as none of them shall be taken or carried out thence upon any account whatsoever, other than in order for exportation, and not until sufficient security be first given to the King's Majesty, his heirs and successors (which the said commissioners are hereby required and empowered to take), that the same and every part thereof

15. *Linen Cloths, &c.*

Persons printing, &c., silks, &c., to clear the duties every six weeks.

Penalty.

Delivering without clearing duties.

Penalty.

Printers not to remove the silk, &c. till officer has taken account thereof, or before marking, on forfeiture of 20*l.*, &c.

Penalty on removing commodities before they are stamped by proper officer.

Such commodities forfeited if found in the possession of any draper, &c.

Such goods imported after 29th Sept. 1701,

after entry thereof, shall be put into warehouses,

15. *Linen  
Cloths, &c.*

and shall be exported again, and not landed in England, &c.  
These securities when to be void,  
8 Anne, c. 13, s. 24.

## Penalty.

14 Car. 2, c. 11.

Goods forfeited to be sold, &c.

Goods not surveyed to be kept separate.

Search for goods unstamped.

After 1st May, 1719, printed silks, calicoes, &c. unmarked, forfeited.

shall be exported, and not landed again in any part of this kingdom of England, dominion of Wales, and town of Berwick-upon-Tweed; which said securities shall be discharged without any fee or reward, upon certificate returned under the common seal of the chief magistrate in any place or places beyond the seas, or under the hands and seals of two known English merchants upon the place, that such goods were there landed, or upon proof by credible persons that such goods were taken by enemies, or perished in the seas, the examination and proof thereof being left to the judgment of the said commissioners; and all such of the aforesaid goods, whether the same shall be mixed, sewed, or made up together for sale with any other goods or materials, or otherwise, which shall be found (a) in any house, shop, or warehouse, or other place whatsoever (other than in such warehouses as shall be approved of by the said commissioners as aforesaid), shall be forfeited, and subject and liable to be searched for and seized, in like manner as prohibited and uncustomed goods are, by an act intituled *An act for preventing frauds, and regulating abuses, in His Majesty's Customs*, made in the 14th year of the reign of our late Sovereign Lord King Charles the Second; and all such goods so forfeited, as aforesaid, shall, upon seizure thereof, be carried to the next custom-house, and after condemnation shall be sold to the best advantage for exportation, at public sale by candle, the buyer and buyers giving security for the exportation thereof in manner as aforesaid; and one-third part of the moneys to be raised by such sale shall be paid to the King's Majesty, his heirs and successors, and the other two-third parts thereof to him, her, or them that shall seize or prosecute for the same; and over and above the loss of the said goods, the person or persons in whose custody, knowing thereof, the same shall be found or seized, (a) or that shall sell or dispose thereof to any person or persons whatsoever, shall forfeit and lose the sum of 200*l.*, one-third part thereof to the King's Majesty, his heirs and successors, and the other two-third parts thereof to such person or persons that shall sue for the same, to be recovered by action of debt, bill, plaint, suit, or information in any of His Majesty's Courts of Record at Westminster, wherein no essoin, protection, or wager of law shall be allowed, or any more than one imparlance."

By 10 Ann., c. 19, s. 81, and 25 Geo. III., c. 72, s. 12—24. Every printer, &c. is to keep the silks, calicoes, linens, and stuffs which have not been taken account of by the officer separate from those which have, on pain of forfeiting, by the former act 5*l.*, by the latter 50*l.*

And by 10 Ann., c. 19, s. 98, and 25 Geo. III., c. 72, s. 18. On oath of reasonable suspicion that any of the said goods are in possession of any draper or other person dealing therein, or of any other to his use, for sale unstamped, the commissioners within the bills, or any two justices elsewhere, may issue their warrants, requiring some officer of the said duties (with a constable) in the daytime to search for the same, and to open doors, chests, trunks, and packages, and to seize such goods, and bring them to the next office; and such commodities so found shall be forfeited.

By 5 Geo. I., c. 11, s. 15. "That from and after the first day of May, 1719, during the continuance of the said duties, in case any silks, calicoes, linens, or stuffs printed, painted, stained, or dyed in Great Britain shall be found in any place whatsoever, on land or water, without being marked or sealed with a stamp or seal, denoting that the duties have been duly paid or charged (except on board such ships or vessels on which such goods have

(a) *The Attorney-General v Delano*, 6 Price, 383.—On an information for penalties under this act, for having prohibited silk goods found in defendant's possession, the only evidence being that the articles were seen by the witnesses (not officers) in his possession, the Court

of Exchequer held that it was sufficient evidence of FINDING upon him to fix him with the penalty under this statute. It seems that the word "*finding*," being used in the act distinct from "*seizing*," means "*discovered*," in the possession of the party charged.

been shipped for exportation), the same shall be forfeited, and shall and may be seized by any officer of the Customs or Excise; and the person or persons in whose custody or possession the goods so seized shall be found shall for every such offence forfeit the sum of 50*l.*; one moiety of which forfeitures and penalties shall be to His Majesty, his heirs and successors, and the other moiety to him or them that shall seize, inform, or sue for the same in His Majesty's Courts of Record at Westminster, or in the Court of Exchequer in Scotland, wherein no protection or wager of law shall be allowed: provided always, that the goods so recovered shall not be delivered out of the custom-house warehouse until the same shall be marked or sealed with a proper mark or stamp, to be provided by the commissioners of the Customs for that purpose; and they are hereby directed and authorized to provide the same, and to cause the said goods to be stamped therewith accordingly; any law to the contrary notwithstanding."

By 27 Geo. III., c. 31, s. 16. "That if any printed, stained, painted, or dyed calico, muslin, linen, stuff, fustian, velvet, velveret, dimity, or other figured stuff, which ought by this or any other act or acts of parliament now in force to be marked or sealed with a stamp or seal to denote any of the duties by the said act, made in this session of parliament, repealed, or thereby imposed for or in respect thereof, to have been duly paid or charged, shall be found in any place whatsoever, except on board ship for exportation, without being marked or sealed with a stamp or seal denoting that such duties have been duly paid or discharged, the same shall be forfeited, and shall and may be seized by any officer or officers of Excise, and the person or persons in whose custody or possession the same shall be found shall, for every such offence, forfeit the sum of 100*l.*"

By 25 Geo. III., c. 72, s. 20. "That the owner or printer of any piece, or remnant of a piece, of any cassae or foreign muslins, and foreign calicoes, shall, before the same are presented to the officer appointed to take an account thereof, mark the same at both ends with a frame or mark, containing in words at length his name and place of abode, and also the name of the goods which they are commonly called or known by, on pain to forfeit the said goods, and the sum of 10*l.* for every piece or remnant of such goods that shall be printed, stained, painted, or dyed (except those that are dyed throughout of one colour only) without being so marked."

Sect. 21. "That the owner or printer of any piece or remnant of linens, or stuffs made of cotton mixed with other materials, or stuffs wholly made of cotton wool, wove in Great Britain, commonly called British manufactory, or muslins plain, chequered, striped, figured, or ornamented, that shall be wove in Great Britain, except fustians, velvets, velverets, dimities, and other figured stuffs made of cotton and other materials mixed, or wholly made of cotton wool, wove in Great Britain, which are by this act made subject to a duty of 1½*d.* per yard square, shall mark the same at both ends of every piece or remnant with a frame or mark, containing in words at length his or her name and place of abode, the name and quality of the goods, and the linen and stuffs made of cotton and other materials mixed, and stuffs wholly made of cotton wool, wove in Great Britain, commonly called British manufactory, with the ready money price or value thereof—(that is to say), if linens, whether the price is more than 16*d.* or more than 2*s.* 6*d.* by the yard in length, or if stuffs made of cotton and other materials mixed, or stuffs wholly made of cotton wool, wove in Great Britain, commonly called British manufactory, or British muslins, whether the ready money price or value thereof be more than 20*d.* and not more than 3*s.* by the yard square, or whether the ready money price or value thereof be more than 3*s.* by the yard square—before the same shall be presented to the officer appointed to take an account thereof, to be printed, stained, painted, or dyed; and in case the owner is not the printer, stainer, painter, or dyer, then he shall deliver a note in writing with the said linens or stuffs to the printer, stainer, painter, or dyer, expressing the number of pieces, their quality and value as afore-

15. *Linen Cloths, &c.*

Penalty on possessor.

If unstamped calicoes, &c. be found in any place, except shipped for exportation, they are forfeited, and also 100*l.*

Every piece of stuff to be marked before printed, &c.

Penalty on neglect.

Name and place of abode of the owner, and name and quality of the goods, to be marked on stuffs liable to the duty of 1½*d.* per yard,

and the ready money price to be marked on goods called British manufactory, before presented to the Excise officer.

Owner to deliver to the printer, &c. with the stuffs, &c. an account of the number, quality, and value of

15. *Linen Cloths, &c.*

the pieces delivered, which is to be given to the Excise officer before printing, &c.

Penalty on neglect of the above-mentioned regulations.

Penalty on marking stuffs at a price less than the real value.

Frame-marks unavoidably defaced may be renewed upon notice being given to the Excise officer.

Counterfeiting the frame-mark.

Counterfeiting the stamps.

Exportation.

said, and the time when delivered to the printer, stainer, painter, or dyer; which note the said printer, stainer, painter, or dyer shall deliver to the officer who is to take an account of the said linens and stuffs, before the same shall be printed, stained, painted, or dyed (except those that are to be dyed throughout of one colour only), on pain that every piece or remnant of such linens or stuffs, not so marked as aforesaid, shall be forfeited, and may be seized by any officer of Excise, and the owner, or other person putting out or sending such piece not so marked, shall forfeit and lose the sum of 20*l.*; and that every printer, stainer, painter, or dyer, being the owner, who shall print, stain, paint, or dye any of the said linens or stuffs (except such as shall be dyed throughout of one colour only), shall, before he begins to print, stain, paint, or dye the same, mark each piece, or remnant of a piece, at both ends thereof, with a frame or mark, containing in words at length his or her name and place of abode, and also the name of the goods which they are commonly called or known by, with the ready money price or value thereof—(that is to say), if linens, whether the price is more than 16*d.* or more than 2*s.* 6*d.* by the yard in length, or if stuffs made of cotton and other materials mixed, or stuffs wholly made of cotton wool, wove in Great Britain, commonly called British manufactory, or British muslins, whether the ready money price or value thereof be more than 20*d.* and not more than 3*s.* by the yard square, or whether the ready money price or value thereof be more than 3*s.* by the yard square—before he begins to print, stain, paint, or dye the same (except those that are dyed throughout of one colour only), on pain to forfeit the sum of 20*l.* for every neglect; and also the said linens and stuffs not so marked as aforesaid shall be forfeited, and may be seized by any officer of Excise: and in case such owner, or other person so putting out or sending any such linens or stuffs to be printed, stained, painted, or dyed, as aforesaid, or any such printer, stainer, painter, or dyer, shall mark any piece or remnant of such linens or stuffs at a price less than the real value, or ready money price, as hereinbefore directed, every such piece or remnant shall be forfeited, and may be seized by any officer of Excise, and the owner thereof shall forfeit the sum of 20*l.* for every such offence."

Sect. 22. "That when the said frame-marks shall become obliterated or defaced, the printer, stainer, painter, or dyer, who shall print, stain, paint, or dye the said commodities, shall give notice thereof to the officer of Excise under whose survey he is, and require the said officer to renew the said frame-mark, who shall renew the same accordingly."

By a. 23, and 27 Geo. III., c. 31, s. 22. If any person shall counterfeit or forge any frame-mark, to denote the measure, he forfeits 100*l.*

Sect. 17. If any person shall counterfeit the stamp, he shall be guilty of felony without benefit of clergy.

By 10 Ann. c. 19, s. 97; 13 Geo. III., c. 56; and 25 Geo. III., c. 72, s. 17. If any person shall knowingly sell any of the said goods with a counterfeit stamp, he shall forfeit 100*l.* and be set in the pillory. (Abolished as to pillory by 56 Geo. III., c. 138.)

Moreover, by 27 Geo. III., c. 31, s. 14. If any person shall knowingly sell any of the said goods with such counterfeit stamp, with intent to defraud His Majesty, he shall be guilty of felony without benefit of clergy.

By 25 Geo. III., c. 72, s. 27, 28, 29, 30; and 25 Geo. III., c. 74, s. 17, 19, 20, 21. Every person who hath paid the duties, or bought goods which have paid the duties, may export the same, and shall be allowed drawback, as set forth in 43 Geo. III. c. 69, sched. (C), on conforming to the following conditions, viz.:—The person intending to export such goods shall give twelve hours' notice in writing, if within the limits of the chief office (elsewhere twenty-four hours'), of his intention to pack up the same, and of the time and place, to the officer appointed for that purpose, who shall measure the said goods, and see that the stamps and frame-marks be taken off; and every piece shall be packed up in the presence of such officer, and shall be sealed and marked as the commissioners shall

direct ; and if any person shall open such package, or deface such seal or mark (except the officer at the port of exportation), he shall forfeit 20*l*. And the officer who saw the same packed up shall take an account of the kinds and qualities thereof, and make a return to the officer who shall be appointed to receive the said goods at the port of exportation. And such person shall also give six hours' notice in writing to such officer of the time and place of shipping the same ; and shall give bond that such goods shall not be unshipped or relanded, or put into any other vessel (unavoidable accident excepted). And if any person shall unship or reland, or put into any other ship (except as aforesaid), any such goods, the same shall be forfeited over and above the penalty of such bond.

By 25 Geo. III., c. 74, s. 18. If such person shall not begin to pack such goods within one hour after the time mentioned in such notice, the same shall be void, and he shall be obliged to give a fresh notice.

Sects. 22, 23. But nothing herein shall extend to authorize the exportation of any goods, other than such as might have been exported before, nor to alter the manner thereof, except as aforesaid.

The 4 Geo. III., c. 37, s. 17, 18 (which establishes the corporation of the English Linen Company for making cambricks and lawns), provides that the commissioners of Excise, where there shall be a manufactory of cambricks or lawns, or of goods known under that denomination, shall appoint the supervisor or other officer to seal the same ; for which they shall have such fee as the commissioners shall appoint.

15. *Linen  
Cloths, &c.*

Regulations con-  
cerning cambricks  
and lawns made in  
England.

Sect. 19. The manufacturer to give notice in writing to the officer of the finishing of every piece before it is taken out of the loom, who shall seal the same at both ends ; on pain that such manufacturer, taking the same out of the loom without having given such notice, and having the same sealed as aforesaid, shall forfeit 5*l*. ; and every such piece shall be forfeited, and may be seized by any officer of the Customs or Excise.

Sect. 20. And the officer with convenient speed, after notice, shall mark and also number each piece before it is taken out of the loom ; and make entry, in writing, in books to be provided at the expense of the manufacturer, of the number set to each piece, the length thereof, and the number of threads in the warp ; on pain of 10*l*.

Sect. 21. If the officer shall mark any not made in England or Wales, or after the same has been taken out of the looms, he shall forfeit 50*l*. for each piece to him who shall sue, and lose his office, and be incapacitated to hold any other office of trust under the crown.

Sect. 22. If any person shall offer to the officer any bribe to fix the mark to any pieces not so made, he shall forfeit 50*l*. ; and if he shall, by bribery or otherwise, prevail upon the officer to commit such offence, he shall forfeit 100*l*. and stand in the pillory two hours. (The punishment of pillory is repealed by 56 Geo. III., c. 138.)

Sect. 23. And the officer shall yearly, in the month of June, transmit to the commissioners an account of all goods he shall have stamped, and a copy of the entries made, on pain of dismission ; and he, or his executors, shall deliver up the seals on demand from the commissioners, on pain of 200*l*.

Sect. 24. Cambricks and lawns made in England found unstamped shall be forfeited, and may be seized by any officer of the Customs or Excise ; and after condemnation shall be sold. And every person who shall sell or expose to sale, or have in his custody for that purpose, any cambricks or lawns made in England, unmarked, shall forfeit 200*l*.

Sect. 25. But the said goods so seized, condemned, and sold shall not be worn in this kingdom, but exported, and not be sold but upon condition of exportation ; and shall not be delivered out of the warehouse until bond be given, to the satisfaction of the collector, in double penalty of the goods, that the same shall be exported and not relanded.

Sect. 26. To counterfeit the seal appointed by this act, or import any foreign cambricks or lawns having such counterfeit mark thereon, or expose



15. *Linen  
Cloths, &c.*

the same to sale knowing the stamp thereon to be counterfeited, is felony without benefit of clergy.

Sect. 28. All goods condemned, and all pecuniary forfeitures (not herein otherwise directed), shall be sued for and recovered in any of His Majesty's Courts of Record at Westminster, in the name of the attorney-general, or of such officer as aforesaid; and be applied (after all charges deducted) half to the use of the king, and half to the officer or other person who, pursuant to the directions of this act, shall seize, inform, or sue.

Sect. 31. And if any question shall arise, where the goods were manufactured, the proof shall lie on the owner or claimer, and not on the officer.

The justices' power.

By 10 Ann. c. 19, s. 92; 24 Geo. II., c. 40, s. 29; and 25 Geo. III., c. 72, s. 33, 34, the penalties (except as is above mentioned in relation to calicoes) may be sued for, levied, and mitigated as by the laws of Excise, or in the Courts of Westminster; and shall be employed half to the king, and half to him that shall discover, inform, or sue. And see 7 & 8 Geo. IV., c. 56, *ante*, 226 to 310.

Utensils liable.

And by 10 Ann. c. 19, s. 83; 25 Geo. III., c. 72, s. 15; and 28 Geo. III., c. 37, s. 21, all the utensils and instruments for printing, painting, staining, or dyeing such goods, in custody of any the said persons, or any other to his use, shall be liable to all arrears of the duty, and to all penalties concerning the same, in like manner as if such person were the lawful owner. (a)

16. *Malt.*

(16.) *Malt.* (b) (See title "*Ale, Beer, and Brewsters*," *ante*, 311.)

[12 Ann. st. 1, c. 2; 6 Geo. I., c. 21; 12 Geo. I., c. 4; 3 Geo. II., c. 7; 33 Geo. II., c. 7; 1 Geo. III., c. 3; 48 Geo. III., c. 74; 59 Geo. III., c. 53; c. 88; 1 & 2 Geo. IV., c. 82; 3 Geo. IV., c. 18; 4 Geo. IV., c. 51; 6 Geo. IV., c. 58; c. 81; 7 & 8 Geo. IV., c. 52; c. 53; 9 Geo. IV., c. 45; 11 Geo. IV., c. 17.] (c)

No malt to be imported.

By 12 Ann. st. 1, c. 2, s. 26. No malt shall be imported, on pain of forfeiting the same, and the value thereof.

(a) Calicoes in the white, frame-marked, the property and manufacture of third persons, in the hands of the printer, are not liable to a seizure under an extent for bygone duties due from the printer, by virtue of the stat. 28 Geo. III., c. 37, s. 21, the printer not being the maker or manufacturer within the meaning of that act. *Quære*, whether printed calicoes, the property of third persons, in the hands of the printer, are liable to seizure under an extent for duties in respect of those goods, due from the printer, by virtue of stat. 28 Geo. III., c. 37, s. 21. *Rex v. Tregoning and others*, 2 Young and Jer. 132. See note, *ante*, 270.

(b) See the decisions in 1 Chitty Com. Law, 829 to 853.

(c) The former statutes respecting the malt duty, as arranged by the practical writers upon this branch of the Excise law, regulated,

1. The amount of the duty, see 60 Geo. III., c. 3, and the annual malt act.

2. The entry of utensils and places, 12 Ann., sess. 1, c. 2, c. 36; 48 Geo. III., c. 74, s. 18; 49 Geo. III., c. 81, s. 8. Huie, 275. 7 & 8 Geo. IV., c. 53, s. 19, *ante*, 264.

3. The taking out licences, 24 Geo. III., sess. 2, c. 41, s. 1, 6, 7. Huie, 276. 6 Geo. IV., c. 61, *ante*, 247.

4. The construction of cisterns, 52 Geo. III., c. 128, s. 1; 53 Geo. III., c. 9, s. 3. Huie, 276.

5. The notice before wetting, 3 Geo. III., c. 13, s. 1. Huie, 276.

6. The hours of beginning to wet, 42 Geo. III., c. 38, s. 28; 53 Geo. III., c. 9, s. 2. Huie, 277.

7. The time the grain must be covered with water, and adding fresh grain after account taken, 42 Geo. III., c. 38, s. 32; 52 Geo. III., c. 128, s. 6; 53 Geo. III., c. 9, s. 182. Huie, 277.

8. The taking grain from the cistern, 52 Geo. III., c. 128, s. 4 & 5. Huie, 278.

By 6 Geo. IV., c. 58, s. 1, the allowances and drawbacks of Excise payable upon malt were repealed.

16. *Malt.*

Duties.  
Excise.

9. *The number and lay of floors*, 52 Geo. III., c. 128, s. 2 & 3. Huie, 278.

10. *The power of officers to enter and take account*, 12 Ann., sess. 1, c. 2, s. 4 and 34; 42 Geo. III., c. 38, s. 34. Huie, 278, 279; 7 & 8 Geo. IV., c. 53.

11. *The accounts which are to be by gauge only, and allowances*, 8 and 9 Will. III., c. 22; 12 Ann., sess. 1, c. 2, s. 17 and 7; 50 Geo. III., c. 34, s. 4; 12 Ann., sess. 1, c. 2, s. 20 & 28; 42 Geo. III., c. 28, s. 29; 33 Geo. II., c. 7, s. 59; 42 Geo. III., c. 38, s. 32.

12. *The officer's return*, 12 Ann., sess. 1, c. 2, s. 4 & 31.

13. *The pressing in cistern or couch*, 48 Geo. III., c. 74, s. 19; 41 Geo. III., c. 91, s. 1; 48 Geo. III., c. 74, s. 19.

14. *The wetting grain after taking from cistern, &c.*, 42 Geo. III., c. 38, s. 30 & 31; 48 Geo. III., c. 74, s. 13 & 14.

15. *The concealing, &c. of malt*, 48 Geo. III., c. 74, s. 17; 42 Geo. III., c. 93, s. 17; 48 Geo. III., c. 74, s. 20; 52 Geo. III., c. 128, s. 7; 1 Geo. I., sess. 2, c. 2, s. 13.

16. *The penalty on maltster's servants wetting or removing grain contrary to law*, by stat. 42 Geo. III., c. 38, s. 33.

17. *The account which the makers of malt must keep of the barley*, according to 48 Geo. III., c. 74.

18. *The permits for malt in the Highlands of Scotland*, 46 Geo. III., c. 102, s. 36.

19. *The entry of malt, and payment of the duty*, 12 Ann., sess. 1, c. 2, s. 4, 5, 6, 1 Geo. I., sess. 2, c. 2, s. 8; 48 Geo. III., c. 74, s. 16, 23.

And, 20, *the relief for malt destroyed or damaged*, 9 Geo. I., c. 3, s. 35, 36, 37; and see, as to malt in general, Huie, 273 to 296.

The present principal regulating act is 11 Geo. IV., c. 17, which altered and amended the 7 & 8 Geo. IV., c. 52.

*Proof of malt* not having required so long a space of time in working, and passing through the floors from the cistern to the kiln, as it had been entered as having taken for that purpose, will, in some cases, be considered *prima facie* evidence of fraud; and duties are recoverable for the amount of so much grain malted as would be commensurate with such excess of time, as if so much of the duty were in arrear.

The average number of days necessary for working the grain intended for malt between the steeping and drying is computed by the Excise at *sixteen*. Excise

books transcribed from the maltster's specimen paper are admissible evidence against him, without calling the officers to substantiate them; and that although they should be charged to be fraudulent and collusive, without proof of their being so. If the jury find a verdict for a sum certain, according to a calculation which does not warrant the amount, it is a ground for a new trial. *Rex v. Grimwood*, 1 Price, 369.

After a laborious investigation and comparison of all the malt acts, it was held that the restrictive proviso in the 12th Anne, c. 2, limiting the right of the crown to proceed for arrears of duties on malt to a period of five years previous to the commencement of suit, was not then in effect, not having been re-enacted by any of the subsequent malt acts referring to that statute. And as a general rule, it was decided, that clauses limiting the right of the crown are to be considered as repealed by subsequent statutes, unless expressly re-enacted. *Attorney-General v. Newman*, 1 Price, 438.

The surety in a bond to the crown by a maltster, for securing the payment of duties on malt made by him, is not such a debtor to the crown as is entitled to prosecute an extent in aid, because by the special condition of such bonds the duties are not payable till *four months* after the maltster shall have made *entry*, according to the 48 Geo. III., c. 74, s. 23. It is not necessary that the bond on which the inquisition proceeds should be actually produced. The process of extent issues of common right, if well founded. *Rex* (in aid of Ricketts) *v. Sly*, 2 Price, 157.

In an action against Excise officers for the detention and negligent custody of certain malt, &c. taken under a distress upon a conviction under the malt act, 43 Geo. III., c. 74, it appeared that the plaintiff having been convicted in a penalty, a warrant issued directing the defendants to levy the same, and that they seized and removed the plaintiff's goods from his premises, and that afterwards he paid the penalty. The defendants, ten days after this payment, brought the goods back to the plaintiff's premises, but in a damaged state. It was held, that in order to make the detention unlawful, the plaintiff ought to have demanded the goods, and that there having been no demand, the detention was not unlawful. *Hutchings v. Morris* and others, 6 Bar. & Cress. 464.

## 16. Malt.

## New duties.

6 Geo. IV., c. 81.  
Licences.

Sect. 2 imposes new duties, allowances, and drawbacks.

These duties were recoverable, according to the general regulations of the new Excise law, 7 & 8 Geo. IV., c. 53 (*ante*, p. 229 to 310), and also by the new malt act, 7 & 8 Geo. IV., c. 52 (*post*).

By 6 Geo. IV., c. 81, s. 1, (a) the former duties on Excise licences are repealed; and by s. 2 new duties are enacted; viz. (*ante*, 247)

For every *Excise licence* taken out by every maltster or maker of malt for sale, if the quantity of malt made by such maltster or maker of malt within the year ending the 5th of July in each year shall not exceed 50 quarters, 7s. 6d.

	£.	s.	d.
If exceeding 50 and not exceeding 100 quarters	. 0	15	0
If exceeding 100 and not exceeding 150	. 1	2	6
If exceeding 150 and not exceeding 200	. 1	10	0
If exceeding 200 and not exceeding 250	. 1	17	6
If exceeding 250 and not exceeding 300	. 2	5	0
If exceeding 300 and not exceeding 350	. 2	12	6
If exceeding 350 and not exceeding 400	. 3	0	0
If exceeding 400 and not exceeding 450	. 3	7	6
If exceeding 450 and not exceeding 500	. 3	15	0
If exceeding 500 and not exceeding 550	. 4	2	6
If exceeding 550	. 4	10	0

And every person who shall *first* become a maltster or maker of malt for sale, on taking out such licence, shall pay 7s. 6d.; and within ten days after 5th July next, after taking out such licence, such further additional sum as with the 7s. 6d. shall amount to the duty before mentioned, according to the quantity of malt made in the preceding year, or period for which such licence was granted.

The enactments in this act respecting the licences, penalties, &c. are inserted at length *ante*, 247 to 262.

7 & 8 Geo. IV.,  
c. 52.  
From 10th Oct.  
1827, every malt-  
ster shall make  
entry of all places  
and utensils used  
for making malt,  
under a penalty of  
100*l.* and forfeiture  
of all malt found  
therein.

By 7 & 8 Geo. IV., c. 52, intituled *An act to consolidate and amend certain laws relating to the revenue of Excise on malt made in the united kingdom; and for amending the laws relating to brewers in Ireland, and to the allowance in respect to the malt duty on spirits made in Scotland and Ireland from malt only*; "that from and after the 10th day of October, 1827, every maltster or maker of malt shall make true and particular entry in writing of his or her name and place of abode, and of every building, place, cistern, couch frame, kiln, and other vessel and utensil, by such maltster or maker of malt intended to be used in or for the making or keeping of malt, or for the keeping of corn or grain to be made into malt, describing in such entry the particular use or purpose for which such building, place, cistern, couch frame, kiln, and other vessel and utensil respectively, is intended to be used, at the next office of Excise; and if any maltster or maker of malt shall use any building, place, cistern, couch frame, kiln, or other vessel or utensil, in or for the making or keeping of malt, or for the keeping of corn or grain to be made into malt, without having made a true and particular entry in writing thereof at the next office of Excise; or if any maltster or maker of malt shall, without due notice first given at such next office of Excise, use any building, place, cistern, couch frame, kiln, or other vessel or utensil for any other or different purpose in or for the making or keeping of malt, or for the keeping of corn or grain to be made into malt, than the particular use or purpose for which the same shall have been entered; every maltster or maker of malt so offending shall forfeit and lose the sum of 100*l.* for every building, place, cistern, couch frame, kiln, and other vessel or utensil so used, and all the malt and corn or grain which shall be found in any

(a) See 11 Geo. IV., c. 17.

such building, place, cistern, couch frame, kiln, or other vessel or utensil shall be forfeited, and shall and may be seized by any officer of Excise. Provided always, that any entry made of any building, place, cistern, couch frame, kiln, or other vessel or utensil, for any more than one such particular use or purpose as aforesaid, shall be void to all intents and purposes."

Sect. 2. "That every cistern which shall be used by any maltster or maker of malt for the wetting or steeping of corn or grain to be made into malt, who shall wet or steep more than eight bushels of corn or grain to be made into malt at any one time, shall be permanently made and constructed with the sides and ends thereof straight and at right angles to each other, and of no greater depth in any part thereof than forty inches, and having an even bottom, with no more inclination for the drip than half an inch for every foot in length of such drip; and that every such cistern shall be placed in a situation where the officer gauging any corn therein shall have sufficient light, and shall have a clear open space of forty-eight inches at the least above every part of such cistern; and that every such maltster or maker of malt shall provide for the use of the officers of Excise full and sufficient means to enable such officers easily, safely, and conveniently to have access to and to gauge the corn or grain contained in such cistern, in every part thereof. Provided always, that every vessel, thing, or place used by any maltster or maker of malt to wet or steep corn or grain to be made into malt shall for the purposes of this act be deemed and taken to be a cistern."

Sect. 3. "That no cistern shall be used for the wetting or steeping of corn or grain to be made into malt, by any maltster or maker of malt who shall wet or steep more than eight bushels of corn or grain to be made into malt at any one time, which shall not be made or constructed, and placed in such a situation, and have such full and sufficient means provided as by this act before directed and required; and every such maltster or maker of malt, before any corn or grain shall by him or her be wet or steeped in any cistern to be made into malt, shall first obtain a certificate in writing from the supervisor of Excise of the district in which such cistern shall be situated, that he has surveyed and examined such cistern, and that the same is made or constructed, and placed in such a situation, and has such full and sufficient means provided as by this act before directed and required; and if any such maltster or maker of malt shall wet or steep any corn or grain to be made into malt in any cistern, without having first obtained and having such certificate as aforesaid, or in any cistern in which, or in the dimensions or situation whereof, or in the means provided as aforesaid, any change has been made after such certificate has been obtained, without notice thereof to such supervisor as aforesaid, and a new certificate obtained for the same in like manner as aforesaid, every such maltster or maker of malt so offending (and notwithstanding any entry by him or her made of such cistern) shall be deemed to have wet and steeped such corn or grain to be made into malt without notice, and shall be liable to be sued for and to pay for every such offence as aforesaid the penalty by this act imposed for wetting or steeping corn or grain to be made into malt without notice."

Sect. 4. "That if any such maltster or maker of malt, having obtained such certificate from the supervisor as by this act before directed, shall not maintain and at all times place and keep the means by him or her provided, as by this act before directed and required, and for which such certificate shall have been obtained, or shall not aid and assist to the utmost of his or her power, and with his or her servants, any officer of Excise in using such means, so that such officer may be thereby enabled easily, securely, and conveniently to gauge the whole of the corn or grain contained in any cistern by him or her used for the wetting or steeping of such corn or grain to be made into malt, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*."

16. *Malt.*

7 & 8 Geo. IV.,  
c. 52.

Construction of cisterns used by maltsters for steeping above eight bushels at one time.

Maltsters to obtain certificate from supervisors that cisterns are duly constructed.

Steeping corn without such certificate shall be deemed a wetting or steeping without notice.

Maltsters not keeping the requisite means for the use of the officers, or not assisting them to gauge the cisterns, to forfeit 100*l*.

16. *Malt.*

Couch frames to be constructed as specified, under penalty of 100*l.* and forfeiture of malt found therein.

1 & 2 Geo. IV. c. 52.

No penalty for using cisterns and couch frames in use before the passing of this act, if the same shall remain unaltered.

Officers may enter buildings used by maltsters, gauge vessels, &c. and take account of grain and malt, and make a return, which shall be a charge of duty, leaving a copy thereof if required.

Sect. 5. "That every couch frame which shall be used by any such maltster or maker of malt shall be made or constructed with the sides and bottoms thereof straight and at right angles to each other, and having three of such sides permanently made or constructed, and the other side thereof formed by moveable boards or planks of the substance of two inches at the least in thickness, such couch frame to be supported on the outside in every part thereof, so that the same and every part thereof may be of sufficient strength not to bend or curve, or fail to preserve, when filled with corn or grain, the same dimensions which such couch frame shall have had when empty, and so that the officer of Excise may be enabled easily and conveniently to gauge in every part of such couch frame the corn or grain contained therein; and if any such maltster or maker of malt shall use any couch frame in or for the making of malt, which shall not be made or constructed as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*, and all corn or grain which shall be found in any couch frame so made or constructed as aforesaid shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 6. "Provided always, that no such maltster or maker of malt who shall use any cistern for the wetting or steeping of corn or grain to be made into malt, or any couch frame in or for the making of malt, which shall have been so used and constructed at and immediately before the passing of this act, shall, so long as the same shall remain unaltered, and of the same form and dimensions as the same respectively were at and immediately before the passing of this act, be subject or liable to any penalty or forfeiture by this act imposed, for or by reason of such cistern or couch frame not being made or constructed in the form and dimensions by this act in that behalf directed and required, or for or by reason of such maltster laying any corn or grain in any such cistern of any greater depth in any part thereof than forty inches, or for or by reason of such maltster laying any corn or grain in any such couch frame of any greater depth in any part thereof than thirty inches, if such couch frame, as the same shall have been used and constructed at and immediately before the passing of this act, shall not be of sufficient size to contain the corn or grain emptied from the cistern, without the same being laid therein a greater depth than thirty inches, and such couch frame cannot, without enlarging such malt-house, or other cause shown to the satisfaction of the commissioners of Excise in England, or the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland, be made of such sufficient size as aforesaid, (such cause and satisfaction being stated in the certificate of the supervisor hereinbefore mentioned); subject nevertheless, in all other respects, to the several rules, regulations, and provisions by this act imposed."

Sect. 7. "That it shall be lawful for any officer of Excise, and any person or persons in his aid or assistance, at any time, either by night or day, to enter into and remain so long as such officer may think fit, for the purposes hereinafter mentioned, in any building or place belonging to or used by any maltster or maker of malt for the making or keeping of malt, or for the keeping of corn or grain to be made or making into malt, and to gauge all vessels and utensils therein used by any such maltster or maker of malt for the wetting or steeping of corn or grain to be made into malt, and to examine, gauge, or measure and take account of all corn or grain in any such building or place, whether such corn or grain shall be in a state of operation for the making of malt or otherwise, and also of all malt that shall be in any such building or place; and it shall be lawful for such officer, and he is hereby authorized and required, to charge the duty imposed by any act or acts relating to the revenue of Excise on malt, upon all malt made, or corn or grain making into malt, by such maltster or maker of malt, found therein, and of such account and charge of duty to make a return or report in writing to the commissioners of Excise, or to the commissioner or commissioners and assistant commissioners of Excise

in Scotland or Ireland, or to such person as the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, may direct; such officer, in all cases where the minutes of the entries made by him in taking such account shall not appear on the book or paper called the specimen left at the entered premises of such maltster or maker of malt, giving (if demand be made thereof in writing at the time of taking such account) a true copy of such charge, in writing under his hand, to such maltster or maker of malt; and any such return or report of such officer as aforesaid shall be and shall be taken to be a charge of such duty upon the maltster or maker of malt."

Sect. 8. "That the supervisor or surveyor of Excise in whose district or division any maltster or maker of malt shall be, or the officer of Excise under whose survey such maltster or maker of malt shall be, may leave and deposit in some conspicuous and open part of some building or place entered by such maltster or maker of malt a certain book or paper called a specimen, for recording therein minutes of the entries made by the officers respectively who survey the premises of such maltster or maker of malt, in the books of such officers, of the state of the manufactory, and of the accounts and particulars of the survey thereof at any time taken by such officers respectively, and the names and minutes of survey and observations of any other officer who may visit or inspect such entered premises; and every officer of Excise shall at all times have free access to such book or paper, with liberty and power to remove or take away the same, leaving a new book or paper, for the like purpose as aforesaid, in lieu thereof; and if any maltster or maker of malt, or other person, not being an officer of Excise, shall remove or take away or shall conceal or withhold any such book or paper, or shall damage or destroy the same, or alter, deface, or obliterate any entry therein, or shall make any entry therein, every such maltster or maker of malt, or other person, so offending, shall for every such offence forfeit and lose the sum of 200*l.*"

Sect. 9. "That if any maltster or maker of malt, or other person, shall resist, oppose, molest, obstruct, or hinder any officer of Excise, or any person employed in the revenue of Excise, or acting in the aid and assistance of any officer or person so employed, in the due execution of his office or duty, or in the execution of any of the powers or authorities by this act given or granted to such officer or person so employed, every maltster or maker of malt, or other person, so offending, shall for every such offence forfeit and lose the sum of 300*l.*"

Sect. 10. "That there shall be delivered by the proper officer of Excise to every maltster or maker of malt a book, prepared for such purposes as hereinafter mentioned, called a barley book, to be kept by such maltster or maker of malt in some public and open part of his or her entered premises, for the inspection of the officers of Excise; and every maltster or maker of malt shall, on the same day on which any barley shall be taken or received into the custody or possession of such maltster or maker of malt, or into the custody or possession of any person or persons in trust for or to the use of such maltster or maker of malt, enter in a book so delivered as aforesaid, and in the proper columns prepared for such purposes respectively, a true and particular account of the number of bushels of barley which shall be so taken or received into such custody or possession respectively as aforesaid, together with the christian and surname and place of abode of the person or persons from whom such barley shall have been so taken or received, and the day of its being so taken or received; and every maltster or maker of malt shall, within three hours after any corn or grain shall have been covered with water, for the purpose of wetting or steeping the same to be made into malt, enter in such book as aforesaid, and in the proper columns prepared for such purposes respectively, a true and particular account of the quantity of barley in bushels so wetted or steeped, and shall enter against and immediately opposite to every such

16. *Malt.*

7 & 8 Geo. IV. c. 52.

Specimen to be kept by the officers on the premises of maltsters, and not to be removed or destroyed, or the entries therein obliterated.

Penalty on obstructing officers of Excise, or persons acting in their aid.

A barley book to be delivered to and kept by every maltster, for the purpose of entering therein all barley received, wetted, and sent out by him, under penalty of 100*l.*

## 16. Malt.

7 & 8 Geo. IV.,  
c. 52.

Proviso as to barley  
in the straw.

Stocks of barley or  
malt in separate  
places may be  
kept as distinct  
stocks.

Within ten days  
after 5th July,  
yearly, maltsters  
to deliver to of-  
ficers an account  
of all barley not in  
operation, and  
show the same,  
if required so to  
do, under penalty  
of 100*l*.

Whenever the  
barley in operation  
in any malthouse  
shall be all dried  
off, a like account  
to be given, and  
also 24 hours be-  
fore beginning to  
wet again, under  
penalty of 50*l*.

entry the particular day and hour of the day on and at which such barley was so wetted or steeped; and every maltster or maker of malt, who shall sell, remove, or otherwise dispose of any barley, shall, on the same day on which any such barley shall be sold, removed, or otherwise disposed of, enter in such book as aforesaid, and in the proper columns prepared for such purposes respectively, a true and particular account of the quantity of barley in bushels so sold, removed, or otherwise disposed of, and the name and place of residence of the person or persons to whom any such barley shall have been so sold, removed, or otherwise disposed of; and if any maltster or maker of malt shall neglect or refuse to make any such entry as aforesaid, or shall not keep such book as aforesaid, or shall convey away or conceal the same, or shall destroy or tear out any leaf thereof, or cancel, obliterate, destroy, or alter any entry therein, or make any false entry therein, or shall refuse to permit any officer of Excise to inspect such book, or to make any minute therein, as to such officer shall seem meet, or to remove or take away such book, leaving a new book, for the like purpose as aforesaid, in lieu thereof, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*. Provided always, that nothing hereinbefore contained shall be deemed or construed to extend to barley in the straw and unthreshed, in the custody or possession of any maltster or maker of malt, or in the custody or possession of any person or persons in trust for or to the use of such maltster or maker of malt, so as such barley, when threshed, be thereupon entered in the barley book as barley then taken and received into the custody or possession of such maltster or maker of malt, and subject to the provisions of this act."

Sect. 11. "That if any maltster or maker of malt shall lodge, store, or deposit any barley or malt in different buildings or places which shall not be under the same roof, or have any internal communication between them, the supervisor of Excise under whose survey such barley or malt shall be shall, if he shall deem it expedient so to do, take the same as separate and distinct stocks, and such stocks shall and may in such case be surveyed and kept account of by the officers of Excise accordingly, in the same manner as if the same had belonged to different persons."

Sect. 12. "That every maltster or maker of malt, within ten days after the 5th day of July in every year, shall deliver to the officer of Excise under whose survey such maltster or maker of malt shall then be, a true and particular account in writing of all barley which shall not at such time be in actual operation or process of making into malt, in the custody or possession of such maltster or maker of malt, or in the custody or possession of any person or persons in trust for or to the use of such maltster or maker of malt, describing in every such account the particular building or place in which such barley shall be lodged, stored, or deposited, and the number of bushels of such barley contained in each such building or place; and every such maltster or maker of malt shall, if required by any officer of Excise, show to such officer every such building or place, and all such barley which shall be therein respectively contained; and if any maltster or maker of malt shall neglect or refuse to deliver such account as aforesaid, or shall deliver any false or untrue account in such behalf as aforesaid, or shall neglect or refuse to show to any such officer as aforesaid any such building or place, or any such barley as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 13. "That every maltster or maker of malt, when and so soon as he or she shall have finished or dried off all the malt which shall be or shall have been in operation or process of making into malt in any particular malthouse of and belonging to such maltster or maker of malt, and also within twenty-four hours at the least before such maltster or maker of malt shall again begin to wet or steep corn or grain to be made into malt in such malthouse, deliver to the officer of Excise under whose survey such

maltster or maker of malt shall then be a true and particular account in writing of all the barley which shall then be in the custody or possession of such maltster or maker of malt, or in the custody or possession of any person or persons in trust for or to the use of such maltster or maker of malt, describing in every such account the particular building or place in which such barley shall be lodged, stored, or deposited, and the number of bushels of such barley contained in each such building or place; and every such maltster or maker of malt shall, if required by any officer of Excise, show to such officer every such building or place, and the barley therein respectively contained; and if any such maltster or maker of malt shall neglect or refuse to deliver such account as aforesaid, or shall deliver any false or untrue account in such behalf as aforesaid, or shall neglect or refuse to show to any such officer as aforesaid any such building or place, or any such barley as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 50*l*."

Sect. 14. "That every maltster or maker of malt shall, when and so often as he or she shall be thereunto required by any officer of Excise, level and cast or place the barley in the custody or possession of such maltster or maker of malt, or in the custody or possession of any person or persons in trust for or to the use of such maltster or maker of malt, which shall not then be in actual operation or process of making into malt, into such regular form as may enable the officer of Excise conveniently to gauge and ascertain the true quantity thereof; and if any maltster or maker of malt, being thereunto required as aforesaid, shall neglect or refuse so to do, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 15. "That it shall be lawful for any officer of Excise to gauge and take an account of all barley in the stock, custody, or possession of any maltster or maker of malt, or in the custody or possession of any person or persons in trust for or to the use of such maltster or maker of malt; and every such maltster or maker of malt shall, before the taking of such account, be permitted to enter in the barley book all barley which shall have been taken or received into the custody or possession of such maltster or maker of malt, or into or in the custody or possession of any person or persons in trust for or to the use of such maltster or maker of malt, and all barley which shall have been sold, removed, or otherwise disposed of on the same day, and before the taking of such account, and all barley which shall have been wetted or steeped to be made into malt within three hours next before the taking of such account."

Sect. 16. "That if, upon gauging and taking such account as aforesaid, the quantity of barley (not in actual operation for the making of malt) shall be found to exceed the quantity which the maltster or maker of malt ought to have had in his or her stock, custody, or possession, and in the custody or possession of any person or persons in trust for or to the use of such maltster or maker of malt, according to the barley book, in the proportion of one bushel in every twenty bushels of barley, then and in every such case every such maltster or maker of malt shall be deemed and adjudged to have taken or received barley into his or her custody or possession, and to have neglected and refused to make such entry thereof as is by this act in that behalf directed and required."

Sect. 17. "That if, upon gauging and taking such account as aforesaid, the quantity of barley (not in actual operation for the making of malt) shall be found short of or less than the quantity which the maltster or maker of malt ought to have had in his or her stock, custody, or possession, and in the custody or possession of any person or persons in trust for or to the use of such maltster or maker of malt, according to the barley book, in the proportion of one bushel in every twenty bushels of barley, then and in every such case every such maltster or maker of malt shall be deemed and adjudged to have wetted and steeped barley to be made into

16. *Malt.*

7 & 8 Geo. IV.  
c. 52.

Maltsters, when required, to place their barley not in operation in such form that the officer may conveniently gauge the same, under penalty of 100*l*.

Officers of Excise may gauge and take an account of all barley in the stock of any maltster, who shall be permitted to enter up his barley book to the time of taking such account.

If an excess be found above one in twenty, the maltster to be deemed to have received barley without entering it.

If deficiency exceed one in twenty, the maltster to be deemed to have wetted barley without entering it, and to be charged with duty in respect thereof, over and above the penalty.



## 16. Malt.

7 & 8 Geo. IV.,  
c. 52.

In case of dispute as to the quantity of barley in stock, it may be measured in the presence of the officer.

On informations for the recovery of any duty or penalty on account of deficiency or excess in stock, proof may be adduced that barley was stolen, or that accident or error was the cause.

24 hours' notice to be given of wetting corn at a malthouse situated in a city or market town, and 48 hours elsewhere, under penalty of 100*l*.

Notice to be void, if not duly proceeded on.

malt, and to have neglected and refused to make such entry thereof as is by this act in that behalf directed and required; and every such maltster or maker of malt shall in every such case, over and above the penalty by this act imposed for such neglect and refusal as aforesaid, be charged with and be liable to pay the duty chargeable on malt for every bushel of barley so found deficient as aforesaid; and such duty shall and may be sued for, levied, and recovered by such and the like ways, means, and methods, and under such and the like penalties, as the duty on malt is or may be sued for, levied, and recovered by any law or laws in force relating to the duties of Excise."

Sect. 18. "That if, upon gauging or taking such account as aforesaid, any dispute shall arise between the maltster or maker of malt and the officer of Excise, respecting the true quantity of barley (not in actual operation for the maker of malt) as aforesaid, such maltster or maker of malt shall be allowed immediately, and with all due diligence and despatch, to measure the same in the presence of such officer, by a just and correct bushel measure, as prescribed by law, to be provided by such maltster or maker of malt, and the quantity ascertained by such admeasurement shall be taken to be the true quantity of such barley; any thing in this act to the contrary thereof notwithstanding."

Sect. 19. "That upon the trial or hearing of any information for the recovery of any duty or penalty for or on account of any deficiency or excess in the quantity of barley in the stock or stocks of any maltster or maker of malt, according to this act, it shall be lawful for the defendant or defendants, upon such prosecution, to prove that such deficiency was actually and *bonâ fide* occasioned by barley having been stolen or privately conveyed away without the knowledge, privity, or consent of such defendant or defendants, or that such deficiency or excess respectively was occasioned by accidental or unintentional error or mistake in entering and keeping the barley book, without any design or intention of fraud or evasion of the provisions of this act; and in case the court and jury, or the commissioners of Excise, or justices of the peace, before whom any such information shall be tried or heard, shall be satisfied of the truth of such evidence, and that the same does account for such deficiency or excess, it shall be lawful for such court and jury, or commissioners of Excise, or justices of the peace, to acquit the defendant or defendants of such duty or penalty; any thing in this act to the contrary thereof notwithstanding."

Sect. 20. "That every maltster or maker of malt, before beginning to wet or steep any corn or grain to be made into malt, shall give to the officer of Excise under whose survey such maltster or maker of malt shall then be twenty-four hours' notice at least, in writing, if the malthouse of such maltster or maker of malt shall be situated in any city, or in the suburbs of any city, or in any market town, and forty-eight hours' notice at least, in writing, if such malthouse shall not be so situated, of the day and particular hour of the day when such maltster or maker of malt intends to wet or steep corn or grain to be made into malt, and of the quantity of corn or grain in bushels to be then wet or steeped; and if any maltster or maker of malt shall begin to wet or steep any corn or grain to be made into malt, without giving such notice as aforesaid, or shall wet or steep any greater or less quantity of corn or grain (exceeding the proportion of one in twenty) than the quantity of corn or grain expressed in such notice, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*.; and in case any maltster or maker of malt shall not, pursuant to any such notice as aforesaid, begin to wet or steep the corn or grain mentioned in such notice, and cover the whole thereof with water, at the day and hour mentioned in such notice, or within three hours next after the expiration of such hour, every such notice shall be and is hereby declared to be null and void; and every such maltster or maker of malt, before he shall begin to wet or steep such corn

or grain, shall give fresh notice thereof, according to the provisions of this act, under pain of such penalty as last aforesaid. Provided always, that no maltster or maker of malt shall be subject to the said last-mentioned penalty for or by reason of his or her wetting or steeping any less quantity of corn or grain than the quantity of corn or grain expressed in such notice as aforesaid, if such maltster or maker of malt shall be prevented from wetting or steeping the quantity of corn or grain expressed in such notice by want of barley, and shall give notice thereof to the proper officer of Excise, by entering, with such wetting or steeping, in the barley book, the cause and extent of such prevention as aforesaid. Provided also, that no maltster or maker of malt shall be subject to the said last-mentioned penalty for or by reason of his or her wetting or steeping any greater or less quantity of corn or grain, exceeding the proportion aforesaid, than the quantity of corn or grain expressed in such notice as aforesaid, if such maltster or maker of malt shall show, to the satisfaction of the commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, that the same occurred by accident or oversight, and without intentional disregard of any of the provisions of this act in that behalf contained."

Sect. 21. "That it shall not be lawful for any maltster or maker of malt to begin to wet or steep any corn or grain to be made into malt at any other time than between the hours of eight of the clock in the morning and two of the clock in the afternoon; and if any maltster or maker of malt shall begin to wet or steep any corn or grain to be made into malt at any other time than as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 22. "That it shall be lawful for any maltster or maker of malt, who shall give such further notice of his or her intention to continue the corn or grain by him or her to be wet or steeped covered with water for the space of sixty-five hours, as hereafter mentioned, to begin to wet or steep such corn or grain to be made into malt at any time between the hours of eight of the clock in the evening and eleven of the clock at night; and if any maltster or maker of malt, who shall have given such further notice as aforesaid, shall begin to wet or steep any such corn or grain as aforesaid, to be made into malt, at any other time than as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 23. "That every maltster or maker of malt shall continue the corn or grain by him or her wet or steeped in the cistern to be made into malt covered with water for a space of time not exceeding fifty-five and not less than forty hours from the time of such corn or grain being first wet or steeped; and if any maltster or maker of malt shall continue such corn or grain, or any part thereof, covered with water for any space of time exceeding fifty-five hours, or shall drain or draw off the water from any such corn or grain before the expiration of forty hours from the time of such corn or grain being first wet or steeped, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 24. "That where any maltster or maker of malt shall intend to continue the corn or grain to be wet or steeped covered with water for the space of sixty-five hours, every such maltster or maker of malt shall, in the notice in writing by him or her required to be given to the officer of Excise under whose survey such maltster or maker of malt shall then be, of the day and particular hour of the day when such maltster or maker of malt shall intend to wet or steep corn or grain to be made into malt, and of the quantity of corn or grain in bushels to be then wet or steeped, give further notice that it is his or her intention to continue the same covered with water for the space of sixty-five hours from the time of such corn or grain being first wet or steeped; and every such maltster or maker of malt shall in such case continue such corn or grain covered with water for and until

16. *Malt.*

7 & 8 Geo. IV.,  
c. 52.  
Exceptions.

Hours of wetting  
of corn.

Penalty, 100*l*.

Maltsters giving  
notice to steep corn  
65 hours must  
begin to wet be-  
tween 8 in the  
evening and 11 at  
night, under pe-  
nalty of 100*l*.

Corn in the cistern  
to be kept covered  
with water not ex-  
ceeding 55 nor less  
than 40 hours,  
under penalty of  
100*l*.

Maltsters, having  
given notice of  
their intention to  
steep 65 hours,  
must continue  
their corn in steep  
for such time, and  
no longer, under a  
penalty of 100*l*.

16. *Malt.*

7 & 8 Geo. IV.,  
c. 52.

Between 1st March  
and 1st November  
water may be once  
drained during the  
steeping, upon due  
notice being given,  
provided the corn  
be again covered  
within an hour.

No corn to be  
added to that in  
steep after the ac-  
count has been  
taken, under pe-  
nalty of 200*l.*

Corn to be emp-  
tied only between  
7 in the morning  
and 4 in the after-  
noon, under pe-  
nalty of 100*l.*

Maltsters, having  
given notice to  
steep for 68 hours,  
may empty such  
corn only between  
1 in the forenoon  
and 4 in the after-  
noon, under pe-  
nalty of 100*l.*

All cisterns in the  
same house to be  
emptied at the  
same time, or  
within three hours  
from the time of  
beginning to empty  
any one of them,  
on penalty of 200*l.*

the expiration of sixty-five hours as aforesaid; and if any maltster or maker of malt, who shall have given such further notice as aforesaid, shall not continue such corn or grain covered with water for and until the expiration of sixty-five hours as aforesaid, or shall continue the same covered with water for any time after the expiration of sixty-five hours as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*"

Sect. 25. "That it shall be lawful for any maltster or maker of malt, between the first day of March and the first day of November in every year, to drain or draw off the water once from any corn or grain by him or her wet or steeped in the cistern to be made into malt, before the expiration of the time for which corn or grain is by this act required to be kept covered with water, without incurring any penalty for so doing, provided such maltster or maker of malt shall, in the notice by him or her given of his or her intention to wet or steep such corn or grain to be made into malt by this act before required, express his or her intention to drain or draw off the water from such corn or grain as aforesaid, and the particular day and hour of the day, between the hours of eight of the clock in the morning and two of the clock in the afternoon, when such maltster or maker of malt shall intend so to do. Provided always, that such corn or grain be again completely covered with water before the expiration of one hour from the time of the water being begun to be drained or drawn off as aforesaid; any thing hereinbefore contained to the contrary thereof notwithstanding."

Sect. 26. "That if any maltster or maker of malt shall add any corn or grain to the corn or grain wet or steeped in any cistern to be made into malt after the officer of Excise shall have taken an account thereof, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l.*"

Sect. 27. "That it shall not be lawful for any maltster or maker of malt to empty or take any corn or grain from or out of the cistern at any other time than between the hours of seven of the clock in the morning and four of the clock in the afternoon; and if any maltster or maker of malt shall empty or take any corn or grain from or out of the cistern at any other time than aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*"

Sect. 28. "That it shall not be lawful for any maltster or maker of malt, who shall have given such further notice of his or her intention to continue the corn or grain by him or her wet or steeped covered with water for the space of sixty-five hours, as before mentioned, to empty or take such corn or grain, or any part thereof, from or out of the cistern at any other time than between the hours of one of the clock in the forenoon and four of the clock in the afternoon; and if any maltster or maker of malt, who shall have given such further notice as aforesaid, shall empty or take such corn or grain as aforesaid, or any part thereof, from or out of the cistern at any other time than aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*"

Sect. 29. "That if any maltster or maker of malt shall, in any building or place, or in any buildings or places, having the same roof or any internal communication between them, use more than one cistern at the same time for wetting or steeping any corn or grain to be made into malt, every such maltster or maker of malt shall empty or take all the corn or grain from and out of all such cisterns at one and the same time; and if any such maltster or maker of malt shall empty or take any corn or grain from or out of any such cisterns at different times, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l.* Provided always, that nothing hereinbefore contained shall be deemed or construed to extend to subject any maltster or maker of malt to the said last-mentioned penalty for or by reason of his or her emptying

or taking corn or grain from or out of any two or more cisterns at different times of the same day, if the emptying or taking of the corn or grain from or out of the last of such cisterns shall be finished within three hours from the time of beginning to empty or take the corn or grain from or out of the first of such cisterns."

Sect. 30. "That it shall not be lawful for any maltster or maker of malt to empty or take any corn or grain from or out of any cistern in any building or place, or in any buildings or places, having the same roof or any internal communication between them, until the expiration of ninety-six hours from the time of the last preceding emptying or taking of corn or grain from or out of any cistern therein; and if any maltster or maker of malt shall empty or take any corn or grain from or out of any such cistern until the expiration of such time as last aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l*. Provided always, that such maltster or maker of malt shall not be liable to any such penalty as last aforesaid for or by reason of his or her emptying or taking any corn or grain from or out of any such cistern as aforesaid before the expiration of such ninety-six hours, if such corn or grain be so emptied or taken out on the day on which such ninety-six hours shall expire, and not before seven of the clock of the morning of such day."

Sect. 31. "That if any maltster or maker of malt shall take or convey away from the cistern any corn or grain making into malt, so that no gauge thereof can be taken by the officer of Excise in the couch frame, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l*."

Sect. 32. "That every maltster or maker of malt who shall empty or take any corn or grain from or out of the cistern shall empty all such corn or grain into a couch frame or frames entered by such maltster or maker of malt; and that it shall be lawful for any maltster or maker of malt who shall use more than one cistern at the same time, for the wetting or steeping of corn or grain to be made into malt, in any building or place, or in any buildings or places, having the same roof or any internal communication between them, to empty the corn or grain from or out of any two or more of such cisterns into one and the same entered couch frame, to be taken an account of by the officer therein and thenceforth as one and the same wetting or steeping; and all corn or grain emptied into such couch frame or frames as aforesaid shall be laid flat and level therein by the maltster or maker of malt, and at no greater depth, except as in that behalf is in this act before excepted, in any such couch frame or frames than thirty inches in any part thereof; and when any corn or grain shall be so emptied between the first day of March and the first day of December in any year, such corn or grain shall be kept and continued so laid in the couch frame or frames into which such corn or grain shall have been emptied for the space of twenty-six hours from the time of being emptied or taken from or out of the cistern or cisterns; and when any corn or grain shall be so emptied at any other time of the year than as aforesaid, such corn or grain shall be kept and continued so laid in the couch frame or frames into which such corn or grain shall have been emptied for the space of thirty hours from the time of its being so emptied or taken from or out of the cistern or cisterns; and all corn or grain making into malt during such respective periods of time as aforesaid shall be deemed and taken to be in couch; and if any maltster or maker of malt, who shall empty or take any corn or grain from or out of any cistern or cisterns, shall not empty all such corn or grain into such couch frame or frames entered by such maltster or maker of malt, or shall not lay the same flat and level in such couch frame or frames as aforesaid, or shall lay the same therein to any greater depth than thirty inches in any part thereof, or shall not keep or continue all corn or grain in the couch frame or frames into which the

16. *Malt.*

7 & 8 Geo. IV.,  
c. 52.

Penalty on taking corn out of any cistern within 96 hours of the last emptying of any cistern under the same roof, &c.

Proviso.

Penalty on so conveying corn from cistern that it cannot be gauged in couch frame.

Maltsters to empty all grain from the cisterns into the couch frames.

Grain to be levelled therein, and not to be of greater depth than 30 inches.

Time that such grain shall lie in the couch frames.

16. *Malt.*

7 & 8 Geo. IV.,  
c. 52.

Penalty 100*l*.

Penalty on tread-  
ing or forcing  
together corn  
in the cistern or  
couch frame.

Officers suspecting  
corn or grain to  
have been forced  
together in the  
cistern or couch  
frame may turn it  
over and lay it  
level again therein.

What increase  
shall be conclusive  
evidence of  
forcing.

Maltster to assist  
the officer, if re-  
quired, under  
penalty of 100*l*.

Penalty on sprink-  
ling or wetting  
corn before it has  
been 12 days out  
of the cistern.

No maltster to  
have more than  
five floors, includ-  
ing the couch frame  
and kiln, from one  
cistern, or one or  
more cisterns emp-  
tied into the same  
couch frame,  
under penalty  
of 200*l*.

same shall have been emptied for such period of time respectively as aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 33. "That if any maltster or maker of malt shall tread or force together any corn or grain making into malt in the cistern or couch frame, or if any corn or grain making into malt shall be found in any cistern or couch frame so hard, close, and compact as it could not have been unless the same had by some means or other been trodden or forced together therein, every maltster or maker of malt who shall tread or force together such corn or grain as aforesaid, or in whose cistern or couch frame such corn or grain shall be found so hard, close, and compact as aforesaid, shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 34. "That if any officer of Excise shall have reason to believe, or shall suspect, that the corn or grain making into malt in any cistern or couch frame has been trodden or forced together, it shall be lawful for such officer, and any person or persons in aid and assistance of such officer, in the presence of the maltster or maker of malt, or of his or her servant, if such maltster or servant shall think fit to be present, to turn over all such corn or grain, either by throwing all such corn or grain from and out of the cistern or couch frame, and returning the same into the cistern or couch frame from which it shall have been thrown, and laying the same level again therein, or by turning over all such corn or grain in such cistern or couch frame, and laying the same level again therein, or by throwing out any part of such corn or grain from such cistern or couch frame, and turning over so much thereof as shall be left remaining therein, and returning so much of such corn or grain as shall have been thrown out into the cistern or couch frame from which the same shall have been thrown, and laying the whole of such corn or grain level again in such cistern or couch frame, as to such officer shall seem fit; and every maltster or maker of malt, together with his or her servants, shall give such aid and assistance to such officer, and to such person or persons as aforesaid, in such behalf as aforesaid, as such officer or other person may request; and if any increase shall be found in the gauge or quantity of such corn or grain, after being turned over and laid level again in the cistern or couch frame in any such manner as aforesaid, over and above the former gauge, in any greater proportion than that of one bushel in every twenty bushels of such corn or grain, the increase so found as aforesaid shall be deemed conclusive evidence that such corn or grain had been trodden or forced together; and if any maltster or maker of malt shall refuse to aid and assist any officer of Excise, or any person or persons acting in aid and assistance of such officer as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*. Provided always nevertheless, that it shall be lawful to prove by any other or indifferent evidence than that above mentioned, that such corn or grain had been trodden or forced together."

Sect. 35. "That if any maltster or maker of malt shall wet, water, or sprinkle any corn or grain making into malt, before the expiration of twelve days, or two hundred and eighty-eight hours, after the same shall have been emptied or taken from or out of the cistern, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l*."

Sect. 36. "That it shall not be lawful for any maltster or maker of malt at one and the same time to have more than five floors or quantities of corn or grain making into malt, in the couch frame, or on the floor or kiln, or all or any of them, wetted or steeped in and arising from, or pretended to have been wetted or steeped in and to have arisen from, or denoted by its place of deposit in the malthouse to have been wetted or steeped in and to have arisen from one and the same cistern, or one or more cisterns emptied into one and the same couch frame; and if any maltster or maker of malt shall at one and the same time have more than five floors or quantities of corn

or grain making into malt as aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l*. Provided always, that nothing hereinbefore contained shall extend, or be deemed or construed to extend, to subject any maltster or maker of malt to the said last-mentioned penalty for or by reason of his or her separating or dividing any one or more of his or her floors or quantities of corn or grain making into malt, either into two or more pieces, for the purpose of working such pieces separately and apart from each other, in the same malthouse in which such floors or quantities of corn or grain making into malt respectively shall have been wet or steeped, or for or by reason of any such maltster or maker of malt separating or dividing the oldest of his or her floors or quantities of corn or grain making into malt, for the sole purpose of removing the same to the kiln to be immediately dried thereon."

Sect. 37. "That every maltster or maker of malt shall deposit and leave all such floors or quantities of corn or grain making into malt, so that the sides or outward edges thereof shall be in straight lines, and shall level and lay the same in regular succession one before the other, according to the seniority in age of such floors or quantities of corn or grain making into malt upon the floor or floors of the malthouse of such maltster or maker of malt; and if any maltster or maker of malt shall not deposit and leave any such floor or quantity of corn or grain making into malt so as aforesaid, or if the maltster or maker of malt, or any of his servants, being present at the survey thereof by any officer, shall not, on the request of such officer, forthwith put the sides or outward edges of any floor or quantity of corn or grain making into malt in straight lines, or shall not level or lay the same as aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 38. "That if any maltster or maker of malt shall mix, either on the floor or on the kiln, any corn or grain of one wetting or steeping, with or amongst any corn or grain of another or different wetting or steeping, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l*."

Sect. 39. "That if any maltster or maker of malt shall wet, water, sprinkle, or damp any malt after the same shall have been taken or thrown off the kiln, and before such malt shall be delivered into the custody or possession of the brewer or other person who shall have purchased the same, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 40. "That if any maltster or maker of malt, or other person, shall fraudulently deposit, conceal, or convey away from the sight of the officers of Excise any malt, or corn or grain making into malt, every maltster or maker of malt, or other person, so offending, shall for every such offence forfeit and lose the sum of 200*l*; and all such malt, or corn or grain making into malt, so fraudulently deposited, concealed, or conveyed away as aforesaid, shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 41. "That if any maltster or maker of malt shall remove, carry, or send away any malt from the building or place where the same shall have been made, before such malt shall have been taken an account of and charged with duty by the proper officer of Excise, or if any person shall receive or have in his or her custody or possession any malt so removed, carried, or sent away as aforesaid, knowing the same to have been so removed, carried, or sent away, every maltster or maker of malt, or person, so offending, shall for every such offence forfeit and lose the sum of 200*l*; and all the malt so removed, carried, or sent away as aforesaid shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 42. "That whenever the duty upon malt shall be charged by gauge of the corn or grain taken while the same is in a state of operation, or in process of making into malt, such allowances shall be made upon such gauges as are hereinafter mentioned: upon every gauge thereof taken

16. *Malt.*

7 &amp; 8 Geo. IV.,

c. 52.

Floors may be divided for working separately, or the oldest one for carrying to the kiln.

Floors to be in regular forms, and levelled and laid in succession, according to seniority of age, under penalty of 100*l*.

Penalty on mixing corn of different steepings.

Penalty on wetting or damping malt after taken from the kiln.

Penalty on fraudulently depositing, concealing, or conveying away malt.

Penalty for removing or receiving malt before account taken and duties charged.

When malt is charged by gauge while in operation, certain allowances to be made.

## 16. Malt.

7 & 8 Geo. IV.,  
c. 52.

Account may be taken of the malt when dried off the kiln, and the excess above the gauge taken while in operation charged with duty.

Allowance on unscreened malt measured from the kiln.

by the officer of Excise in the cistern wherein the corn or grain is wetting or steeping to be made into malt, or in the couch frame into which the corn or grain shall have been emptied, during the period respectively for which corn or grain is by this act before required to be kept and continued in such cistern and couch frame respectively, an allowance shall be made by such officer of one-fifth part of the whole quantity of the corn or grain so found by such gauge; and upon every gauge taken by the officer of Excise of such corn or grain on the floor, after the expiration of such periods of time respectively as aforesaid, and before the expiration of ninety-six hours from the time when such corn or grain was emptied or taken from or out of the cistern, an allowance shall be made by such officer of one-third part of the whole quantity of the corn or grain so found by such gauge as last aforesaid; and upon every gauge afterwards taken by the officer of Excise of such corn or grain before the same shall be dried off upon and removed from the kiln, an allowance shall be made by such officer of one half of the whole quantity of such corn or grain so found by such gauge as last aforesaid; and the duty of Excise upon malt, when charged upon the corn or grain in a state of operation, or in process of making into malt as aforesaid, shall be charged upon the best of the several gauges so taken as aforesaid, after such allowances shall have been so made thereon respectively as before mentioned. Provided always, that it shall be lawful for any officer of Excise to take an account of all the malt made by any maltster or maker of malt, after the same shall have been taken or thrown off from the kiln, and whilst the same shall remain in the custody or possession of the maltster or maker thereof; and if, upon taking such account as last aforesaid, such officer shall find the quantity of malt so taken account of to exceed the quantity before charged with duty, according to the best gauge thereof when taken in operation as aforesaid, such officer shall in every such case (making an allowance after the rate of eighteen bushels in every one hundred bushels of blown malt for porter) charge the duty upon all such excess; any thing hereinbefore contained to the contrary thereof notwithstanding."

Sect. 43. "Provided always, that whenever any officer of Excise shall propose to measure or take an account of malt, on the same being taken or thrown off from the kiln, and whilst the same is hot, and contains the commings or roots thereof, and is in the same state as the same has been taken or thrown off from the kiln, such officer shall in such account make an allowance of twelve per centum for the heat, commings, or roots, and unclean state of such malt, or shall, at the election of such officer, require such malt to be forthwith screened and cleaned for the purpose of being measured and taken account thereof without such allowance; and in case such maltster or maker of malt shall, on such request of the officer to screen such malt, desire time so to do, it shall be lawful for such officer to lock up all such malt in a safe and secure room, to be provided by such maltster or maker of malt; and no such maltster or maker of malt shall be entitled to any such allowance as aforesaid, or to screen such malt before the same is measured or taken account of as aforesaid, unless he shall forthwith remove and deposit all such malt in such room, and keep the same therein so locked by the officer of Excise, safely and securely, and unmixed with any other malt whatsoever, until such maltster or maker of malt shall give forty-eight hours' notice to the proper officer of Excise to unlock such room, and shall thereupon screen and clean such malt for the purpose of being measured and taken account of by the officer, without such allowance as aforesaid. Provided also, that on any officer taking an account of the malt in the stock, custody, or possession of any maltster or maker of malt, on or after the 10th day of October in every year, as hereinafter mentioned, every such officer shall make an allowance to such maltster or maker of malt, of one bushel in twenty bushels of such malt, for any variation having occurred therein whilst in stocks; any thing hereinbefore contained to the contrary thereof in anywise notwithstanding."

Sect. 44. "That every maltster or maker of malt shall, monthly and every

month, make a true entry in writing of all the malt by him or her made within such period as aforesaid, at the office of Excise within the limits whereof such malt shall have been made; and if any maltster or maker of malt shall neglect or refuse to make entry as aforesaid, or shall make any false entry in that behalf, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*"

Sect. 45. "That every maltster or maker of malt shall, within the space of fourteen days next after he or she shall have or ought to have made such entry as aforesaid, pay and clear off all the duties which shall have been charged upon, and which shall remain unpaid by, such maltster or maker of malt, for or in respect of any malt by him or her made, unless such maltster or maker of malt shall have given, and shall maintain and renew, upon the death or insolvency of any party thereto, security, approved of by the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland respectively, or the person or persons who shall be appointed or employed by them respectively for that purpose, by bond in double the value of the duties which such commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise, or such person or persons as aforesaid, shall judge likely to arise or be charged upon and become due from such maltster or maker of malt within any five months, for the due payment at the end of every four months from the day on which such maltster or maker of malt shall or ought to have made such entry as aforesaid, of all such duties and sum and sums of money as shall arise or be charged on or become due from such maltster or maker of malt; and if any maltster or maker of malt, who shall not have given such security, or who shall not maintain and renew such security as aforesaid, shall neglect or refuse to pay and clear off such duties within the space of fourteen days as aforesaid, every such maltster or maker of malt as last aforesaid, so offending, shall for every such offence forfeit and lose double the sum for which such duties so neglected or refused to be paid or cleared off as aforesaid shall amount to."

Sect. 46. "That if any workman, servant, or labourer employed by or in the service of any maltster or maker of malt, shall maliciously, and with intent to injure such maltster or maker of malt, begin to wet or steep any corn or grain to be made into malt at any other time than between the hours of eight of the clock in the morning and two of the clock in the afternoon; or if any workman, servant, or labourer shall maliciously, and with such intent as aforesaid, empty or take any corn or grain from or out of the cistern at any other time than between the hours of seven of the clock in the morning and four of the clock in the afternoon; or shall maliciously, and with such intent as aforesaid, wet, water, or sprinkle any corn or grain making into malt before the expiration of twelve days or two hundred and eighty-eight hours after the same shall have been emptied or taken from or out of the cistern, or mix, either on the floor or on the kiln, any corn or grain of one wetting or steeping with or amongst any corn or grain of another or different wetting or steeping; every such workman, servant, or labourer shall and may, for any such offence as aforesaid, be arrested and conveyed, by any constable or other lawful peace officer, before any one or more of His Majesty's justices of the peace for the county, shire, division, city, town, or place wherein such workman, servant, or labourer shall be found; and it shall be lawful for any such justice or justices of the peace, on the confession of the party, or by proof on the oath of one or more credible witness or witnesses made of any such offence, to convict every such workman, servant, or labourer so offending of such offence, and upon such conviction, by warrant or warrants under his or their hand or hands, to commit such workman, servant, or labourer to the common gaol or house of correction of the county, shire, division, city, town, or place in which such conviction shall take place, for any length of time not exceeding twelve and not less than three months from the day of such commitment; and such workman, servant, or labourer shall, for and during the whole time for which he or she shall be com-

16. *Malt.*

7 & 8 Geo. IV.,  
c. 52.

Entry to be made monthly of all malt made, under penalty of 100*l.*

Maltsters to clear off their duties within 14 days after entry, unless security be given, under penalty of double duty.

Punishment of servants maliciously beginning to wet corn, or emptying the cistern at illegal hours, &c.



16. *Malt.*

7 & 8 Geo. IV.,  
c. 52.

Maltster to be liable to penalties for such offences, unless he shall prosecute such servant to conviction, and shall obtain a certificate thereof, and that he has undergone the punishment.

Certificate books to be delivered to maltsters; and no maltster to send out malt exceeding four bushels without certificate, or without making correspondent entry, under penalty of 200*l.*

mitted, be kept to hard labour in such gaol or house of correction, and shall not, under any pretence or by reason of any authority or order, be discharged therefrom until the expiration of the time for which such commitment shall have been made. Provided always, that nothing herein contained shall extend or be deemed or construed to extend to repeal, alter, or affect any penalty or penalties on the maltster or maker of malt by whom or in whose service or premises any such workman, servant, or labourer as aforesaid shall be employed, by reason of any such offence or offences, but that every such maltster or maker of malt shall still remain and continue liable to all and singular such penalty or penalties, any thing hereinbefore contained to the contrary thereof notwithstanding; unless such maltster or maker of malt shall forthwith prosecute such workman, servant, or labourer as aforesaid to conviction as aforesaid, and shall, before the recovery of any such penalty, produce to the commissioners of Excise if in England, or to the commissioner or commissioners and assistant commissioners of Excise if in Scotland or Ireland, a certificate of such conviction, and of the workman, servant, or labourer so convicted having suffered or being in prison under such sentence, and suffering such punishment as aforesaid."

Sect. 47. "That a book, prepared with proper printed forms and titles for such purposes as hereinafter mentioned, shall be delivered by the proper officer of Excise to every maltster or maker of malt; and that from and after the 10th day of October, 1827, no malt, in any quantity exceeding four bushels at one time, or if to a brewer of beer for sale, in any quantity whatsoever, shall be sold, sent out, or delivered by any maltster or maker of malt without a certificate, filled up and cut out progressively from the printed forms and titles contained in such book as aforesaid, signed by the maltster or maker of malt selling, sending out, or delivering the same, or by some person on his or her behalf, certifying the date, quantity, and quality of such malt (whether blown malt for porter or other malt), to whom sold or sent out, of what place, and that the duty had been duly charged thereon, and at what place and upon what maltster or maker of malt such charge had been made; and every such certificate shall be left with the person or persons to whom such malt shall be sold, sent out, or delivered; and every such maltster or maker of malt selling or sending out any such malt as aforesaid shall at the same time make a correspondent entry to such certificate, and containing the same particulars, in the book and part thereof from which such certificate shall have been cut; and every such maltster or maker of malt shall at all times keep such book as aforesaid, with all entries made therein, open and exposed in some entered building or place of and belonging to such maltster or maker of malt, for the perusal and inspection of the officers of Excise, and shall deliver up every such book as aforesaid to any officer of Excise demanding the same, and permit him to make any minute therein, as such officer shall think fit; and if any such maltster or maker of malt shall sell, send out, or deliver any malt in any quantity exceeding four bushels at one time, or if to a brewer of beer for sale, in any quantity whatsoever, without such certificate as aforesaid, or shall not so leave such certificate as aforesaid, or shall make use of the same a second time, or to accompany any other malt than the malt for which it was first cut out of such book as aforesaid, or shall not at the same time make a correspondent entry to such certificate as aforesaid, or shall not keep such book as aforesaid, or shall not deliver up any such book to any officer demanding the same, or permit him to make any minute therein, or shall convey away or conceal any such book, or shall destroy or tear out any leaf therefrom, or cancel, obliterate, destroy, or alter any entry therein, or make any false entry therein, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l.*; and all such malt, and the vessel or boat, cart, carriage, or other conveyance, horses or other cattle, removing or which shall have been used in the removal of such malt, shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 48. "That every maltster or maker of malt shall daily enter in a book delivered to him or her by the officer of Excise for that purpose the total quantity of malt by such maltster or maker of malt sold or sent out during such day, in quantities not exceeding four bushels at one time, except to a brewer of beer for sale; and every such maltster or maker of malt shall at all times keep such book, with all entries made therein, open and exposed in some entered building or place of and belonging to such maltster or maker of malt, for the perusal and inspection of the officers of Excise, and shall deliver up every such book as aforesaid to any officer of Excise demanding the same, and permit him to make any minute therein, as such officer shall think fit; and if any such maltster or maker of malt shall neglect or refuse to make any such entry as aforesaid, or shall not keep such book as last aforesaid, or shall not deliver up any such book to any officer demanding the same, or permit him to make any minute therein, or shall convey away or conceal the same, or shall destroy or tear out any leaf thereof, or cancel, obliterate, destroy, or alter any entry therein, or make any false entry therein, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 50*l*."

Sect. 49. "That every factor or dealer in or seller of malt, and every brewer of beer for sale, and every distiller or maker of low wines or spirits, and every maker of vinegar or acetous acid for sale, and every trader subject to survey under the Excise laws, who shall receive into his or her custody or possession any malt with certificate, shall, within three days next after such malt shall have been so received as aforesaid, or when requested by any officer of Excise, deliver up every such certificate to the officer of Excise under whose survey such factor, dealer in or seller of malt, brewer of beer for sale, or distiller or maker of low wines or spirits, or maker of vinegar or acetous acid, or trader as aforesaid, shall then be, or to any officer requesting the same as aforesaid; and if any such factor, dealer in or seller of malt, brewer of beer, or distiller or maker of low wines or spirits, or maker of vinegar or acetous acid, or trader as aforesaid, who shall receive into his or her custody or possession any malt with certificate, shall not deliver up every such certificate as aforesaid, or if any person whosever shall receive any malt from any maltster or maker of malt, exceeding at one time four bushels, or if a brewer of beer for sale shall receive from any maltster or maker of malt any quantity of malt, without such malt being accompanied by such certificate delivered therewith as aforesaid, every such factor, dealer in or seller of malt, brewer of beer, and distiller or maker of low wines or spirits, and makers of vinegar or acetous acid, and trader and person as aforesaid, so offending, shall for every such offence respectively forfeit and lose the sum of 40*s*. for every bushel of malt received with such certificate not so delivered up, or without certificate, or 100*l*., at the election of the attorney-general or person who shall inform or sue for the same."

Sect. 50. "That every factor or dealer in or seller of malt shall make true and particular entry in writing of every building or place by him or her intended to be used for the storing or keeping of malt for sale, at the nearest office of Excise; and if any factor, dealer in or seller of malt, shall use any building or place for the storing or keeping of malt for sale, without having made such entry thereof as aforesaid, every factor, dealer in or seller of malt, so offending, shall forfeit and lose the sum of 100*l*. for every building or place so used without such entry thereof as aforesaid; and all malt which shall be found in any such building or place shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 51. "That a book, prepared with proper printed forms and titles for such purposes as hereinafter mentioned, shall be delivered by the proper officer of Excise to every factor or dealer in or seller of malt; and that every factor or dealer in or seller of malt, when and so soon as he or she shall receive any malt into his or her custody or possession, shall enter in such book as aforesaid, and under the proper title prepared for such purpose,

16. *Malt.*

7 & 8 Geo. IV., c. 52.  
Maltsters to make entry of the total quantity of malt sent out by them daily in quantities not exceeding four bushels at a time, under penalty of 50*l*.

Brewers, distillers, &c. receiving malt by certificate, to deliver up such certificate within three days to their surveying officer, or to any officer demanding the same, under penalty of 40*s*. for every bushel of malt, or 100*l*.

Factors to make entry of their places for keeping malt, under penalty of 100*l*. and forfeiture of malt found therein.

Books to be delivered to factors, and factors receiving malt without entering the same therein, or making false entries, &c., to forfeit 100*l*.

16. *Malt.*7 & 8 Geo. IV.,  
c. 52.

the quantity and quality (whether blown malt for porter or other malt) of such malt, the date when, and the person from whom, whether a maltster or maker of malt, dealer or factor, and of what place, the same shall have been received; and every such factor or dealer in or seller of malt shall at all times keep such book as aforesaid, with all entries made therein, open and exposed in some entered building or place of or belonging to such factor or dealer in or seller of malt, for the perusal and inspection of the officers of Excise, and shall deliver up every such book as aforesaid, and all certificates by him or her received with any malt, into his or her custody or possession, to any officer of Excise demanding the same, and permit any officer of Excise to make any minute in such book, as such officer shall think fit; and if any such factor or dealer in or seller of malt, when and so soon as he or she shall have received any malt into his or her custody or possession, neglect or refuse to enter the same in such book as aforesaid, or shall not keep such book as aforesaid, or shall not deliver up the same to, or permit the officer to make any minute therein, or shall not deliver up any certificate by him or her received with any malt into his or her custody or possession as aforesaid, or shall convey away or conceal any such book, or shall destroy or tear out any leaf therefrom, or cancel, obliterate, destroy, or alter any entry therein, or make any false entry therein, every such factor or dealer in or seller of malt so offending shall for every such offence forfeit and lose the sum of 100*l*."

Maltsters, within ten days after 10th October yearly, to place all dry malt so that it may be conveniently gauged.

Sect. 52. "That every maltster or maker of malt, within ten days after the 10th day of October in every year, shall cast or place all the malt not then in operation or process of making into malt, in his or her custody or possession, into such level and regular form as may enable the officer of Excise conveniently to gauge and ascertain the true quantity thereof; and if any maltster or maker of malt shall neglect or refuse to cast or place all or any such malt as aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l*."

Officers may demand the inspection of malt on its removal, with the certificate accompanying it.

Sect. 53. "That every person who shall at any time be found removing or attending and directing the removal of any malt from one part of the united kingdom to any other part thereof, shall, upon the demand of any officer of Excise, produce such malt, and the certificate accompanying, or which shall or ought to have accompanied, such malt on the removal thereof, to the officer demanding the same, to be by him examined and inspected, and compared with the quantity and quality of the malt so removing as aforesaid; and if any such person or persons shall, upon the demand of any officer of Excise, neglect or refuse to produce any such malt or certificate as aforesaid, or to suffer and permit such inspection, examination, and compare as aforesaid, or shall hinder or obstruct any officer of Excise therein, or in the due execution of his duty, or of any of the powers to such officer by this act granted, every such person so offending shall for every such offence forfeit and lose the sum of 200*l*; and in every such case all such malt, and the vessel or boat, cart, carriage, or other conveyance, horses or other cattle, removing or which shall have been used in the removal of such malt, shall be forfeited, and shall and may be seized by any officer of Excise."

Penalty on refusal or obstruction, 200*l*.

Brewers in Ireland to make entry of all premises and utensils used for brewing or storing beer, under penalty of 100*l*.

Sect. 54. "That every brewer of beer for sale in Ireland shall make a true and particular entry in writing of every building, place, vessel, and utensil by him or her intended to be used in or for the brewing or keeping of worts or beer, at the nearest office of Excise, specifying in such entry the particular use or purpose for which such building, place, vessel, or utensil shall be intended to be used as aforesaid; and if any such brewer shall use any building, place, vessel, or utensil, without having made such entry thereof as aforesaid, or shall use any building, place, vessel, or utensil for any other or different use or purpose, in or for the brewing or keeping of worts or beer, than the particular use or purpose for which such building, place, vessel, or utensil shall have been entered, every such brewer so offending shall forfeit and lose the sum of 100*l*. for every such

building, place, vessel, or utensil as aforesaid; and all worts or beer which shall be found therein, and the casks or other vessels containing the same, shall be forfeited, and shall and may be seized by any officer of Excise. Provided always, that any entry made of any building, place, vessel, or utensil, for any more than one such particular use or purpose as aforesaid, shall be void to all intents and purposes."

Sect. 55. "That every such brewer shall, in the entry by him or her made of any building or place for the brewing of beer, specify and distinguish every building or place in which he or she shall intend to store or keep the malt to be used by him or her in the brewing of beer, and shall store and deposit all such malt in one or more of such entered buildings or places so specified and distinguished, and shall not use or employ any malt in the brewing of beer which shall not have been so stored and deposited in and taken from one or more of such buildings or places so specified and distinguished; and if any such brewer shall store or keep any malt to be used by him or her in the brewing of beer, in any building or place which shall not have been specified and distinguished in such entry as aforesaid, or shall use or employ any malt in the brewing of beer which shall not have been stored and deposited in and taken from an entered building or place so specified and distinguished as aforesaid, every such brewer so offending shall for every such offence forfeit and lose the sum of 200*l.*; and all malt which shall be found in any building or place entered or used for the brewing of beer, other than malt taken from one or more of such buildings or places so specified and distinguished, for the purpose of being employed in the brewing of beer, shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 56. "That it shall be lawful for any officer of Excise, and any person in aid and assistance of such officer, at any time, either by night or day, to enter into, and remain so long as such officer may think fit, for the purposes hereinafter mentioned, in any building or place belonging to or used by any such brewer for the brewing or keeping of worts or beer, or for the storing or keeping of malt; and it shall be lawful for such officer of Excise, and any person in aid and assistance of such officer, to inspect any such building or place, and to take such account as such officer shall deem necessary of all worts, beer, and malt therein, and of all other matters and things, and of all vessels, utensils, goods, and materials belonging to or in anywise appertaining to the trade or business of such brewer; and if any such brewer shall oppose, molest, obstruct, or hinder any officer of Excise, or any person acting in the aid or assistance of such officer, in entering into or remaining in any such building or place as aforesaid, or in inspecting the same, or taking any account as aforesaid, or in the due execution of the duty of such officer, every such brewer so offending shall for every such offence forfeit and lose the sum of 200*l.*"

Sect. 57. "That a book, prepared with proper and distinct columns for such purposes as hereinafter mentioned, shall be delivered by the proper officer of Excise to every such brewer, and every such brewer shall, on the same day on which he or she shall store or deposit any malt in any building or place by him or her entered for the storing or keeping of malt to be used in the brewing of beer, write and enter in such book as aforesaid, and in the proper columns prepared for such purposes respectively, the day when and the number of bushels of malt which he or she shall have so stored or deposited as aforesaid, and the christian and surnames, and place or places of abode, of the person or persons, and whether maltsters or makers of malt, of whom he or she shall have received such malt as aforesaid; and every such brewer shall, on the same day on which he or she shall use any malt in the brewing of beer, and before the same shall be mashed, or any water or other liquor put thereto or mixed therewith, write and enter in such book as aforesaid, and in the proper columns prepared for such purposes respectively, the particular day and hour of the

16. Malt.

7 & 8 Geo. IV.,  
c. 52.

Such brewers to specify in their entry all places intended to be used for keeping malt.

Penalty on keeping malt in any place not specified in such entry, 200*l.*

Officers may enter any building or other place used by such brewer, for the purpose of inspecting or taking an account of beer or malt therein.

Penalty on obstructing officers, &c. 200*l.*

The different quantities of malt stored and used by such brewers to be entered in a book to be kept for the inspection of the officers.

16. *Malt.*7 & 8 Geo. IV.,  
c. 52.

Malt in stock to be  
laid regularly and  
even, to enable the  
officers to gauge  
the same.

If any excess or  
deficiency be  
found, brewer  
deemed to have  
received or used  
malt without  
making entry.

Book to be entered  
up before account  
taken by officer.

In case of dispute,  
brewer may mea-  
sure the malt in  
stock.

day when and the number of bushels of malt which he or she shall so use as aforesaid; and every such brewer shall keep such book, with all entries made therein, in some public and open part of his or her entered premises, for the inspection of the officers of Excise, and shall deliver up every such book as aforesaid to any officer of Excise demanding the same, and permit him to make any minute therein, as such officer shall think fit; and if any such brewer shall store or deposit any malt in any building or place by him or her entered for the storing or keeping of malt to be used in the brewing of beer, or shall use any malt in or for the brewing of beer, and shall not write or enter the same in such book as aforesaid, or shall not keep such book as aforesaid, or shall not deliver up the same to any officer demanding such book, or permit any officer to make any minute therein, or shall convey away or conceal the same, or shall destroy or tear out any leaf therefrom, or cancel, obliterate, or destroy or alter any entry therein, or make any false entry therein, every such brewer so offending shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 58. "That every such brewer shall, when and so often as he or she shall be thereunto required by any officer of Excise, level and cast all the malt in any building or place by him or her entered for the storing or keeping of malt to be used for the brewing of beer, in or into such regular form as may enable the officer of Excise easily and conveniently to gauge and ascertain the true quantity thereof; and if any such brewer, upon being thereunto required as aforesaid, shall neglect or refuse to level or cast any such malt in or into such form as aforesaid, every such brewer so offending shall for every such offence forfeit and lose the sum of 100*l*; and if, upon taking an account of such malt as aforesaid, the quantity of such malt shall be found to exceed the quantity which such brewer ought to have had according to the entries contained in such book as aforesaid, in a greater proportion than one-twentieth part of the quantity of malt so found, every such brewer shall be deemed and taken to have received malt into the building or place by him or her entered for the storing or keeping of malt to be used for the brewing of beer, without having made such entry thereof in such book as aforesaid, and shall in such case be liable to the penalty by this act imposed for not making entry in that behalf in such book as aforesaid, and all such excess shall be forfeited, and shall and may be seized by any officer of Excise; and if the quantity of such malt shall be found to be less than the quantity which such brewer ought to have had, according to the entries contained in such book as aforesaid, in such proportion as aforesaid, every such brewer shall be deemed and taken to have used malt in the brewing of beer without having made such entry thereof in such book as aforesaid, and shall in such last-mentioned case be liable to the penalty by this act imposed for not making entry in that behalf in such book as aforesaid."

Sect. 59. "That it shall be lawful for any such brewer, before any officer of Excise shall take an account of such malt as aforesaid, to enter up in such book as aforesaid all malt which he or she shall have received into any building or place by him or her entered for the storing or keeping of malt to be used for the brewing of beer, in the course of the day on which such account shall be proposed or intended to be taken; and if any dispute shall arise between any such brewer and the officer of Excise, respecting the true quantity of malt so taken an account of as aforesaid, such brewer shall be allowed immediately, and with all due diligence and despatch, to measure the same in the presence of such officer, by a just and correct bushel measure of the dimensions prescribed by law, to be provided by such brewer; and the quantity so ascertained shall be taken to be the true quantity of such malt, any thing in this act to the contrary thereof notwithstanding."

Sect. 60. "That if any such brewer as aforesaid shall not use or consume in the brewing of beer the whole of the malt received into any building or

place by him or her entered for the storing or keeping of malt intended to be used for the brewing of beer, or shall sell, send out, or deliver any such malt, or any worts by him or her brewed for the making of beer, to any person or persons whatsoever, every such brewer so offending shall for every such offence forfeit and lose the sum of 200*l.*; and all malt and worts so sold, sent out, or delivered as aforesaid shall be forfeited, and shall and may be seized by any officer of Excise. Provided always, that if, upon application made by any such brewer to the commissioner or commissioners and assistant commissioners of Excise in Ireland, it shall appear to them to be reasonable to allow such brewer, under the circumstances stated, to sell any malt received into any building or place by him or her entered for the storing or keeping of malt to be used for the brewing of beer, it shall be lawful for such commissioner or commissioners and assistant commissioners of Excise to grant an order under their hands to such brewer so to do; and every such order shall be sufficient authority to such brewer to sell, send out, or deliver such malt as shall be therein expressed, any thing herebefore contained to the contrary thereof notwithstanding."

Sect. 61. "That every such brewer shall, before he or she shall begin to mash any malt to be used for the brewing of beer, and before any water or other liquor shall be added thereto or be mixed therewith, give twenty-four hours' notice thereof in writing to the officer of Excise under whose survey such brewer shall then be (if the brewhouse of such brewer of beer shall be situated in a city or market town, or in the suburbs thereof, and forty-eight hours' notice thereof if not so situated), in which notice shall be expressed the day and particular hour of the day when, and the quantity of malt which such brewer shall intend to use for the brewing of beer as aforesaid; and if any such brewer shall begin to mash any malt to be used for the brewing of beer, or shall add to or mix with any malt any water or other liquor, without having given such notice as aforesaid, or if any such brewer shall mash any greater or less quantity of malt than the quantity of malt expressed in such notice, every such brewer so offending shall for every such offence forfeit and lose the sum of 100*l.*"

Sect. 62. "That no malt which shall have been mashed by any such brewer shall be removed from the vessel or utensil in which the same shall have been mashed until the proper officer of Excise shall have gauged and taken an account thereof; and if any such brewer shall remove any such malt, or any part thereof, before the proper officer of Excise shall have gauged and taken an account thereof, or shall use any means, art, or contrivance, whereby the officer of Excise shall be deceived, or which shall be calculated to deceive such officer in gauging and taking an account thereof, every such brewer so offending shall for every such offence forfeit and lose the sum of 100*l.* Provided always, that no such brewer shall incur the said last-mentioned penalty for or by reason of his having removed any such malt as aforesaid, after all the worts shall have been drawn off from the same, and without any officer of Excise having gauged and taken an account thereof, if such brewer shall, at the time of making entry in such book as aforesaid of the malt to be mashed, have specified in such book and entry as aforesaid the time for such officer to attend to take such gauge and account as aforesaid, and such officer shall not have attended for that purpose within an hour after the time so specified."

Sect. 63. "That every such brewer shall, before he or she shall cleanse or remove any beer from any fermenting tun, make a declaration in writing in such book so delivered to him or her as aforesaid, and opposite the quantity of malt therein entered as having been used by him or her for the brewing of beer, of the whole strength or quantity and quality of the beer brewed by such brewer from such malt, which declaration shall at the same time be signed by such brewer, or by his principal servant under whose direction or inspection such beer shall have been brewed; and if any such brewer shall cleanse or remove any beer from any fermenting tun without having made such declaration in writing as aforesaid, or shall

16. *Malt.*

7 & 8 Geo. IV.,  
c. 52.

Brewers not consuming the whole of their malt in brewing, or sending out the same, or any worts, to forfeit 200*l.*

Commissioners in Ireland may authorise brewers to sell malt under special circumstances.

Brewers to give notice before beginning to mash any malt of the quantity intended to be used.

Penalty 100*l.*

Mashed malt not to be removed till gauged and taken an account of by the officer, under penalty of 100*l.*

Proviso for brewers having given due notice.

Brewers to make declaration in the book of the strength and quantity of beer brewed.

16. *Malt.*

7 & 8 Geo. IV.,  
c. 52.

Brewers having  
or using any in-  
gredient in ad-  
dition or as a sub-  
stitute for malt or  
hops, or for the  
colouring of beer,  
to forfeit 200*l.*

Persons know-  
ingly selling such  
ingredients to  
brewers to forfeit  
200*l.*

From 10th Oct.  
1827, the allow-  
ance on spirits di-  
stilled from malt to  
be made only to  
distillers making  
their spirits from  
malt made under  
the regulations of  
this act.

Storehouses to be  
provided by di-  
stillers, and ap-  
proved of by the  
collector and su-  
pervisor, who are  
to provide locks,  
&c. at the expense  
of the distiller.

cancel, obliterate, destroy, or alter any such declaration as aforesaid, or make any untrue declaration in that behalf, or if any such brewer, or his principal servant as aforesaid, shall neglect or refuse to sign any such declaration, every such brewer so offending shall for every such offence forfeit and lose the sum of 100*l.*"

Sect. 64. "That if any such brewer shall receive into or have in his or her custody or possession, or use in brewing, or mix with or put into any worts or beer, any ingredients, preparation, or material whatsoever, in addition to or for or as a substitute for malt or hops, or for the purpose of diluting or darkening the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing, every such brewer so offending shall for every such offence forfeit and lose the sum of 200*l.*; and all such ingredients, preparations, and materials, and all worts or beer brewed therefrom, or with or into which the same shall have been mixed or put, and all vessels and utensils containing any such worts or beer, shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 65. "That if any person shall sell or deliver to any such brewer as aforesaid, knowing him or her to be such brewer, or to any other person or persons for or on account of or for the use of such brewer, any ingredient, preparation, or material to be used in worts or beer, in addition to or as a substitute for malt or hops, or for the purpose of darkening the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing, every person so offending shall for every such offence forfeit and lose the sum of 200*l.*"

Sect. 66. "And whereas by a certain act of Parliament passed in the sixth year of the reign of His present Majesty, for providing equivalent rates of Excise duties, allowances, and drawbacks on beer and malt, and on spirits made in Scotland or Ireland, according to the measure of the new imperial standard gallon, a certain allowance is made of the duty charged upon spirits distilled from malt only; and it is expedient to make some further regulations in respect thereof, in order to prevent frauds being practised for the purpose of unduly obtaining such allowance; be it enacted, that from and after the 10th day of October, 1827, no such allowance as aforesaid shall be made in respect of any spirits made after the 10th day of October, 1827, from malt only, in Scotland or Ireland, unless the distiller or maker thereof claiming such allowance shall have distilled all such spirits from such malt only as shall have been made for the sole purpose of being consumed in distilling low wines and spirits from malt only, under the several rules, regulations, and provisions hereinbefore contained respecting maltsters or makers of malt, and under such further rules, regulations, and provisions as are hereinafter contained in that behalf."

Sect. 67. "That every such distiller or maker of low wines or spirits who shall make malt shall make entry as a maltster or maker of malt for the sole purpose of being consumed in distilling low wines or spirits made from malt only, and shall provide and keep a proper and secure building or place at the premises by him or her entered as aforesaid for the purpose of making malt, and also at every distillery by him or her used for distilling low wines or spirits made from malt only, to be approved of in writing by and under the hands of the collector and supervisor of Excise of the collection and district in which any such building or place shall be situated, for securing therein the malt by him or her made, to be used and consumed in his or her distillery or distilleries as aforesaid; and the said collector or supervisor shall provide and affix proper locks and fastenings thereto, at the expense of such distiller or maker of low wines or spirits making entry as aforesaid, who shall be permitted, if he or she shall think proper so to do, to provide and affix other locks and fastenings thereto, the keys of such last-mentioned locks and fastenings to be kept by him or her; and if any such distiller or maker of low wines or spirits making any such entry as aforesaid shall neglect or refuse to pay for any lock, key, or fastening pre-

vided and affixed by such collector or supervisor to any such building or place entered by such distiller for the purpose aforesaid, or shall wilfully destroy, damage, or injure any such lock, key, or fastening, or shall by any art, device, or contrivance open, take off, or remove any such lock or fastening, or make any way or entrance into any such building or place, every such distiller or maker of low wines or spirits, making any such entry, as aforesaid, so offending, shall for every such offence forfeit and lose the sum of 100*l*."

Sect. 68. "That every such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid shall give twelve hours' notice in writing to the officer of Excise under whose survey such distiller or maker of low wines or spirits shall then be of the day and particular hour of the day when he or she shall intend to take any malt off the kiln; and if any such distiller or maker of low wines or spirits shall take any malt off the kiln without having given such notice as aforesaid, every such distiller or maker of low wines or spirits so offending shall for every such offence forfeit and lose the sum of fifty pounds; and all malt taken off the kiln without such notice as aforesaid shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 69. "That when and so soon as any malt made by such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid shall be fully dried, the same (screened or unscreened, as such maltster or maker of malt may think fit,) shall, in the presence of an officer of Excise, forthwith be measured; and if any quantity be found by such admeasurement over and above the quantity found by the last gauge taken of the corn or grain of which such malt shall have been made whilst in operation or process of making into malt, such excess shall be charged with duty; and all such malt shall be carried by such distiller or maker of low wines or spirits, in the presence of the officer, into and locked up and secured in one or more of such buildings or places by him or her provided as aforesaid, at the premises by him or her entered as aforesaid for the purpose of making malt; and if any such distiller or maker of low wines or spirits shall neglect or refuse to cause all such malt as aforesaid to be measured, and carried or locked up or secured as aforesaid, every such distiller or maker of low wines or spirits so offending shall for every such offence forfeit and lose the sum of 50*l*."

Sect. 70. "That books, prepared with proper columns for such purposes as hereinafter mentioned, shall be delivered by the proper officer of Excise to every such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid, to be kept by him or her at the building or place by him or her provided as aforesaid, at the premises by him or her entered as aforesaid for making malt for the purpose aforesaid, and at every distillery by him or her used for distilling low wines or spirits made from malt only; and every such distiller or maker of low wines or spirits shall, whenever he or she shall receive any malt into any such building or place by him or her provided as aforesaid, or shall remove or take away any malt out of any such building or place to any other building or place, to be used or consumed in his or her distillery, forthwith write and enter in such book as aforesaid, and in the proper columns prepared for that purpose, the particular day and hour of the day when, and the quantity of malt in bushels which he or she shall have received into or taken or removed out of such building or place as aforesaid; and if any such distiller or maker of low wines or spirits shall receive any malt into or shall take or remove any malt out of any such building or place so provided as aforesaid, and shall not write and make entry thereof in such book as aforesaid, or shall not so keep such book as aforesaid, or shall not deliver up any such book to any officer of Excise demanding the same, or permit the officer to make any minute therein, or shall conceal or convey away the same, or destroy or tear out any leaf therefrom, or cancel, hereinbefore contained to the contrary thereof notwithstanding. Pro-

16. *Malt.*

7 & 8 Geo. IV.,  
c. 52.  
Distillers refusing  
to pay for locks,  
or destroying them,  
&c. to forfeit 100*l*.

Distillers to give  
notice of taking  
malt off the kiln,  
under penalty of  
50*l*.

Malt, when fully  
dried, to be mea-  
sured in the of-  
ficer's presence,  
and directly se-  
cured in store-  
houses, under the  
penalty of 50*l*.

Distillers to enter  
into a book the  
quantity of malt  
carried into and  
removed from the  
storehouses to be  
used in the dis-  
tillery, under penalty  
of 200*l*.



## 16. Malt.

7 &amp; 8 Geo. 4, c. 52.

Distillers desirous of removing malt from a malthouse to a distillery to give notice to the proper officer, who is to attend and grant a permit.

obliterate, or destroy or alter any entry therein, or make any false entry therein, every such distiller or maker of low wines or spirits so offending shall for every such offence forfeit and lose the sum of 200*l*."

Sect. 71. "That when any such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid shall be desirous of taking or removing any malt out of any building or place by him or her provided as aforesaid, at the premises by him or her entered as aforesaid for the purpose of making malt, to a building or place by him or her provided as aforesaid, at a distillery by him or her used for distilling low wines or spirits made from malt only, such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid shall give twenty-four hours' notice to the proper officer of Excise of the time when and the quantity of malt which, and the building or place so provided as aforesaid, from and to which he or she shall be desirous of removing such malt as aforesaid; and every such officer of Excise shall attend in pursuance of such notice at the time and place therein mentioned, to unlock the building or place from which such malt is intended to be removed, and see measured out therefrom the quantity of malt expressed in such notice; and such officer of Excise shall thereupon grant a permit for the removal of such malt from and to the buildings or places so provided as aforesaid, and expressed in such notice, in which permit shall be expressed the time for which such permit shall be in force, such time being a reasonable and sufficient time for such removal as aforesaid: and if any such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid, who shall remove any malt as aforesaid, shall not deposit and place the same in the building or place expressed in such permit as the place to which such malt is to be removed, or shall sell or dispose of, or remove the same to any other place than as aforesaid, every such distiller or maker of low wines or spirits making entry in and for the purpose aforesaid, so offending, shall for every such offence forfeit and lose the sum of 200*l*.; and all malt so removed, which shall not be so deposited and placed as aforesaid, or which shall be sold or disposed of or removed to any other place than as aforesaid, shall be forfeited, and shall and may be seized by any officer of Excise: and if any such malt shall be found by any officer of Excise removing or removed, without the same being or having been accompanied by such permit as aforesaid, or accompanied with a permit expired and out of force, or which shall not agree with the quantity of such malt, or the time or manner of the removal thereof, all such malt shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 72. "That every such distiller or maker of low wines or spirits making entry as and for such purpose as aforesaid shall, when and so often as he or she shall be thereunto required by any officer of Excise, cast all the malt in any building or place so by him or her provided as aforesaid in or into such regular form, and level the same so as to enable the officer of Excise easily and conveniently to gauge and ascertain the true quantity thereof; and if any such distiller or maker of low wines or spirits, upon being thereunto required as aforesaid, shall neglect or refuse to cast or level any such malt as aforesaid, every such distiller or maker of low wines or spirits so offending shall for every such offence forfeit and lose the sum of 100*l*.; and if upon taking any such account as aforesaid the quantity of such malt shall be found to exceed the quantity which such distiller or maker of low (a) wines or spirits ought to have had at any such building or place by him or her provided as aforesaid, according to the entries contained in such book as aforesaid, in a greater proportion than one-twentieth part of the quantity of malt so found, every such distiller or maker of low wines or spirits shall be deemed and taken to have received malt into such building or place by him or her provided as aforesaid without having made such entry thereof in such book as aforesaid, and every such excess of malt shall be forfeited, and shall and may be seized by any officer of Excise; and if the quantity of such malt shall be found

Malt in stock to be laid regular and even, so that the officers may gauge the same, under penalty of 100*l*.

If any excess above one in twenty be found, distiller to be deemed to have carried malt into the storehouse without notice; and if any deficiency, to have taken malt from the storehouse without entry.

(a) "Lower" in the act.

to be less than the quantity which such distiller or maker of low wines or spirits ought to have had in such building or place, according to the entries contained in such book as aforesaid, in such proportion as aforesaid, every such distiller or maker of low wines or spirits shall be deemed and taken to have removed and taken away malt out of such building or place without having made such entry in such book as aforesaid, and shall in every such case of excess or deficiency be liable to the penalty by this act before imposed for not making entry in such book as aforesaid."

Sect. 73. "That if any such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid shall take or remove any malt out of any such building or place so by him or her provided as aforesaid, without the knowledge or presence of the proper officer of Excise, or shall not use all the barley by him or her received at any malthouse or premises entered for such purpose as aforesaid, by making the same into malt for the purpose aforesaid, and consume all such malt by him or her made as aforesaid in his or her distillery or distilleries in distilling low wines or spirits made from malt only, or shall sell, send out, or deliver any barley or any of such malt from any such malthouse, or any malt from such distillery, or building or place there, or convey away, hide, or conceal the same, every such distiller or maker of low wines or spirits so offending shall for every such offence forfeit and lose the sum of 100*l.*; and all such barley or malt so taken or removed, and all such barley or malt so sold or sent out or delivered, or hid or concealed as aforesaid, shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 74. "That no such distiller or maker of low wines or spirits shall, from and after the said 10th day of October, 1827, be allowed or entitled to claim any part of the allowance granted by the said recited act passed in the sixth year of the reign of His present Majesty, for or in respect of any spirits by him or her distilled or made after that day from malt, except for spirits distilled from such malt only as shall have been made at mashing premises entered for the purpose only aforesaid, and which shall have been charged with duty, and which shall have been stored and entered at such distillery in such book as aforesaid, and afterwards taken from such building or place so provided as aforesaid at such distillery, to be used in the distillery of such distiller or maker of low wines or spirits, and at the time of being so taken from such building or place shall have been entered in such book as aforesaid, and shall have been actually used in making wort or wash distilled in such distillery from such malt only; and that every such distiller shall deliver such account and make such declaration as are provided by an act passed in the fourth year of the reign of His present Majesty, for granting certain duties of Excise upon spirits distilled from corn or grain in Scotland and Ireland, save and except as to mashing permits, which, from the day and year above mentioned, shall be no longer required, and shall be subject to all other the regulations and provisions contained or referred to in the said last-recited act as to malt used by distillers or makers of low wines or spirits for the distillation of spirits from malt only, in Scotland or Ireland, and as to the payment of such allowance, except so far as is altered by or shall be inconsistent with the regulations of this act."

Sect. 75. "That it shall and may be lawful for any person in the united kingdom, other than such distiller or maker of low wines or spirits, to make entry, as a maltster or maker of malt, of premises for the purpose of making malt to be used and consumed only by distillers or makers of low wines or spirits in Scotland or Ireland, in distilling low wines or spirits made from malt only, under and subject to the same rules, regulations, and provisions to which such distillers of low wines or spirits themselves, making entry as and for the purpose aforesaid, are subjected; and it shall and may be lawful for any such distiller or maker of low wines or spirits to obtain and use such malt in distilling low wines or spirits made from malt only, and to claim and be entitled to and have the allowance aforesaid in respect of such spirits, any thing

16. *Malt.*

7 & 8 Geo. 4, c. 52.

Distiller clandestinely removing any barley or malt out of the storehouse, or not consuming the same in the distillery, &c. to forfeit 100*l.*

From 10th October, 1827, the allowances granted by 6 Geo. IV., c. 52, to maltsters or distillers shall not be made, except for spirits distilled from malt made and charged as herein described.

Account to be delivered and declaration made as provided by recited act, except as to mashing permits.

Proviso, that persons other than distillers may make entry of premises for making malt to be consumed only in the distillation of spirits from malt only.

16. *Malt.*7 & 8 Geo. IV.,  
c. 52.

In cases of loss or damage of malt by fire or water, the justices at quarter-sessions, or the commissioners of Excise, upon proof thereof, and that the duties have been paid thereon, shall grant a certificate of such loss or damage, and the duties shall be repaid.

vided always, that it shall not be lawful for any person making entry, as a maltster or maker of malt, of premises for the purpose of making malt to be used and consumed only as aforesaid, to make or sell malt for any other use or purpose at or from the premises of which he or she shall have made such entry as aforesaid."

Sect. 76. "That if any malt shall be destroyed or damaged by fire, or shall perish or be damaged by the casting away of or by any inevitable accident happening to any barge or vessel in which such malt shall be transporting or shall have been transported from any part of the united kingdom to any other part thereof, or on which such malt shall have been put on board for that purpose, it shall be lawful for the proprietor or proprietors of such malt to make proof of such accident, and of the cause thereof, on the oath or oaths of one or more credible witness or witnesses, and of the duty upon such malt having been duly charged and paid by the maltster or maker thereof, before the justices of the peace, at quarter-sessions, for the county, shire, division, city, town, or place where such malt shall have been made, or at or next adjoining to the place where such accident shall have taken place or shall have been first discovered, or where the vessel on which such malt shall have been loaded or put on board, or before the commissioners of Excise, or any three of them, who are hereby respectively authorized and required to examine any witness or witnesses thereupon, upon oath (which oath they are hereby respectively authorized to administer), and upon proof being made before them by such witness or witnesses, or by legal documents, that such malt had been entirely lost or totally destroyed as aforesaid, and that the duties thereupon had been duly charged and paid, to grant a certificate thereof, and of the amount of such duties, under their respective hands; upon the production of which certificate to the collector of Excise of the collection in which such duties shall have been charged, such collector shall and he is hereby authorized and required to pay or allow to the proprietor or proprietors of such malt, out of the money arising from any duties of Excise upon malt in his hands, so much money as the sum specified in such certificate as aforesaid for such duties shall amount to; or upon proof being made as aforesaid, that the malt, though not entirely lost or totally destroyed, had been damaged as aforesaid, and that the duties thereupon had been duly charged and paid, it shall be lawful for such justices or commissioners, and they are hereby respectively authorized to adjudge and determine the quantum of such damage, and to grant a certificate of the sum to be repaid or allowed for or in respect of such damage (such repayment or allowance bearing the same proportion only to the whole duty charged and paid upon such malt so damaged as the damage thereof shall bear to the value of such malt before it was damaged); and upon the production of such certificate as last aforesaid to the collector of Excise of the collection in which such duties shall have been charged, such collector of Excise shall and he is hereby authorized and required to repay or allow to the proprietor or proprietors of such malt so damaged, out of the money arising from any duties of Excise upon malt in his hands, so much money as the sum specified in such certificate as last aforesaid to be repaid or allowed shall amount unto."

No person entitled to such relief unless notice be given of the accident within three days afterwards, and of the intended application for relief fourteen days previous thereto, and within a month after the accident, &c.

Sect. 77. "That no person or persons shall be entitled to any relief in such case as aforesaid, unless a notice in writing, describing the nature, cause, and extent of such accident as aforesaid, shall be delivered to the commissioners of Excise, or to the supervisor of Excise of the district in which such loss shall have taken place or shall have been first discovered, within three days next after the same shall have taken place or been so discovered; or unless the person or persons by whom such loss shall have been sustained, or the agent of such person or persons, shall give or leave notice in writing of his, her, or their intention to apply for such relief, with the collector or supervisor of Excise of the collection or district where the quarter-sessions are to be held at which he, she, or they there intend to apply for such relief, or to the solicitor of Excise for the summary juris-

diction of the commissioners of Excise in London, where such application shall be intended to be made to such commissioners, fourteen days at the least before the beginning of such quarter-sessions, or before such application to such commissioners; and unless such person or persons shall apply for such relief within one month after such accident shall have taken place or have been first discovered, or at the next general quarter-sessions of such justices which shall take place after the expiration of such month; any thing in this act or in any other act or acts to the contrary thereof notwithstanding."

Sect. 78. "Provided also, that after such justices of the peace or commissioners of Excise shall have once examined and ascertained such loss or damage, their decision thereon shall be final."

Sect. 79. "That all malt and corn or grain, and all vessels and utensils for the making or keeping of malt, in the custody or possession of such maltster or maker of malt, or in the custody or possession of any other person or persons to the use of or in trust for such maltster or maker of malt, shall be and remain subject and liable to, and the same are hereby made chargeable with, all the duties of Excise on malt which during the time of any such custody or possession shall have been charged or shall become chargeable upon or be in arrear or owing from or by such maltster or maker of malt for or in respect of any malt by him or her made during such time as aforesaid, and shall also be and remain subject and liable to all penalties and forfeitures which during any such custody or possession shall have been incurred by such maltster or maker of malt for any offences by such maltster or maker of malt committed against this act or any other act or acts relating to the revenue of Excise; and all such malt and corn or grain, and all such vessels and utensils as aforesaid, shall be and remain subject and liable to all such duties, penalties, and forfeitures, into whose hands soever the same shall afterwards come, or by what conveyance or title whatsoever the same shall be claimed; and it shall be lawful in all such cases to levy thereupon such duties, penalties, and forfeitures, and to use such proceedings for the recovery or enforcement of such duties, penalties, and forfeitures respectively, as may lawfully be done in cases where the debtors or offenders are the true and lawful owners of such goods, utensils, or vessels."

Sect. 80. "That all laws, powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things, provided for or contained in any act or acts in force at or immediately before the commencement of this act, relating to the revenue of Excise on malt made in any part of the united kingdom of Great Britain and Ireland, or relating to permits for the removal of malt, or to any matter or thing expressly provided for by this act, which is or are repugnant to or inconsistent with the several matters, clauses, provisions, and regulations of this act, or any of them, shall be and the same are hereby respectively, from the said 10th day of October, 1827, repealed, and shall after that day be no longer put in force or observed in any part of the united kingdom, save and except as to the recovery of any penalty or forfeiture before that day incurred under or by virtue of any act or acts or any part or parts of any act or acts by this act repealed as aforesaid."

Sect. 81. "That all fines, penalties, and forfeitures imposed by this act shall be sued for, recovered, levied, mitigated, and distributed (except where other provisions are by this act specially made in such behalf) by such ways, means, methods, and in such manner, in Great Britain and Ireland respectively, as any fine, penalty, or forfeiture imposed by any act or acts relating to the revenue of Excise in Great Britain and Ireland respectively may be sued for, recovered, levied, mitigated, and distributed."

Sect. 82. "That this act shall extend and be deemed and construed to extend to the whole of the united kingdom of Great Britain and Ireland,

16. *Malt.*

7 & 8 Geo. IV., c. 52.

Decision of Justices, &c. to be final.

All malt, utensils, and vessels to be subject to arrears of duty, penalties, and forfeitures. (a).

Former regulations which are inconsistent with this act declared to be repealed.

Fines, penalties, and forfeitures to be recovered, mitigated, and distributed as by former laws.

Act to extend to the united kingdom.

(a) See the general provision, *ante*, 270, and *note*.

## 16. Malt.

7 &amp; 8 Geo. 4, c. 52.

Exceptions.

Commencement  
of act.Act may be al-  
tered this session.

9 Geo. 4, c. 45.

After 10th Oct.  
1828, so much of  
recited act,  
6 Geo. IV., c. 80,  
as relates to  
retailers and  
dealers, &c. in  
spirits, extended  
to Scotland and  
Ireland.

† Sic.

So much of  
8 Geo. IV., c. 82,  
as is in force con-  
tinued until Oct.  
1828; after that  
day the regulations  
respecting private  
distillation in Scot-  
land made per-  
petual; and so  
much as relates to  
rectifiers, &c. as is  
not repugnant to  
6 Geo. IV., c. 80,  
made perpetual,  
and extended  
throughout the  
united kingdom.

After 10th Oct.  
1828, so much of  
former acts re-  
lating to rectifiers  
and dealers, &c.  
in Scotland and  
Ireland as are ex-  
pressly provided  
for by 6 Geo. IV.,

except as to the several rules, regulations, and provisions specially provided for by this act in respect of brewers of beer for sale in Ireland, which shall extend to Ireland only, and the conditions upon which the allowances upon spirits distilled from malt only in Scotland and Ireland are from henceforth to be granted, and which shall extend to Scotland and Ireland only; and this act shall commence and take effect from and immediately after the 10th day of October, 1827."

Sect. 83. "That this act, or any of the provisions thereof, may be amended, altered, or repealed in this present session of parliament."

By 9 Geo. IV., c. 45, s. 1, intituled *An act to amend and to make perpetual, and to extend to the whole of the united kingdom, certain provisions contained in several acts for regulating the rectification, compounding, dealing in, or retailing of spirits, and for preventing private distillation in Scotland, and to provide for the payment of the duty on malt used in making of spirits from malt only*; "That from and after the 10th day of October, 1828, so much and such part of the said hereinbefore recited act of the sixth year aforesaid, intituled *An act to repeal the duties payable in respect of spirits distilled in England, and of licences for distilling, rectifying, or compounding such spirits, and for the sale of spirits, and to impose other duties in lieu thereof; and to provide other regulations for the collection of the said duties, and for the sale of spirits, and for the warehousing of such spirits, without payment of duty of exportation, and of the several enactments, regulations, provisions, penalties, and forfeitures in the said act contained, as are in force in respect of or in relation to the rectification and compounding of spirits, and to the rectifiers and compounders of and to the dealers in and retailers of spirits, except as to the amount of licence duties payable by such traders respectively, shall extend and be applied to, and shall be established, observed, executed, and put in force in and throughout Scotland and Ireland respectively, and in and throughout the united kingdom of Great Britain and Ireland, in such and the like manner to all intents and purposes as if the said recited act had in such respects been originally extended to the whole of the united kingdom; any thing in the said act, or in any other act or acts, to the contrary thereof in anywise notwithstanding.*

Sect. 2. "That so much of the hereinbefore recited act of the third year of His Majesty as shall be in force at the time of the passing of this act shall be and the same is hereby continued and shall be and remain in full force until the 10th day of October, 1828; and that from and after the said 10th day of October, 1828, so much of the said act of the said third year, and the several regulations, provisions, penalties, and forfeitures therein contained, as relate to the prevention of private distillation in Scotland, shall be and the same is and are hereby made perpetual; and that so much of the said act as shall be in force as aforesaid, relating to the rectifying and compounding and to the rectifiers and compounders of spirits, not inconsistent with or repugnant to any of the provisions of the said first-recited act of the sixth year aforesaid, shall be and the same is and are hereby made perpetual, and shall be and the same are hereby extended and applied to, and shall be established, observed, executed, and put in force in and throughout England and Ireland, and in and throughout the united kingdom of Great Britain and Ireland, in the same manner to all intents and purposes as if the said act of the said third year had in such respects been originally extended to the whole of the united kingdom; any thing in the said act or in any other act or acts to the contrary thereof in anywise notwithstanding."

Sect. 3. "That from and after the said 10th day of October, 1828, so much and such parts only of any act or acts in force in Scotland and Ireland respectively, as relate to the rectification or compounding of spirits, and to the rectifiers and compounders of and dealers in and retailers of spirits, and to the several matters and things expressly provided for by the said acts of the sixth year and third year aforesaid, hereby ex-

tended to and established in and throughout the united kingdom as aforesaid, and as are inconsistent with or repugnant thereto, but not otherwise, shall be and are hereby repealed, save and except so far as the said acts or any of them repeal or repeals any former act, or any part or parts of any former act, and except also so far as the said acts or any of them relate or relates to the charging, recovering, suing for, levying, paying, accounting for, allowing, or mitigating of any duty, or any arrear or part thereof, or of any penalty or forfeiture for any offence against the said acts repealed, or any of them, which shall have been or shall be committed on or before the said 10th day of October aforesaid, all which suits or other proceedings, matters, or things shall or may be had or proceeded on, and shall remain and be to all intents and purposes whatsoever, as if the said acts had not been repealed in manner aforesaid. Provided always, that nothing herein contained shall extend or be construed to extend in any manner to alter or affect an act passed in the last session of parliament for consolidating and amending the laws relating to the collection and management of the revenue of Excise throughout Great Britain and Ireland."

Sect. 4. "That from and after the passing of this act all duty charged upon or in respect of any malt which shall be made to be used and consumed only by distillers or makers of low wines or spirits, in Scotland or Ireland, in distilling low wines or spirits made from malt only, shall be paid and cleared off by the maltster or maker of such malt within the space of fourteen days next after such maltster or maker of malt shall have or ought to have made such entry as in the said recited act is mentioned, whether any bond or security for the payment of such duties by such maltster or maker of malt shall or shall not have been given, pursuant to the said recited act, on pain that every such maltster or maker of malt shall forfeit double the amount or sum of such duties so neglected or refused to be paid within the said space of fourteen days; any thing in the said recited act to the contrary in anywise notwithstanding."

Sect. 5. "That this act, or any of the provisions thereof, may be amended, altered, or repealed by any act or acts to be passed in this present session of parliament."

By 11 Geo. IV., c. 17, intituled "*An act to alter and amend an act of the seventh and eighth years of His present Majesty, for consolidating and amending the laws of Excise on malt made in the united kingdom, and for amending the laws relating to brewers in Ireland, and the malt allowance on spirits in Scotland and Ireland*," and passed 29th May, 1830, after reciting the 7 & 8 Geo. IV., c. 52, and that it was expedient to alter and amend the said act; it was therefore enacted, that it shall and may be lawful for any maltster or maker of malt, who shall have made or who shall make entry in manner by the said recited act required of any room or place for the keeping of malt therein, or for the keeping of corn or grain to be made into malt, to make use of any such room or place so entered for keeping malt, and to store and keep therein corn or grain to be made into malt, and to make use of such room or place which shall be so entered for keeping corn or grain, and to keep and store therein malt or any other corn, grain, or seeds; any thing in the said act to the contrary notwithstanding. Provided always, that all malt, corn, grain, and seeds be kept separate and apart, so as to prevent the mixing of any such corn, barley, or other grain or seeds with malt: provided also, that nothing herein contained shall extend to authorize or allow any distiller or maltster in Scotland or Ireland, who shall have made or who shall make entry as a maker of malt for the sole purpose of being consumed in distilling low wines or spirits from malt only, to keep any corn or grain in any room or place entered for keeping, depositing, or storing malt, or to keep or deposit any malt in any room or place entered for storing corn or grain."

Sect. 2. "That it shall and may be lawful for any maltster or maker of malt (except a maltster or maker of malt in Scotland or Ireland making

16. *Malt.*

9 Geo. 4, c. 45.  
c. 80, and  
8 Geo. IV., c. 52.  
repealed.

Duty on malt to be paid within fourteen days after entry made.

Act may be altered this session.

11 Geo. 4, c. 17.

One room may be used for keeping malt and for keeping grain, if separated by a partition.

Raw grain may be dried on the kiln.

16. *Malt.*

11 Geo. IV., c. 11.

Cisterns and couch frames may be used, although not constructed in manner directed by the act.

Officer of Excise to give a copy of his charge, if demanded at any time by the maltster.

Regulations relating to keeping a barley book, and making entries therein, repealed.

malt to be consumed in distilling low wines and spirits from malt only,) on giving twenty-four hours' notice in writing, if the malthouse and premises of such maltster or maker of malt shall be situated in a city or market town or the suburbs thereof, and if situated elsewhere forty-eight hours' notice in writing, to the officer of Excise, of his or her intention so to do, to use any kiln entered for making and drying malt, for drying and to dry thereon barley or any corn or grain not making into malt; any thing in the said recited act contained to the contrary notwithstanding."

Sect. 3. "That it shall be lawful for any maltster or maker of malt, with the approbation of the commissioners of Excise, and under such regulations as the said commissioners shall order and direct, to make use of any cistern which shall have been made and constructed and in use before the passing of the said recited act, notwithstanding such cistern shall not have a clear open space of forty-eight inches at the least above every part of such cistern, so that there be sufficient head-room and light and means to enable the officers of Excise safely and conveniently to have access to and to gauge the corn and grain contained in every part of such cistern; and the certificate in and by the said act required shall, with such approbation as aforesaid, be granted for the use of such cistern, and for any maltster or maker of malt, under such approbation and regulations as aforesaid, to make use of any couch frame made and constructed before the passing of the said recited act, notwithstanding such couch frame shall not have three sides thereof permanently made or constructed, provided that the moveable sides of such couch shall be made with boards or planks of the substance of two inches in thickness at the least, and supported on the outside in every part thereof, so that the frame retain the same dimensions in every part when filled with grain as when empty."

Sect. 4. "That every officer of the Excise who shall take an account of and charge the duty of Excise on any corn or grain making into malt at the malthouse or premises of any maltster or maker of malt, and make a return thereof to the commissioners of Excise, under the powers and directions of the said recited act, shall in all cases when the minutes of the entries made by him in taking such account shall not appear on the book or paper called the specimen paper, left at the premises of the maltster or maker of malt, give a true copy of such charge in writing under his hand to the maltster whose corn or grain making into malt shall be so charged, if such copy shall be demanded in writing by or on behalf of such maltster or maker of malt, notwithstanding such demand may not be made at the time of taking such account."

Sect. 5. "That so much of the said recited act as directs, that there shall be delivered by the proper officer of Excise to every maltster or maker of malt a book prepared for such purposes as thereafter mentioned, called a barley book, to be kept in some public and open part of his or her entered premises, for the inspection of the officers of Excise, together with so much and all such parts of the said recited act, and all clauses, provisions, regulations, and enactments in the said act contained, which direct or require entries of barley received, wetted, or sent out by any maltster or maker of malt, or any other entries, to be made in such book, or which direct or require any maltster or maker of malt to deliver to the officer or officers of Excise any account or accounts of his or her stock of barley, or to level or place the barley in the custody or possession of any maltster or maker of malt in such form as may enable the officers of Excise to gauge and ascertain the quantity thereof, and which direct, authorize, or require any officer of Excise to take an account of the barley in the stock, custody, or possession of any maltster or maker of malt, and all penalties and forfeitures in and by the said act imposed, for any breach or neglect of any of the said clauses, provisions, regulations, or enactments, or for any excess or deficiency in any quantity of barley in the stock, custody, or possession of any maltster or maker of malt, shall be and the same is and are hereby repealed."

8 ct. 6. "That so much of the said recited act as enacts, that every maltster or maker of malt, before beginning to wet or steep any corn or grain to be made into malt, shall give to the officer of Excise under whose survey such maltster or maker of malt shall then be twenty-four hours' notice at least in writing, if the malthouse of such maltster or maker of malt shall be situated in any city, or in the suburbs of any city, or in any market-town, and forty-eight hours' notice at least in writing, if such malthouse shall not be so situated, of the day and particular hour of the day when such maltster or maker of malt intends to wet or steep corn or grain to be made into malt, and of the quantity of corn or grain in bushels to be then wet or steeped; and if any maltster or maker of malt shall begin to wet or steep any corn or grain to be made into malt, without giving such notice as aforesaid, or shall wet or steep any greater or less quantity of corn or grain (exceeding the proportion of one in twenty) than the quantity of corn or grain expressed in such notice, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*; and in case any maltster or maker of malt shall not, pursuant to any such notice as aforesaid, begin to wet or steep the corn or grain mentioned in such notice, and cover the whole thereof with water, at the day and hour mentioned in such notice, or within three hours next after the expiration of such hour, every such notice shall be and is hereby declared to be null and void; and every such maltster or maker of malt, before he shall begin to wet or steep such corn or grain, shall give fresh notice thereof according to the provisions of this act, under pain of such penalty as last aforesaid. Provided always, that no maltster or maker of malt shall be subject to the said last-mentioned penalty for or by reason of his or her wetting or steeping any less quantity of corn or grain than the quantity of corn or grain expressed in such notice as aforesaid, if such maltster or maker of malt shall be prevented from wetting or steeping the quantity of corn or grain expressed in such notice by want of barley, and shall give notice thereof to the proper officer of Excise, by entering, with such wetting or steeping, in the barley book, the cause and extent of such prevention as aforesaid. Provided also, that no maltster or maker of malt shall be subject to the said last-mentioned penalty for or by reason of his or her wetting or steeping any greater or less quantity of corn or grain exceeding the proportion aforesaid than the quantity of corn or grain expressed in such notice as aforesaid, if such maltster or maker of malt shall show to the satisfaction of the commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, that the same occurred by accident or oversight, and without intentional disregard of any of the provisions of this act in that behalf contained,—shall be and the same is hereby repealed."

Sect. 7. "That every maltster or maker of malt, before beginning to wet or steep any corn or grain to be made into malt, shall give to the officer of Excise under whose survey such maltster or maker of malt shall then be twenty-four hours' notice at least in writing, if the malthouse of such maltster or maker of malt shall be situated in any city, or any market town, or in the suburbs thereof, and if such malthouse shall not be so situated, forty-eight hours' notice at least in writing of the day and particular hour of the day when such maltster or maker of malt intends to wet or steep corn or grain to be made into malt; and if any maltster or maker of malt shall begin to wet or steep any corn or grain to be made into malt without giving such notice as aforesaid, or shall wet or steep any corn or grain to be made into malt before the particular hour specified in such notice, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*; and in case any maltster or maker of malt shall not, pursuant to any such notice as aforesaid, begin to wet or steep the corn or grain mentioned in such notice, and cover the whole thereof with water, at the day and hour mentioned in such notice, or before the expiration of three hours from the hour mentioned in such

16. *Malt.*

11 Geo. IV., c. 17.

Provision for notice of wetting corn or grain repealed.

24 hours' notice to be given of wetting corn at a malt-house situated in a city or market town, and 48 hours' notice elsewhere.



**16. Malt.**

11 Geo. 4, c. 17.  
A book to be delivered to every maltster, in which the quantity of corn wetted is to be entered.

notice, every such notice shall be and is hereby declared to be null and void."

Sect. 8. "That there shall be delivered by the proper officer of Excise, to every maltster or maker of malt, a book prepared for such purposes as hereinafter mentioned, to be kept by such maltster or maker of malt in some public and open part of his or her entered premises, for the inspection of the officers of Excise; and every maltster and maker of malt shall, on the same day on which he shall steep any corn or grain to be made into malt, and within three hours after any corn or grain shall have been covered with water for the purpose of wetting or steeping the same to be made into malt, enter in such book, and in the proper columns, to be prepared for such purposes respectively, a true and particular account of the quantity in bushels of the corn or grain so wetted or steeped, and shall enter against and immediately opposite to every such entry the particular day and hour of the day on and at which such corn or grain was so wetted or steeped and covered with water, and shall on the next survey of the officer of Excise produce to such officer the said book, with the said entries therein, for his information; and if any maltster or maker of malt shall not keep such book, or shall neglect or refuse to make any such entry as aforesaid, or to produce such book with such entries therein to the officer of Excise on his next survey, or shall convey away or conceal the same, or shall destroy or tear out any leaf thereof, or cancel, obliterate, destroy, or alter any entry therein, or make any false entry therein, or shall refuse to permit any officer of Excise at any time to inspect such book, or to make any minute therein, or to take any extract therefrom, as to such officer shall seem meet, or to remove or take away such book, leaving a new book for the like purpose in lieu thereof, or if any maltster or maker of malt shall have wetted or steeped any greater or less quantity of corn or grain than shall be stated in the entry thereof in the said book, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 50*l.*: provided that no maltster or maker of malt shall be subject to the said penalty for or by reason of his having steeped or wetted any greater or less quantity of corn or grain than shall be stated in the entry thereof, if the quantity wetted shall not be greater or less than the quantity entered in the proportion of one bushel in twenty."

Provision that maltsters giving notice to steep for sixty-five hours shall begin to wet between eight in the evening and eleven at night repealed.

Sect. 9. "That so much of the said recited act as enacts, that it shall be lawful for any maltster or maker of malt, who shall give such further notice of his or her intention to continue the corn or grain by him or her to be wet or steeped covered with water for the space of sixty-five hours, as hereafter mentioned, to begin to wet or steep such corn or grain to be made into malt at any time between the hours of eight of the clock in the evening and eleven of the clock at night, and if any maltster or maker of malt, who shall have given such further notice as aforesaid, shall begin to wet or steep any such corn or grain as aforesaid, to be made into malt, at any other time than as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*, shall be and the same is hereby repealed."

Provision that corn shall be kept in the cistern not exceeding fifty-five nor less than forty hours repealed.

Sect. 10. "That so much of the said recited act as enacts, that every maltster or maker of malt shall continue the corn or grain by him or her wet or steeped in the cistern to be made into malt covered with water for a space of time not exceeding fifty-five and not less than forty hours from the time of such corn or grain being first wet or steeped, and if any maltster or maker of malt shall continue such corn or grain, or any part thereof, covered with water for any space of time exceeding fifty-five hours, or shall drain or draw off the water from any such corn or grain before the expiration of forty hours from the time of such corn or grain being first wet or steeped, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*, shall be and the same is hereby repealed."

Sect. 11. "That so much of the said recited act as enacts, that where any maltster or maker of malt shall intend to continue the corn or grain to be wet or steeped covered with water for the space of sixty-five hours every such maltster or maker of malt shall, in the notice in writing by him or her required to be given to the officer of Excise under whose survey such maltster or maker of malt shall then be, of the day and particular hour of the day when such maltster or maker of malt shall intend to wet or steep corn or grain to be made into malt, and of the quantity of corn or grain in bushels to be then wet or steeped, give further notice that it is his or her intention to continue the same covered with water for the space of sixty-five hours from the time of such corn or grain being first wet or steeped; and every such maltster or maker of malt shall in such case continue such corn or grain covered with water for and until the expiration of sixty-five hours as aforesaid; and if any maltster or maker of malt, who shall have given such further notice as aforesaid, shall not continue such corn or grain covered with water for and until the expiration of sixty-five hours as aforesaid, or shall continue the same covered with water for any time after the expiration of sixty-five hours as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*—shall be and the same is hereby repealed."

Sect. 12. "That so much of the said recited act as provides and enacts, that it shall be lawful for any maltster or maker of malt, between the 1st day of March and the 1st day of November in every year, to drain or draw off the water once from any corn or grain by him or her wet or steeped in the cistern to be made into malt, before the expiration of the time for which corn or grain is by this act required to be kept covered with water, without incurring any penalty for so doing, provided such maltster or maker of malt shall, in the notice by him or her given of his or her intention to wet or steep such corn or grain to be made into malt by this act before required, express his or her intention to drain or draw off the water from such corn or grain as aforesaid, and the particular day and hour of the day, between the hours of eight of the clock in the morning and two of the clock in the afternoon, when such maltster or maker of malt shall intend so to do, provided always that such corn or grain be again completely covered with water before the expiration of one hour from the time of the water being begun to be drained or drawn off as aforesaid, any thing hereinbefore contained to the contrary thereof notwithstanding, shall be and the same is hereby repealed."

Sect. 13. "That every maltster or maker of malt shall continue the corn or grain by him or her wet or steeped in the cistern, to be made into malt, covered with water for a space of time not less than forty hours from the time of such corn or grain being first wet or steeped; and if any maltster or maker of malt shall drain or draw off the water from any such corn or grain before the expiration of forty hours from the time of such corn or grain being first wet or steeped, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*"

Sect. 14. "Provided always, that it shall be lawful for any maltster or maker of malt to draw off the water from any corn or grain by him or her wet or steeped in the cistern, to be made into malt, once during the time such corn or grain shall be continued in steep, although the same shall not then have been covered with water for the space of forty hours, without any penalty being incurred for so doing, provided such maltster or maker of malt shall, in the notice by him or her given of his or her intention to wet or steep corn or grain to be made into malt, by this act required, express his or her intention to drain or draw off the water from such corn or grain as aforesaid, and the particular day and hour of the day, between the hours of eight of the clock in the morning and two of the clock in the afternoon, when such maltster or maker of malt shall intend so to do; provided always, that such corn or grain be again completely covered with

16. *Malt.*

11 Geo. 4, c. 17.  
Provision that maltsters having given notice to steep for sixty-five hours shall keep grain in steep for that time repealed.

So much of act as allows water to be once drained repealed.

Maltster to keep the grain in the cistern covered with water for at least forty hours.

Water may be once drained during the steeping, on due notice having been given, provided the corn be again covered within an hour.

16. *Malt.*

11 Geo. IV., c. 17.

Provision that maltsters, having given notice to steep for sixty-five hours, shall empty their cistern only between one in the forenoon and four in the afternoon, repealed.

Corn may be emptied from the couch frame at the expiration of twenty-six hours, but to be deemed in couch for thirty hours.

When any increase shall be found on turning out any grain from the couch, such increase not to be deemed conclusive of treading, unless it shall amount to six bushels and one quarter in every one hundred bushels.

water before the expiration of one hour from the time of the water being begun to be drained or drawn off as aforesaid; any thing in the said recited act or this act to the contrary notwithstanding.

Sect. 15. "That so much of the said recited act as enacts, that it shall not be lawful for any maltster or maker of malt, who shall have given such further notice of his or her intention to continue the corn or grain by him or her wet or steeped covered with water for the space of sixty-five hours, as before mentioned, to empty or take such corn or grain, or any part thereof, from or out of the cistern at any other time than between the hours of one of the clock in the forenoon and four of the clock in the afternoon; and if any maltster or maker of malt, who shall have given such further notice as aforesaid, shall empty or take such corn or grain as aforesaid, or any part thereof, from or out of the cistern at any other time than aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*,—shall be and the same is hereby repealed."

Sect. 16. "That no maltster or maker of malt shall be liable to any penalty or forfeiture by the said recited act imposed, for or by reason of any corn or grain not being at any time of the year kept and continued laid in the couch frame or frames into which such corn or grain shall have been emptied for the space of thirty hours or any longer period than twenty-six hours from the time of its being emptied from or out of the cistern or cisterns in which the same shall have been wetted or steeped, but all such corn or grain shall nevertheless in all cases where the same shall not have been gauged and taken account of by the proper officer of Excise within twenty-six hours from the time of such corn or grain being emptied out of the cistern or cisterns, and whilst the same was kept in the couch frame, at all times of the year, be taken and deemed to be in couch, and shall be gauged and taken account of by the officer of Excise as in couch for the space of thirty hours from the time of its being emptied from or out of the cistern or cisterns, whether such corn or grain shall be continued in the couch frame or frames into which the same shall have been emptied, or shall be removed after the expiration of the said twenty-six hours and before the expiration of thirty hours, from such couch frame or frames, to the floor."

Sect. 17. "And whereas in and by the said recited act it is lawful for any officer of Excise who shall have reason to believe or who shall suspect that the corn or grain making into malt in any cistern or couch frame has been trodden or forced together, and for any person or persons in aid and assistance of such officer, in the presence of such maltster or maker of malt, or of his servant, if such maltster or servant shall think fit to be present, to turn over all such corn or grain, either by throwing all such corn or grain from and out of the cistern or couch frame, and returning the same into the cistern or couch frame from which it shall have been thrown, and laying the same level again therein, or by turning over all such corn or grain in such cistern or couch frame, and laying the same level again therein, or by throwing out any part of such corn or grain from such cistern or couch frame, and turning over so much thereof as shall be left remaining therein, and returning so much of such corn or grain as shall have been thrown out into the cistern or couch frame from which the same shall have been thrown, and laying the whole of such corn or grain level again in such cistern or couch frame, as to such officer shall seem fit; and if any increase shall be found in the gauge or quantity of such corn or grain after being turned over and laid level again in the cistern or couch frame in any such manner as aforesaid, over and above the former gauge in any greater proportion than that of one bushel in every twenty bushels of such corn or grain, the increase so found is in and by the said recited act to be deemed conclusive evidence that such corn or grain had been trodden or forced together: and whereas it may happen that when corn or grain has been emptied from the cistern into

the couch frame more than twelve hours the increase thereof from the swell may amount to one bushel in twenty without fraud ; and it is expedient to alter such proportion, so far as respects such corn or grain in the couch frame ; be it therefore enacted, that when any officer of Excise shall in manner authorized by the said recited act turn over and level again in any couch frame any corn or grain after the expiration of twelve hours from the time when such corn or grain shall have been emptied from the cistern or cisterns into such couch frame, and any increase shall be found in the gauge or quantity of such corn or grain after being turned over and laid level again in the couch frame in any such manner as aforesaid, over and above the former gauge, no such increase shall be deemed conclusive evidence that such corn or grain had been trodden or forced together, unless such increase shall be in any greater proportion than six bushels and one quarter of a bushel in every one hundred bushels of such corn or grain."

Sect. 18. " And whereas in and by the recited act every maltster and maker of malt is restricted from wetting, watering, or sprinkling any corn or grain making into malt, before the expiration of twelve days or two hundred and eighty-eight hours after the same shall have been emptied or taken from or out of the cistern : and whereas it is expedient to allow, under certain regulations, maltsters and makers of malt to water and sprinkle corn or grain making into malt, before the expiration of twelve days or two hundred and eighty-eight hours ; be it therefore enacted, that it shall and may be lawful for any maltster or maker of malt who shall have kept and continued any corn or grain making into malt covered with water in the cistern for the full space of fifty hours from the time of such corn or grain being first wetted or steeped, and who shall not at the same time have in the same malthouse any other corn or grain on the floor which shall been\* kept and covered with water for any less space than fifty hours from the time of the same being first wet or steeped, to wet, water, or sprinkle any such corn or grain at any time after the expiration of eight days or one hundred and ninety-two hours after the same shall have been emptied or taken out of the cistern. Provided always, that every maltster or maker of malt who shall wet, water, or sprinkle any corn or grain making into malt contrary to the regulations aforesaid shall be subject and liable to the penalty in and by the said recited act imposed for wetting, watering, or sprinkling corn or grain before the expiration of twelve days or two hundred and eighty-eight hours."

Sect. 19. " That nothing in the said act contained shall extend or be construed to extend to render liable any maltster or maker of malt to any penalty by the said act imposed for not putting or placing the sides or outward edges of any floor, or any quantity of corn or grain making into malt, in straight lines, as required by the said recited act, so that all such floors or quantities of corn or grain making into malt shall be deposited and left and placed in such form that they may be conveniently gauged, and that they be levelled as required by the said recited act."

Sect. 20. " And that so much of the said recited act as enacts, that whenever the duty upon malt shall be charged by gauge of the corn or grain taken while the same is in a state of operation, or in process of making into malt, such allowances shall be made upon such gauges as are hereinafter mentioned : upon every gauge thereof taken by the officer of Excise (a) in the cistern wherein the corn or grain is wetting or steeping to be made into malt, or in the couch frame into which the corn or grain shall have been emptied, during the period respectively for which corn or grain is by this act before required to be kept and continued in such cistern and couch frame respectively, an allowance shall be made by such officer of one-fifth part of the whole quantity of the corn or grain so found by such gauge ; and upon every gauge taken by the officer of Excise of such corn or grain on the floor, after the expiration of such

16. *Malt.*

11 Geo. IV., c. 17.

Grain which has been steeped fifty hours, if there be no other grain in the house which has been steeped for any less time, may be sprinkled.

\* Sic.

No penalty for the outward edges of the floor not being in straight lines, if so placed as to be conveniently gauged.

Allowances on charging malt re-pealed.

(a) In the act it is printed by mistake *Exercise*.

## 16. Malt.

11 G.O. 4, c. 17.

periods of time respectively as aforesaid, and before the expiration of ninety-six hours from the time when such corn or grain was emptied or taken from or out of the cistern, an allowance shall be made by such officer of one-third part of the whole quantity of the corn or grain so found by such gauge as last aforesaid; and upon every gauge afterwards taken by the officer of Excise of such corn or grain before the same shall be dried off upon and removed from the kiln, an allowance shall be made by such officer of one-half of the whole quantity of such corn or grain so found by such gauge as last aforesaid; and the duty of Excise upon malt, when charged upon the corn or grain in a state of operation, or in process of making into malt as aforesaid, shall be charged upon the best of the several gauges so taken as aforesaid, after such allowances shall have been so made thereon respectively as before mentioned. Provided always, that it shall be lawful for any officer of Excise to take an account of all the malt made by any maltster or maker of malt, after the same shall have been taken or thrown off from the kiln, and whilst the same shall remain in the custody or possession of the maltster or maker thereof; and if, upon taking such account as last aforesaid, such officer shall find the quantity of malt so taken account of to exceed the quantity before charged with duty, according to the best gauge thereof when taken in operation as aforesaid, such officer shall in every such case (making an allowance after the rate of eighteen bushels in every one hundred bushels of blown malt for porter) charge the duty upon all such excess; any thing hereinbefore contained to the contrary thereof notwithstanding,—shall be and the same is hereby repealed.”

Allowances to be made on charging malt by gauge.

Sect. 21. “That whenever the duty upon malt shall be charged by gauge of the corn or grain taken whilst the same is in a state of operation, or in process of making into malt, such allowances shall be made upon such gauges as are hereinafter mentioned; that is to say, upon every gauge thereof taken by the officer of Excise in the cistern wherein the corn or grain is wetting or steeping to be made into malt, during the time which such corn or grain shall be kept and continued in such cistern, or in the couch frame into which such corn or grain shall be emptied, or on the floor, during the period for which such corn or grain is by this act before required to be kept and continued in such couch frame, and directed to be deemed in couch, and gauged and taken account of as in such couch, an allowance shall be made by such officer of seventeen bushels and one half bushel in every one hundred bushels of the whole quantity of the corn or grain so found by such gauge; and upon every gauge taken by the officer of Excise of such corn or grain on the floor after the expiration of twenty-six hours, if such corn or grain shall have been previously gauged and taken account of in the couch frame, and if such corn or grain shall not have been so previously gauged, then after the expiration of thirty hours, and before the expiration of seventy-two hours from the time when such corn or grain was emptied or taken from or out of the cistern, an allowance shall be made of one-third of the whole quantity of the corn or grain so found by such gauge as last aforesaid; and upon every gauge afterwards taken by the officer of Excise of such corn or grain before the same shall be dried, an allowance shall be made by such officer of one-half of the whole quantity of such corn or grain so found by such gauge as last aforesaid; and the duty of Excise on malt, when charged upon the corn or grain in a state of operation, or in process of making into malt, as aforesaid, shall be charged on the best of the several gauges so taken respectively as aforesaid.”

Allowance on unscreened malt measured from the kiln repealed.

Sect. 22. “And that so much of the said act as provides and enacts, that whenever any officer of Excise shall propose to measure or take an account of malt, on the same being taken or thrown off from the kiln, and whilst the same is hot, and contains the commings or roots thereof, and is in the same state as the same has been taken or thrown off from the kiln, such

officer shall in such account make an allowance of twelve *per centum* for the heat, commings, or roots, and unclean state of such malt, or shall, at the election of such officer, require such malt to be forthwith screened and cleaned for the purpose of being measured and taken account thereof without such allowance; and in case such maltster or maker of malt shall, on such request of the officer to screen such malt, desire time so to do, it shall be lawful for such officer to lock up all such malt in a safe and secure room, to be provided by such maltster or maker of malt; and no such maltster or maker of malt shall be entitled to any such allowance as aforesaid, or to screen such malt before the same is measured or taken account of as aforesaid, unless he shall forthwith remove and deposit all such malt in such room, and keep the same therein so locked up by the officer of Excise, safely and securely, and unmixed with any other malt whatsoever, until such maltster or maker of malt shall give forty-eight hours' notice to the proper officer of Excise to unlock such room, and shall thereupon screen and clean such malt for the purpose of being measured and taken account of by the officer, without such allowance as aforesaid. Provided also, that on any officer taking an account of the malt in the stock, custody, or possession of any maltster or maker of malt, on or after the 10th day of October in every year, as hereinafter mentioned, every such officer shall make an allowance to such maltster or maker of malt of one bushel in twenty bushels of such malt, for any variation having occurred therein whilst in stocks; any thing hereinbefore contained to the contrary thereof in anywise notwithstanding,—shall be and the same is hereby repealed.”

Sect. 23. “ And that so much of the said act as enacts, that every maltster or maker of malt shall, monthly and every month, make a true entry in writing of all the malt by him or her made within such period as aforesaid, at the office of Excise within the limits whereof such malt shall have been made; and if any maltster or maker of malt shall neglect or refuse to make entry as aforesaid, or shall make any false entry in that behalf, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*,—shall be and the same is hereby repealed.”

Entry required to be made monthly repealed.

Sect. 24. “ And that so much of the said recited act as enacts, that every maltster and maker of malt shall, within the space of fourteen days next after he or she shall have or ought to have made such entry as aforesaid, pay and clear off all the duties which shall have been charged upon and which shall remain unpaid by such maltster or maker of malt, for or in respect of any malt by him or her made, unless such maltster or maker of malt shall have given, and shall maintain and renew, upon the death or insolvency of any party thereto, security, approved of by the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland respectively, or the person or persons who shall be appointed or employed by them respectively for that purpose, by bond in double the value of the duties which such commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise, or such person or persons as aforesaid, shall judge likely to arise or be charged upon and become due from such maltster or maker of malt within any five months, for the due payment at the end of every four months from the day on which such maltster or maker of malt shall or ought to have made such entry as aforesaid, of all such duties and sum and sums of money as shall arise or be charged on or become due from such maltster or maker of malt; and if any maltster or maker of malt who shall not have given such security, or who shall not maintain and renew such security as aforesaid, shall neglect or refuse to pay and clear off such duties within the space of fourteen days as aforesaid, every such maltster or maker of malt as last aforesaid, so offending, shall for every such offence forfeit and lose double the sum for which such duties so neglected or refused to be paid or cleared off as aforesaid shall amount to,—shall be and the same is hereby repealed.”

So much of the act as requires maltsters to clear off their duties within fourteen days after entry repealed.

Sect. 25. “ And that so much of an act passed in the ninth year of the

## 16. Malt.

11 Geo. IV., c. 17.  
So much of 9 Geo.  
4, c. 45, as enacts,  
that all duty on  
malt shall be paid  
within fourteen  
days after entry  
made repealed.

Officer of Excise  
to make a return  
of duty charged on  
the maltster every  
six weeks: the  
amount of such  
return to be paid  
in six days, unless  
security shall have  
been given.

Certain maltsters  
in Scotland and  
Ireland to clear off  
the duty in six  
days.

Regulations re-  
lating to cer-  
tificates repealed.

reign of His present Majesty, intituled *An act to amend and to make perpetual, and to extend to the whole of the united kingdom, certain provisions contained in several acts for regulating the rectification, compounding, dealing in, or retailing of spirits, and for preventing private distillation, in Scotland, and to provide for the payment of the duty on malt used in making of spirits from malt only*, as enacts, that all duty charged upon or in respect of any malt which shall be made to be used and consumed only by distillers or makers of low wines or spirits in Scotland or Ireland, in distilling low wines or spirits made from malt only, shall be paid and cleared off by the maltster or maker of such malt within the space of fourteen days next after such maltster or maker of malt shall have or ought to have made such entry, as in the said therein-recited act is mentioned, whether any bond or security for the payment of such duties shall or shall not have been given pursuant to the said recited act, on pain that every such maltster or maker of malt shall forfeit double the amount or sum of such duties so neglected or refused to be paid within the said space of fourteen days, any thing in the said recited act to the contrary in anywise notwithstanding, shall be and the same is hereby repealed."

Sect. 26. "And that the officer of Excise under whose survey any maltster or maker of malt shall be, or any other officer appointed so to do, shall and he is hereby required, from time to time, at the expiration of every six weeks, or at such other times as the commissioners of Excise shall direct, to make out and deliver to the collector of Excise, or to such person or persons as the commissioners of Excise shall appoint to receive the same, an account or return in writing of the quantity of malt made by such maltster or maker of malt, and for which he shall have become chargeable with duty, in such preceding six weeks or period, and of the duty payable thereon; and the return or account of such officer shall be a charge on every such maltster or maker of malt; and such maltster or maker of malt shall pay and clear off the duty appearing by such return or account to have become due and payable within six days after such return or account shall have been made, unless such maltster or maker of malt shall have given and shall maintain, and shall renew from time to time as he may be by the commissioners of Excise required, or persons appointed by them for that purpose, to renew the same, security, approved by the commissioners of Excise, or the person or persons who shall be appointed by them for that purpose, by bond in double the value of the duties which such commissioners of Excise, or such person or persons as aforesaid, shall judge likely to arise or be charged on and become due from such maltster or maker of malt within any eighteen weeks, for the due payment at the end of every eighteen weeks after such account or return as aforesaid shall be made of all such duties and sum and sums of money as shall arise or be charged on or become due from such maltster or maker of malt; and if any maltster or maker of malt who shall not have given such security, or who shall not maintain, and renew when required so to do, such security, shall neglect or refuse to pay and clear off such duties within six days as aforesaid, every such maltster or maker of malt shall for every such offence forfeit and lose double the sum which such duties so neglected or refused to be paid or cleared off shall amount to."

Sect. 27. "Provided always, that all duty charged upon or in respect of any malt which shall be made to be used and consumed only by distillers or makers of low wines and spirits in Scotland or Ireland, in distilling low wines or spirits from malt only, shall be paid and cleared off within the space of six days next after such account or return shall have been made as aforesaid, whether any bond or security for the payment of such duties shall or shall not have been given, on pain that every such maltster or maker of malt shall forfeit double the amount or sum of such duties so neglected or refused to be paid within the said space of six days."

Sect. 28. "And that so much of the said recited act as directs and requires that a book, with proper printed forms and titles for such purposes as



thereinafter mentioned, shall be delivered by the proper officer of Excise to every maltster or maker of malt, and that from and after the 10th day of October, 1827, no malt exceeding four bushels at one time, or if to a brewer of beer for sale, in any quantity whatsoever, shall be sold, sent out, or delivered without a certificate, filled up and cut out progressively from the printed forms and titles contained in such book as aforesaid, signed by the maltster or maker of malt selling, sending out, or delivering the same, or by some person on his behalf, certifying the particulars in and by the said recited act required, together with all other regulations, provisions, clauses, and enactments in the said recited act contained, relating to such books, and to the issuing, delivering, or sending out such certificates, filling up any counterparts thereof, or to any trader or other person, or delivering such certificates to any officer of Excise, or to the removal of any malt under or by virtue of any such certificate, and all penalties and forfeitures in and by the act imposed for any breach or neglect of any of the said provisions, regulations, clauses, or enactments relating to the said book and to such certificates, shall be and the same is and are hereby repealed."

Sect. 29. "And that so much of the said recited act as enacts, that every maltster or maker of malt shall daily enter in a book delivered to him or her by the officer of Excise for that purpose the total quantity of malt by such maltster or maker of malt sold or sent out during such day, in quantities not exceeding four bushels at one time, except to a brewer of beer for sale; and every such maltster or maker of malt shall at all times keep such book, with all entries made therein, open and exposed in some entered building or place of and belonging to such maltster or maker of malt, for the perusal and inspection of the officers of Excise, and shall deliver up every such book as aforesaid to any officer of Excise demanding the same, and permit him to make any minute therein, as such officer shall think fit; and if any such maltster or maker of malt shall neglect or refuse to make such entry as aforesaid, or shall not keep such book as last aforesaid, or shall not deliver up any such book to any officer demanding the same, or permit him to make any minute therein, or shall convey away or conceal the same, or shall destroy or tear out any leaf thereof, or cancel, obliterate, destroy, or alter any entry therein, or make any false entry therein, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 50*l.*,—shall be and the same is hereby repealed."

Provision as to daily entries of malt sent out repealed.

Sect. 30. "And that so much of the said recited act as enacts, that every factor or dealer in or seller of malt shall make true and particular entry in writing of every building or place by him or her intended to be used for the storing or keeping of malt for sale at the nearest office of Excise; and if any factor, dealer in or seller of malt, shall use any building or place for the storing or keeping of malt for sale, without having made such entry thereof as aforesaid, every factor, dealer in or seller of malt, so offending, shall forfeit and lose the sum of 100*l.* for every building or place so used without such entry thereof as aforesaid; and all malt which shall be found in any such building or place shall be forfeited, and shall and may be seized by any officer of Excise,—shall be and the same is hereby repealed."

Provision that entry shall be made of every building used by malt factors repealed.

Sect. 31. "And that so much of the said recited act as directs and requires that a book, prepared with proper printed forms and titles for such purposes as thereinafter mentioned shall be delivered by the proper officer of Excise to every factor or dealer in or seller of malt, and that every factor or dealer in or seller of malt shall make entries in such book of all malt received into his or her custody, and all regulations, directions, and provisions in the said recited act relating to such book or such entries, shall be and the same is and are hereby repealed."

Regulations regarding malt factors repealed.

Sect. 32. "And that so much of the said act as enacts, that every maltster or maker of malt, within ten days after the tenth day of October in every year, shall call or place all the malt not then in operation or process of

Regulations for taking stock of malt repealed.



## 16. Malt.

Penalty and forfeiture for removing malt without certificate repealed.

making into malt, in his or her custody or possession, into such level and regular form as may enable the officer of Excise conveniently to gauge and ascertain the true quantity thereof; and if any maltster or maker of malt shall neglect or refuse to cast or place all or any such malt as aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*,—shall be and the same is hereby repealed."

Sect. 33. "And that so much of the said recited act as enacts, that every person who shall at any time be found removing or attending and directing the removal of any malt from one part of the united kingdom to any other part thereof shall, upon the demand of any officer of Excise, produce such malt, and the certificate accompanying or which shall or ought to have accompanied such malt on the removal thereof, to the officer demanding the same, to be by him examined and inspected, and compared with the quantity and quality of the malt so removing as aforesaid; and if any such person or persons shall, upon the demand of any officer of Excise, neglect or refuse to produce any such malt or certificate as aforesaid or to suffer or permit such inspection, examination, and compare as aforesaid, or shall hinder or obstruct any officer of Excise therein, or in the due execution of his duty, or of any of the powers to such officer by this act granted, every such person so offending shall for every such offence forfeit and lose the sum of 200*l.*; and in every such case all such malt, and the vessel or boat, cart, carriage, or other conveyance, horses or other cattle, removing or which shall have been used in the removal of such malt, shall be forfeited, and shall and may be seized by any officer of Excise,—shall be and the same is hereby repealed."

Repeal of provisions of recited act shall not revive the provisions of any former act.

Sect. 34. "Provided always, that the repeal of any of the provisions of the said recited act by this act shall not extend or be construed to extend to revive or put in force any provision contained in any former act or acts; but that all such enactments, clauses, and provisions, in any former act or acts contained, as are by the said recited act directly or indirectly repealed, shall and the same are hereby declared to continue repealed and of no effect."

Punishment of servants offending.

Sect. 35. "That if any workman, servant, or labourer employed by or in the service of any maltster or maker of malt shall maliciously, and with intent to injure such maltster or maker of malt, omit to give any notice, or to do any act, matter, or thing required by the said recited act or this act to be given or done, or shall do any act, matter, or thing prohibited to be done by the said recited act or this act, or commit any offence against any of the provisions of the said recited act or this act, whereby such maltster or maker of malt shall be injured or damnified, or subjected to any penalty imposed by the said recited act or this act, every such workman, servant, and labourer so offending shall and may be arrested and conveyed before any one justice of the peace, and convicted by and before such justice, and committed to gaol, and kept to hard labour, in the manner directed by and for the time specified in the said provision of the said recited act; and the said provision is hereby extended to the other offences against the recited act and this act, and made part of this act, as fully and effectually as if the same was hereby repealed and re-enacted. Provided always, that no such arrest and conviction shall take place or be made for any offence committed by any such workman, servant, or labourer against any provision of the said recited act or this act, after the expiration of one month from the discovery of the offence."

Provision that no person shall be entitled to relief for malt destroyed, unless notices be given in manner therein specified, repealed. (a)

Sect. 36. "And that so much of the said recited act as provides and enacts, that no person or persons shall be entitled to any relief in such case as aforesaid, unless a notice in writing, describing the nature, cause, and extent of such accident as aforesaid, shall be delivered to the commissioners of Excise, or to the supervisor of Excise of the district in which such loss shall have taken place or shall have been first discovered, within three days next after the same shall have taken place or been so discovered; or unless the person or persons by whom such loss shall have been sustained,

or the agent of such person or persons, shall give or leave notice in writing of his, her, or their intention to apply for such relief, with the collector or supervisor of Excise of the collection or district where the quarter-sessions are to be held at which he, she, or they there intend to apply for such relief, or to the solicitor of Excise for the summary jurisdiction of the commissioners of Excise in London, where such application shall be intended to be made to such commissioners, fourteen days at the least before the beginning of such quarter-sessions, or before such application to such commissioners; and unless such person or persons shall apply for such relief within one month after such accident shall have taken place or have been first discovered, or at the next general quarter-sessions of such justices which shall take place after the expiration of such month; any thing in this act, or in any other act or acts, to the contrary thereof notwithstanding, —shall be and the same is hereby repealed."

Sect. 37. "Provided always, that no person or persons shall be entitled to any relief under the said recited act for any malt destroyed or damaged by fire or inevitable accident, unless a notice in writing, describing the nature, cause, and extent of such accident as aforesaid, shall be delivered to the commissioners of Excise, or to the supervisor of Excise of the district in which such loss shall have taken place or shall have been first discovered, within fourteen days next after the same shall have come to the knowledge of the person or persons claiming such relief; nor unless such person or persons, or the agent of such person or persons, shall also give or leave notice in writing of his, her, or their intention to apply for such relief with the collector or supervisor of Excise of the collection or district where the quarter-sessions are to be held at which he, she, or they intend to apply for such relief, or to the solicitor of Excise for England, where such application shall be intended to be made to such commissioners, ten days at the least before the beginning of such quarter-sessions, or before such application to such commissioners; nor unless such person or persons shall also apply for such relief within four calendar months after such accident shall have come to his, her, or their knowledge; any thing in this act, or in any other act or acts, to the contrary thereof notwithstanding."

Sect. 38. "And that all clauses, enactments, provisions, restrictions, regulations, matters, and things in the said recited act contained, not hereby repealed, shall be and remain in full force and effect."

Sect. 39. That all the enactments, clauses, powers, and provisions contained in an act made and passed in the 7 & 8 Geo. IV., c. 53, except as the same are hereby expressly altered or repealed, shall extend and be deemed and construed to extend to this act, and this act to commence from the passing hereof.

By 12 Geo. I., c. 4, s. 48, and 33 Geo. II., c. 7, s. 14. No malt entered and made for exportation only shall be liable to the duties; and no drawbacks shall be allowed for any malt exported.

By 1 Geo. III., c. 3, s. 9, and 59 Geo. III., c. 3, s. 8. There shall be allowed to every maker of malt for exportation, for every 20 quarters of grain made into malt, in 30 quarters when dried and made into malt, and no more, though by the steeping or watering thereof it may be run out into a greater quantity than 30 quarters.

By 12 Geo. I., c. 4, s. 49, 58. Every maker of malt, before he shall begin to wet or steep any grain to be made into malt for exportation, shall leave notice in writing with the officer of the quantity of grain intended to be contained in each steeping, on pain of 50*l.*; and the same shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5*s.* a bushel.

Sect. 50. No maker of malt shall begin to wet or steep any corn to make into malt for exportation above six days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption above six days before all

16. *Malt.*

Notice to be given on application for relief in case of malt destroyed or damaged.

Recited act to remain in force where not repealed.

The 7 & 8 Geo. IV., c. 53, extended to this act.

Making malt for exportation.

Allowance to maltsters for grain made into malt.

## 16. Malt.

Grain making into malt for exportation to be kept separate until measured.

the corn on his floors for exportation be dried and locked up, on pain of 5*s.* for every bushel.

By 3 Geo. IV., c. 18, s. 12. Every maker of malt shall keep each steeping or wetting of grain making into malt for exportation, when the same shall be on the kiln, or after it shall be taken off, separate from any former steepings until the same shall be measured, on pain of forfeiting 50*l.*

By 3 Geo. II., c. 7, s. 16. The maker shall keep the whole quantity of his corn making into malt for exportation of one steeping or wetting, when the same shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting until it hath been measured in presence of the officer, on pain of 50*l.*

By 12 Geo. I., c. 4, s. 52. The officers during the steeping of the corn so intended for exportation, and till it be dried and locked up, may gauge and take an account thereof in all its operations, as in case the duties were to be charged thereon.

Sect. 58. And persons opposing the officers in the execution of this act shall forfeit 50*l.*

Notice of taking malt off the kilns.

By 12 Geo. I., c. 4, s. 51, 58, and 3 Geo. II., c. 7, s. 17. The maker shall give notice in writing to the officer, or leave notice at the next Excise office, of the hour when he intends to take any malt off the kiln, that the officer may attend the measuring; and after it has been measured, it shall (on pain of 50*l.*) be immediately carried on ship-board, or else into storehouses, to be provided by such maker, to be there kept apart from all other malt under two locks, one to be provided by the proprietor, and the other by the officer at the expense of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the same be delivered out for exportation.

Such malt to be exported or stored.

And by 3 Geo. II., c. 7, s. 18. If the maker of malt, or any person with his privy or direction, shall open such lock, or make any way or kind of entrance into the storehouse, or carry any of it away, without knowledge or consent of the officer, or notice given to some officer, he shall forfeit 100*l.*

Notice to be given of the hour when malt for exportation is to be taken off the kiln.

By 3 Geo. IV., c. 18, s. 13. All makers of malt for exportation shall give notice in writing to some officer of the duties upon malt, or leave notice in writing at the next office of Excise where the journal is kept, of the hour when he, she, or they shall intend to take any malt off the kiln or kilns, that such officer may attend the measuring of such malt; and after such malt has been measured, the same shall be immediately carried on ship-board, if intended to be then exported, or else shall be immediately locked up and secured in some storehouse or other place belonging to such maltsters or makers of malt, in the presence of the said officer or officers, on pain of forfeiting the sum of 50*l.*

Such malt to be carried immediately on ship-board, or secured, on penalty of 50*l.*

Storehouse where such malt is secured not to be opened, or entrance made, without giving notice to the officer, on penalty of 100*l.*

Sect. 14. If any such maker of malt, or any other person by his order, privy, or direction, after any steeping or making of malt shall have been locked up and secured in any storehouse or other place, in manner as aforesaid, shall open any of the locks or doors, or shall make any way or kind of entrance into such storehouse or other place, or shall remove any part whatsoever of the partition between any such storehouse or place and any other place whatsoever next thereunto adjoining, or shall remove out of the said storehouse or other place any quantity whatsoever of the malt that has been so locked up and secured, without the knowledge and consent of, or without first having given notice to, some officer or officers for the said duties, he, she, or they shall respectively forfeit and lose the sum of 100*l.*

By 12 Geo. I., c. 4, s. 53. When any maker or proprietor shall be desirous to take away any of the malt for exportation, and shall thereof give notice in writing to the officer forty hours before the time he shall desire to take out the same, expressing in such notice the quantity of the malt, and the port to which it is to be removed, the officer shall attend at the place where the malt is locked up, and see it measured and delivered out.

Sect. 54. The officer shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give such person a cer-

tificate to the officer of the division to which it is intended to be removed, expressing the quantity, the name of the maker or proprietor, and the place whence delivered, who shall file the same, and make an entry thereof; and if the maker or proprietor shall neglect to deliver such certificate, he shall forfeit 50*l*.

Sect. 57. Persons intending to ship malt for exportation shall give at least forty-eight hours' notice before they begin to put it on board to the officer of the port, in writing, of the hour when such shipping is intended to be begun, and the name of the ship, on pain of 5*s*. a bushel.

Sect. 57. If the malt so entered and made for exportation shall not, within nine months next after the making and drying, and carrying into such room, and there locked up as aforesaid, be exported, the proprietor shall, for every bushel, forfeit 5*s*.

Sect. 56. During the shipping, at all such times as the proprietor shall not be actually shipping merchandises, the hatches of the ship shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches shall be so kept locked from the time the ship shall be fully loaded till it be ready to sail.

Sect. 58. And persons breaking open the hatches of any ship so locked down shall forfeit 50*l*.

Sect. 55. The officer may not only attend the measuring of such malt, but continue on board the ship till it be cleared of the port.

By 3 Geo. IV., c. 18, s. 15, it is enacted, that all and every maltster or maker of malt who shall at any time have any quantity of malt locked up and secured in any storehouse or any other place, as is before directed, to be exported, shall, within fifteen months next after the 5th day of July preceding, remove and clear out of his storehouse or other place all and every part and parcel thereof that at any time after the said 5th day of July shall be locked up and secured in such storehouse or other place, in order to be exported, and shall always from time to time, in every fifteen months after the 5th day of July, remove and clear out of such storehouse or other place, in order to be exported, all and every part or parcel of malt that at any time within the fifteen months next after the 5th day of July preceding shall be locked up and secured in any storehouse, or in any other place that shall be made use of by him, her, or them for the keeping of malt for exportation, on pain of forfeiting the sum of 50*l*.

Storehouses used for securing malt for exportation to be cleared out every 15 months after the 5th of July, on penalty of 50*l*.

Sect. 16. If after the shipping of any malt made to be exported, the malt so shipped to be exported, or any part thereof, shall be reloaded in any part of Great Britain, then, and in every such case, all the malt which shall be reloaded, and treble the value thereof, shall be forfeited; (that is to say), one moiety thereof to the king, and the other moiety thereof to the person or persons who shall seize, inform, or sue for the same; and such malt so reloaded shall and may be seized by any officer or officers of Customs or Excise.

Malt reloaded after being shipped shall be forfeited, and penalty of treble its value.

Sect. 18. All fines, penalties, and forfeitures imposed or created by this act shall be sued for, recovered, levied, or mitigated by such ways, means, or methods as any penalty may be sued for by any law of Excise, or by action of debt or information in any of His Majesty's Courts of Record at Westminster, or in the Court of Exchequer in Scotland; and one moiety shall be to His Majesty, and the other moiety to him who shall inform, discover, or sue for the same.

Recovery and application of penalties.

Sect. 19. All powers in 12 C. II., c. 24, and any other law relating to Excise, shall be used and put in execution for the purpose of this act, &c.

By 6 Geo. I., c. 21, s. 4. If any unmalted oats or barley be found mixed among malt shipped for exportation, the person shipping shall forfeit 5*s*. for every bushel.

By 12 Ann., st. 1, c. 2, s. 30. If ground malt shall be exported, it shall be computed at so many bushels as it contained before it was ground.

Sect. 9. The penalties, &c., to be sued for, &c. as by the laws of Excise,

Power of the justices.



## II. PARTICULAR LAWS, &c. (16.) *Malt.*

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levied, or mitigated, &c. as any fine, &c., may be by any law of Excise, or by action, &c.; one moiety to His Majesty, the other to him who shall inform, discover, or sue for the same.

16. *Malt.*

By 12 Ann. st. 1, c. 2, s. 38. The justices at their quarter-sessions may award costs to either party, as they shall think fit, to be levied by warrant of the justices of the county, or two of them, on the goods of the party against whom the same shall be awarded.

12 Ann. c. 2. Costs

Sect. 37. No writ of *certiorari* shall be allowed or brought to set aside any order of the justices.

*Certiorari.*

18. *Malt.* See *Malt* and *Malt-dreglin*. (*Ante*, *Cyder*.)

## (19.) *Paper.*

(19.) *Paper.*

[10 Anne, c. 19; 1 Geo. I., st. 2, c. 36; 11 Geo. I., c. 7; 24 Geo. III., sess. 2, c. 41; 26 Geo. III., c. 78; 28 Geo. III., c. 37; 32 Geo. III., c. 54; 34 Geo. III., c. 20; 41 Geo. III., (U. K.) c. 8; 42 Geo. III., c. 94; 43 Geo. III., c. 69; 47 Geo. III., c. 30; 52 Geo. III., c. 143; 56 Geo. III., c. 103; 1 Geo. IV., c. 58; 6 Geo. IV., c. 81; c. 111.]

By 43 Geo. III., c. 69. *Sched. (A.) (B.)* certain Excise duties were imposed upon papers of different kinds, not being sheathing paper, or button-papers or button-board; and by 47 Geo. III. sess. 2, c. 30, s. 14, this exception is repealed, and they are made subject to the same duties as millboard, and subject to the same regulations, &c.

Duties.  
Excise.

By 1 Geo. IV., c. 58, s. 21. Scaleboard is to be charged as millboard, and scaleboard-makers are liable to the regulations imposed by law on paper-makers: and the several duties upon paper to be under the management of the commissioners of Excise.

Scaleboard.

See table to 6 Geo. IV., c. 111, for the duties of Customs payable upon papers and books imported. *Ante*, p. 123. 138.

Customs.

By 11 Geo. I., c. 7, s. 16. Old rags, old ropes, or junks, or old fishing-nets, may be imported duty free.

By 32 Geo. III., c. 54, s. 1. The officers of the Customs, where any printed, painted, or stained paper shall be imported, shall cause the same to be marked, and the commissioners shall provide for them proper frames and stamps, and such numbers or marks as they shall think fit to denote the measure; which officers are required to measure every such piece of paper, and to mark the same with such frame-mark and stamp as follows:—every piece of less than half a yard in length to be marked and stamped at one end only; and every piece of half a yard in length or upwards to be marked and stamped at both ends of such piece; which frames, &c. may be from time to time altered as the commissioners shall think fit: and if any person shall counterfeit or forge any frame, number, or mark, or the impression of the same, upon any such paper, he shall forfeit 100*l.*; or if he shall counterfeit or forge or resemble any stamp or seal so provided, or counterfeit or resemble the impression of the same, thereby to defraud His Majesty, he shall forfeit 500*l.*: and if any person shall sell any printed, painted, or stained paper with such counterfeit stamp, knowing he same, he shall forfeit 50*l.*

Importing printed,  
painted, or stained  
paper.

Sect. 2. If any person shall wilfully cut out, obliterate, or deface any such frame-mark, number, or mark, or suffer the same to be done, he shall forfeit 50*l.* for every piece so cut, &c.

Sect. 3. If any person shall fraudulently affix upon any such piece of paper any frame-mark or stamp or seal which hath been before used, he shall forfeit 50*l.*, and also every such piece of paper.

Sect. 4. If any person shall make oath before two commissioners within their limits, or elsewhere before one justice, that he hath reason to sus-

19. *Paper.*

pect that any foreign imported printed, painted, or stained paper, for which a duty ought to have been paid, is or shall be in the custody of any printer, painter, or stainer of paper, or person dealing therein, or other person for his use, without having such stamps or seals as aforesaid, they may authorize any officer of the Customs or Excise, with the assistance of a constable, in the daytime, to search for the same, and to open doors, chests, trunks, and packages; and the paper so found unstamped shall be forfeited, and may be seized by any officer of the Customs or Excise. Provided always, that no remnant or piece of such paper, being of less length than shall be expressed by such frame-mark, so found, having such stamp or seal as aforesaid at one end thereof, shall be forfeited by reason of not having such stamp or seal at both ends thereof; and if any person shall obstruct any of the said officers in the execution of their duty herein, he shall forfeit 50*l*.

Sect. 5. To prevent frauds in adding to any piece or remnant of such paper, after the same hath been stamped or sealed, and also to prevent the importation of any such paper without being stamped or sealed as aforesaid, if any piece or remnant of such foreign imported paper, not having such frame-mark and stamp thereon as aforesaid, (or having the same at one end or both ends thereof, and being of a greater length by half a yard or more than by such mark is expressed,) shall be found in the possession of any printer, painter, or stainer of paper, or dealer therein, the same shall be forfeited, and may be seized in manner aforesaid, and the person in whose possession the same shall be found shall also forfeit 50*l*.

Sect. 6. All penalties and forfeitures by this act imposed may be sued for, recovered, levied, or mitigated as by the laws of Excise, or in the Courts at Westminster, half to the king, and half to him who shall sue.

Licences.

By 6 Geo. IV., c. 81, s. 2. An Excise licence is required to be taken out annually by every maker of paper, pasteboard, or scaleboard, and by every printer, painter, or stainer of paper; and a duty is payable thereon: viz.—

	£.	s.	d.
By every maker of paper, pasteboard, or scaleboard	.	4	0
By every printer, painter, or stainer of paper	.	4	0

The several enactments in 6 Geo. IV., c. 81, relative to licences, penalties, &c. are inserted at length, *ante*, 247.

Two classes of paper.

By 42 Geo. III., c. 94, s. 10. All brown paper made of old ropes or cordage only, without separating or extracting the pitch or tar therefrom, and without any mixture of other materials therewith, shall be deemed and taken to be paper of the second class or denomination, and shall be charged with the duty accordingly; and all other paper whatever (glazed paper for clothiers and hotpressers excepted) shall be deemed and taken to be of the first class or denomination, and chargeable accordingly.

Paper of the first class pressed together without paste liable to the duties imposed on that class.

By 1 Geo. IV., c. 58, s. 20. That if any maker of paper shall couch or press together, without the use of paste, any paper of the first class or denomination, or the materials thereof, with any sheet of paper of the same or any other class or materials, all such paper so couched or pressed together shall be liable to the duties imposed upon paper of the first class.

Paper to be distinguished by first and second class: millboard, button-board, &amp;c. by their different denominations.

Sect. 15. Whenever paper, &c. are required to be distinguished by the different classes and kinds, the same shall not be required to be otherwise distinguished than into paper of the first and second class respectively; and millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard, into their aforesaid several denominations; and no penalty shall be incurred by not distinguishing or separating the same into their several sorts.

Scaleboard-makers liable to the regulations, penalties, &amp;c. imposed on paper-makers.

Sect. 21, after reciting that scaleboard is an article made from the shaving or cutting of wood, and is used and employed in the manufacture of various articles as and for or as a substitute for millboard and pasteboard, and has been included in the laws and regulations of Excise, and doubts

have arisen whether the makers of scaleboard are subject and liable to the regulations imposed on makers of paper, enacts, that every maker of scaleboard shall be subject and liable to the regulations, penalties, and forfeitures in force in respect to makers of paper, and shall take out a licence as a maker of paper; and all scaleboard shall be tied up, labelled, charged with duty, and removed as millboard, and subject to such laws, regulations, and penalties as aforesaid.

By 41 Geo. III., (U. K.) c. 8, s. 6. No person shall print, paint, or stain any paper to serve for hangings or other uses, except such in respect whereof the duty chargeable on paper of the first class hath been charged, nor unless such paper have been previously produced to the officer enclosed in the original wrapper in which it was charged, and with the impression of the stamp denoting such charge, and the name of the officer and date of the charge, and the class of such paper marked and remaining visibly thereon; and such printer, painter, or stainer shall open every ream and bundle of such paper in the presence of such officer, who shall thereupon take an account of the quantities and dimensions thereof, and stamp the same according to law.

No paper to be painted for hangings but of the first class.

Sect. 7. If any maker shall cut or diminish any paper before the same shall be taken account of, weighed, and charged, he shall forfeit 50*l.* and also such paper, which shall also be seized.

Maker not to diminish paper before it be charged.

By 42 Geo. III., c. 94, s. 11. No pasteboard shall be made of any material except paper which has been charged with the full duties of Excise, and has not been used for any purpose, on pain of forfeiture of the pasteboard and all implements, utensils, materials, and preparations used in making such pasteboard (all which shall also be seizable), and also of 100*l.*

Pasteboard to be made of paper charged and unused, on pain of 100*l.*

Sect. 12. Before any maker shall begin to make any paper into pasteboard, he shall produce to the officers all such paper as he shall intend to make into pasteboard in the original wrappers in which the same was charged, and having the Excise duty stamp legible on each ream thereof, and shall take the said wrappers from the said paper in presence of such officer, who shall take account of such paper, its quantity and weight, and destroy such duty stamp; and that such officer may be enabled to take such account, every such maker of pasteboard shall give twenty-four hours' notice in writing of his intention to produce such paper, and shall specify the quantity thereof, and the day and hour when he intends to produce the same; and for neglect of giving such notice, or using any paper for pasteboard before producing the same, and such account being taken, such maker of pasteboard shall for every offence forfeit 100*l.*

Makers thereof to produce the paper, &c. on pain of 100*l.*

Sect. 13. No maker of pasteboard shall carry on the business of a maker of paper; nor shall any maker of pasteboard set up or carry on the business of making pasteboard within one quarter of a mile of any mill or manufactory for the making of paper, on pain of forfeiting 100*l.*

No maker of pasteboard shall be a paper-maker, nor make within one quarter of a mile, on pain of 100*l.*

By 56 Geo. III., c. 103, s. 13. "That from and after the 10th day of October, 1816, the said recited provisions shall extend and apply to such maker or makers only of pasteboard as is not nor are or shall be a maker or makers or concerned or interested in the trade or business of a maker of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper; and it shall and may be lawful for all and every maker and makers of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, to make at his, her, or their entered paper-mill any pasteboard, subject and liable to the payment of the duties respectively herein-after mentioned, according to the quality thereof, from or with paper, millboard, button-board, button-paper, glazed paper, or sheathing paper made by him, her, or them at such mill, before the same shall have been charged with the duty imposed on such paper, millboard, button-board, button-paper, glazed paper, or sheathing paper respectively, any thing in any other act or acts to the contrary thereof notwithstanding."

Respecting materials from which pasteboard is to be made to apply only to makers of pasteboard.

Makers of paper, &c. may make pasteboard at their mills subject to duties after mentioned.

Sect. 15. "That from and after the 10th day of October there shall be



## 19. Paper.

Allowance to makers of pasteboard from paper which has paid duty.

Oath by makers.

Places of making or keeping to be entered.

Stationer carrying on business at a mill; or maker carrying on the business of a stationer within one mile of mill; penalty 200*l*.

Paper, pasteboard, &c. shall be made up in manner herein directed,

and put up in covers as under 34 Geo. III., c. 20, s. 7, &c.

paid and allowed to all and every maker and makers of pasteboard, not being a maker or makers or interested or concerned in the trade or business of a maker of paper, millboard, button-board, button-paper, glazed paper, or sheathing paper, who shall make any pasteboard, and be charged with the aforesaid duties thereon respectively, from or with paper, millboard, button-board, button-paper, glazed paper, or sheathing paper for which the duties shall have been charged and paid thereon respectively, and which shall have been produced and taken account of by the officer as aforesaid before the making thereof into such pasteboard, so much of the duties charged and paid in respect of such paper, millboard, button-board, button-paper, glazed paper, or sheathing paper respectively, as shall be equal to and not more than the amount of the duty charged and paid by such maker or makers of such pasteboard, upon oath being first made by such maker or makers, or his, her, or their principal workman engaged in the said manufactory, which oath the several collectors and supervisors of Excise are hereby respectively authorized to administer, that such pasteboard had been wholly made from such duty-paid paper, millboard, button-board, button-paper, glazed paper, or sheathing paper respectively, so previously produced to and taken account of by the officer as aforesaid."

And by 34 Geo. III., c. 20, s. 5. Every maker of paper, pasteboard, millboard, scaleboard, or glazed paper, before he shall begin, shall make entry in writing at the next Excise office of every mill, workhouse, and other place by him intended to be used for making, drying, or keeping paper, &c. or materials proper to be made into paper, &c., and of all vats, presses, uttensils, and vessels intended to be used in making the same, on pain of forfeiture thereof, and also 50*l*.

By 1 Geo. IV., c. 58, s. 17. "That from and after the 5th day of January, 1821, the same shall be and is hereby repealed; and that from and after the 5th day of January, 1821, no person or persons whatever shall carry on or be concerned in the trade or business of a retail stationer or dealer in paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard at any paper or pasteboard mill respectively, nor shall any maker or makers of paper carry on or be concerned in the business of a retail stationer or dealer in paper in or on any premises within the distance of one mile of any mill or manufactory for the making of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard respectively, wherein he or she is concerned or interested, on pain of forfeiting for every such offence the sum of 200*l*."

By 42 Geo. III., c. 94, s. 15. All paper, pasteboard, millboard, scaleboard, and glazed paper made in Great Britain or in Ireland, and imported from thence, shall be made up by the maker thereof in this manner; (that is to say), all such paper, as soon as made, shall be made up into quires, each quire to consist of 24 sheets, and such quires shall be forthwith made up into reams of 20 quires each; and all such pasteboard, millboard, scaleboard, and glazed paper respectively shall, when made, be forthwith made up in regular parcels, each parcel containing even dozens of sheets of one and the same denomination and of equal dimensions, and not less than 24 nor more than 72 such sheets in each parcel; and every maker shall by himself or servant cause all such paper, pasteboard, &c. to be immediately tied up in wrappers conformably to the directions of 34 Geo. III., c. 20, s. 7, &c. [*see post*, p. 239], and shall without delay mark on each wrapper, in large legible characters and words at length, the class of the paper enclosed, distinguishing in which of the two classes the duty in respect of such paper is chargeable, together with the number of the ream according to the number of such reams of each such class made by such maker at such mill during the current quarter, to be computed from January 5, April 5, July 5, and October 10, as the case may require, in such year, such number to be taken progressively, beginning 1, 2, and so onwards, according to the number of reams of each class made at

such mill in each such quarter; and on each such parcel of pasteboard, &c. there shall in like manner, as soon as tied up as before directed, be marked in like manner the true description of such parcel, and whether the same be pasteboard, millboard, scaleboard, or glazed paper, and the number of sheets in each parcel, together with the progressive number of such parcel of pasteboard, &c., made by such maker at his mill or manufacture during the then current quarter, commencing as aforesaid; and if any maker of paper, pasteboard, &c. shall neglect or refuse so to make and tie up, and denominate for 24 hours after such paper, pasteboard, &c. shall be made; or after the same is tied up and marked, and before it is charged, shall untie or take the same out of the wrapper, or otherwise alter any reams or parcels, or the denominations or numbers marked thereon or on the wrappers; or shall conceal or remove any such paper, pasteboard, &c. from the mill-room or other place entered for making, laying, or keeping the same; every such maker shall for each offence forfeit 200*l.*, together with all such paper, pasteboard, &c. which shall be seizable. Provided, that every maker may make his paper into quires without folding the same, such quires, when made up into reams, being separated by a slip of coloured paper placed between each quire, and visible on the outside of the ream: and provided also, that the outside quires of each ream consist of not less than 20 nor more than 24 sheets, at the option of the maker.

Sect. 16. Any maker of paper may divide with a knife or other instrument, before such paper shall be put up in reams, provided that the quantity upon which the duty is chargeable be diminished thereby, and that all paper so divided shall, on the outside of the wrapper, be distinguished by the words "*cut paper*" being written or printed thereon in large legible characters.

By 56 Geo. III., c. 103, s. 3. "That from and after the said 10th day of October it shall and may be lawful to and for any maker and makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard to cut the edges of such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard before the same is tied up in reams or parcels respectively in the manner hereinafter mentioned. Provided always, that if any paper be divided with a knife or other instrument before such paper shall be tied up in reams or parcels (except by cutting the edges of such paper), each separate piece into which such paper shall be so divided shall be deemed a sheet of the ream into which it shall or is to be tied up; and that all and every maker and makers of paper shall distinguish each and every ream of such divided paper by marking, writing, or printing in large legible characters and words at length on the label thereof, hereinafter mentioned, the words '*cut paper*,' and the number of pieces into which each original sheet has been divided, and shall place and keep such paper separate and apart from all uncut paper, and from all millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard; and if any maker or makers of paper shall neglect or refuse to distinguish such paper so divided as aforesaid by the words '*cut paper*,' and by the number of pieces into which each original sheet has been divided as aforesaid, being so marked, written, or printed thereon by him, her, or them respectively as aforesaid, or shall neglect or refuse to keep all such paper separate and apart from all uncut paper, and from all millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard, he, she, or they so offending shall for each and every such offence forfeit and lose the sum of 50*l.*"

By 34 Geo. III., c. 20, s. 7. Every maker of paper, &c. whose mill or workhouse is situate in any city or market-town, who shall have any paper, &c. to be weighed and charged with the duty, shall give twenty-four hours' (elsewhere forty-eight hours') previous notice in writing of the time and hour of day to the officer of Excise, who shall attend; and such maker or his servant shall produce to such officer, so soon as he shall attend, the whole thereof, tied up in the manner following; (viz.) all such

19. Paper.

On penalty of seal and forfeiture of the paper, &c.

Paper may be made into quires without folding it, &c.

Outside quires.

Paper may be cut before it is put or tied up in reams, if the quantity chargeable be not lessened, and it is marked "*cut paper*."

The edges of paper, pasteboard, &c. may be cut before tied up.

But if paper be divided, each piece to be deemed a sheet, and reams distinguished on labels with the words "*cut paper*," and kept separate from the uncut.

Penalty.

Time of notice of weighing.

Paper, &c. how to be tied up.

## 19. Paper.

How to be marked.

Makers to mark the weight on the label affixed to every ream of paper or parcel of pasteboard.

Penalty.

Weight of paper to be put in words, joining to it lbs. or pounds, on the label to be affixed on the wrapper of every ream of paper, &c.

Maker neglecting, &c., or if paper, &c. found under weight.

Penalty.

From Jan. 5, 1821, 56 G. 3, c. 103, s. 6, repealed.

paper shall be enclosed and tied up with strong thread or string in covers, containing one ream or bundle each, and not more or less; and all such pasteboard, &c. shall be tied up with strong thread or string in such parcels as aforesaid; and the different parts of such thread or string shall pass over and cross each other at the middle of the ream or bundle; and where the different parts of such string shall cross each other, the same shall be passed from thence over and across the ends and sides of such ream or bundle; and if such maker shall not at the time and hour mentioned in such notice produce to such officer all the paper, &c., for which any duty is to be charged, tied up, and the proper class and other matters before described (42 Geo. III., c. 94, s. 15, p. 538, 539.) marked thereon, such notice shall be void, and he shall be obliged to give a fresh and like notice before any account shall be taken or the duty charged, and before he shall remove the same from the mill where made.

Sect. 5. Every maker shall write or print in large and legible characters upon the label hereinafter mentioned, affixed on every ream of paper, and upon every parcel of millboard, &c. the weight of such ream or parcel; and if any such maker shall neglect so to do, or if any such ream of paper or parcel shall, on being reweighed by any officer of Excise, be found to weigh less or more than five *per cent.* under or over the weight so marked, written, or printed on such ream or parcel, the same shall be forfeited, and shall be seized by any officer of Excise, and the maker shall forfeit 50*l.*

By 1 Geo. IV., c. 58, s. 5. "That all and every maker and makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall, in marking, writing, or printing on every ream of paper and parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively, in large and legible characters, as required by the said recited act, the weight of each such ream and parcel respectively, write or print the same in words at length, joining to the word or words expressing such weight the letters lbs. or the word pounds, and shall write or print the same upon the label hereinafter mentioned, and affixed as hereby required on the wrapper of every ream of paper, and of every parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard; and if any such maker or makers as aforesaid shall refuse or neglect to write or print, or cause to be written or printed as aforesaid, on such label of and upon every ream of paper, and of and upon every parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively, as soon as such ream or parcel is tied up in such wrapper as hereinafter mentioned, or at or before the time when such ream or parcel is or shall be produced to be weighed or charged by the officer with duty, the weight of such ream and parcel respectively, in large and legible characters, and in words at length, or to join to the word or words expressing such weight the letters lbs. or the word pounds as aforesaid; or if any such ream of paper, or parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall at any time, on being reweighed by any officer or officers of Excise (which such officer and officers are hereby respectively authorized and empowered to do), be found to weigh under or over the weight so marked, written, or printed on such ream or parcel by such maker or makers as aforesaid, in the proportion of five *per centum* if the weight of the ream or parcel exceed twenty pounds, or ten *per centum* if such weight be twenty pounds or of less weight, the same shall be forfeited, and shall and may be seized by any officer or officers of Excise; and the maker or makers of such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall for every such offence forfeit and lose the sum of 100*l.* in respect of every such ream or parcel respectively."

Sect. 6. "That from and after the 5th day of January, 1821, so much

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of the said act as is hereinbefore recited shall be and the same is hereby repealed; and that the commissioners of Excise of England and Scotland respectively shall from time to time issue and cause to be issued to every supervisor of Excise in whose district any paper-mill shall be situated, or in which any maker of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall carry on any manufactory thereof respectively, a sufficient number of labels of such form and construction as to the commissioners of Excise in England shall seem fit and proper for the purpose hereinafter mentioned; and that, from and after the 5th day of January, 1821, every such maker as aforesaid shall, on his or her request in writing, given to the proper officer of Excise, specifying therein the number of labels which such maker has need of for the purpose hereinafter mentioned, be, within eight days after the receipt of such notice, supplied by such officer with such number of labels signed by the supervisor of Excise of such district for the time being, and marked by such supervisor with the number or letter by which the mill or manufactory of such maker is distinguished by the book or paper delivered to such maker, and then in use as is hereinbefore mentioned; and every such maker, or his or her foreman or servant, shall, at the time of the delivery thereof, acknowledge on the back of such request note the receipt from the officer of such number of labels as aforesaid; and shall, before he or she shall tie up any ream of paper or parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard in any wrapper or wrappers, fix or cause to be fixed with paste and glue, or paste or glue, on one of such wrappers, one of such labels as aforesaid, and shall press the same so that such label shall be firmly and permanently fixed, united, and dried thereon and thereto; and that every such maker as aforesaid shall tie up every ream of paper and parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively in a wrapper or in wrappers, on or to one of which wrappers such label shall be firmly and permanently fixed, united, and dried as aforesaid; and which label, when such ream and parcel respectively is so tied up as aforesaid, shall be on the top of every such ream and parcel, with the end thereof, for receiving the impression of the departure stamp hereinafter mentioned, on the side of such wrapper, or such label shall be affixed on such other part of such wrapper as the commissioners of Excise in England shall from time to time order and direct; and every such maker as aforesaid shall, after such ream and parcel as aforesaid shall be so respectively tied up, write or print on such label the class of paper, and the denomination and number of dozens of sheets of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard contained in such wrappers, and also the weight of such ream or parcel respectively, in the manner required by this act; and that when any officer of Excise shall weigh any paper, or any millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, for the purpose of stamping and charging the same respectively with duty, every such maker as aforesaid shall write on such label as aforesaid the proper progressive number of each ream or parcel thereof respectively, as and when the same is put into or taken out of the scale in which the same is so weighed, and the quarter and year in which such ream and parcel respectively is so weighed; and every such officer shall thereupon write upon such label as aforesaid the day of the month on which such ream and parcel respectively is weighed by him as aforesaid, and sign the same with his christian and surname, and shall thereupon stamp every such ream and parcel respectively with the stamp denoting the charge of duty on such ream or parcel respectively on the top of every such ream or parcel respectively, part of such stamp being on such label as aforesaid, and part thereof on the wrapper; and shall also stamp every such ream and parcel respectively on each side thereof, across the edges of the upper and lower wrappers where they join or overlap;

### 19. Paper.

Commissioners of Excise to issue to the supervisor of the district a sufficient number of labels to be used, with which officer to supply maker.

Label to be pasted on wrapper, that when ream is tied up label shall be on the top, with the end thereof for receiving the impression of the departure stamp on the side.

Class and weight to be put on label by maker; and when officer weighs paper, &c. to put thereon the progressive number of such ream, &c. and the quarter and year when weighed.

Officer to write on such label the day of the month, and afterwards stamp the ream or parcel.

## 19. Paper.

How quarters shall be distinguished.

Maker destroying, &c. label, making false entry thereon, using it on any other wrapper, tying up paper, &c. in any wrapper without such label, and not marking on it the particulars before mentioned, and otherwise offending as herein-after mentioned.

Penalty.

Departure stamps to be issued.

One to be delivered to every maker, who shall fix an

and that for better regulating such progressive number as aforesaid, the current year shall be divided into four quarters, commencing respectively on the 6th day of July, 11th day of October, the 6th day of January, and 6th day of April, the same being successively numbered first, second, third, and fourth quarters, and such progressive numbers as aforesaid shall begin and commence and be renewed with every such quarter; and if any maker of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall cancel, obliterate, or destroy any such label as aforesaid, or make any false entry thereon, or shall use any such label as aforesaid, or the wrapper on which the same has been put or fixed, to cover or tie up any other paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard than that contained in such wrapper with such label when first tied up and weighed, and charged with duty; or shall take off, remove, or detach, or cause, permit, or suffer to be taken off, removed, or detached, any such label from any such wrapper as aforesaid; or shall tie up any ream of paper, or parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, in any wrapper or wrappers without such label as aforesaid, or on one of which wrappers (such wrapper being on the top of such ream or parcel) he or she shall not have, before such ream or parcel respectively was so tied up, fixed or caused to be fixed with paste and glue, or paste or glue, one of such labels as aforesaid, and pressed the same so that such label shall be firmly and permanently fixed and dried thereon and thereto; or shall not, after such ream or parcel respectively as aforesaid shall be tied up with wrappers on one of which such label shall be fixed as aforesaid, write on such label the class of paper, and the denomination and number of dozens of sheets of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard contained in such wrappers, and also the weight of such ream or parcel respectively, in the manner required by this act; or shall not, when any such ream or parcel is weighed by any officer as aforesaid to be charged with duty, write on such label as aforesaid the proper progressive number of such ream or parcel respectively, as and when the same is put into or taken out of the scale after being so weighed, and the quarter and year in which such ream or parcel respectively is so weighed; or shall sell, send out, or deliver any paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, without being so tied up and labelled, and such label written or printed upon as aforesaid; or shall not from time to time, on the demand of any supervisor or other officer of Excise of equal rank with a supervisor, produce and deliver to him or them all such labels delivered to such maker and makers as aforesaid as shall be over and above the number for which such maker or makers shall have produced to the proper officer of Excise, to be taken account of, reams of paper, or parcels of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard; every such maker shall for every such label, wrapper, ream, and parcel respectively as aforesaid, in respect of which such offence shall be committed, forfeit and lose the sum of 200/.

Sect. 7. "That the commissioners of Excise of England and Scotland respectively shall from time to time issue and cause to be issued to every supervisor of Excise in whose district any paper-mill shall be situated, or in which any maker of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall carry on any manufacture thereof respectively, a sufficient number of stamps or dies of such form and construction as to the commissioners of Excise of England shall seem fit and proper for the purpose hereinafter mentioned, and having moveable figures therein, denoting the numbers of the day, month, and year respectively, to be called and distinguished by the name or title of a departure stamp; and that from and after the 5th day of January, 1821, every such maker as aforesaid shall, on his or her request

in writing given to the proper officer of Excise, have delivered to him or her by such officer one of such stamps or dies, the receipt whereof shall, at the time of such delivery, be acknowledged on the back of such request note by such maker or his foreman or servant; and every such maker shall, before he or she shall send out or remove or deliver from his or her mill or manufactory aforesaid any paper, or any millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, truly and distinctly put and fix an impression, with printers' ink, of such departure stamp or die on such part of the label of every ream of such paper, and of every parcel of such millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard respectively, as shall be prepared or printed or shall be directed by the commissioners of Excise of England for that purpose, and on each side of every wrapper on which such label is fixed near to and above the duty charge stamp, and which impression shall contain the number of the day and also of the month and year on which the same was put and fixed as aforesaid; and if any such maker by himself or his foreman or servant shall not give or cause to be given such receipt to the officer for such stamp or die as aforesaid, or shall not, before he or she shall send out, deliver, or remove any paper or millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, put and fix on the label and wrappers thereof as aforesaid such impression of such departure stamp as aforesaid; or if any ream of paper or parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, having such impression on such label and on the wrappers thereof as aforesaid, shall be found in the possession or on the entered premises of any such maker as aforesaid, (not being paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard sent or received by such maker from some other mill or manufactory, or returned to such maker from his or her customer or customers, and of which such notice shall be given as hereinafter mentioned, and which shall be kept in stock shown and produced as hereinafter mentioned) after the expiration of twenty-four hours after the day of the date of such impression, Sundays excluded; or if any label or wrapper having thereon such impression of a departure stamp as aforesaid, and not containing paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, shall be found in the possession or on the entered premises of any such maker as aforesaid; or if any paper, or millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall be found removing or removed from any such mill or manufactory as aforesaid, or in the custody or possession of any stationer or dealer in paper (not being broken reams or parcels for immediate sale, use, or consumption), without being enclosed in a wrapper so labelled, and with such impressions of a departure stamp thereon and on the wrappers thereof as aforesaid, all and every such label, wrapper, ream, parcel, paper, millboard, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively shall be forfeited, and shall and may be seized by any officer or officers of Excise; and every such maker, and every person removing, or who has removed or been concerned in the delivery, removal, or receipt of any such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, and every stationer or dealer, person or persons, in whose custody or possession such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively shall be found (except as aforesaid), shall for every such offence lose the sum of 200*l.* in respect of every such ream and parcel respectively."

By 34 Geo. III., c. 20, s. 10. As soon as the officer is satisfied that the conditions in this act specified have been complied with, he shall stamp or mark every ream and bundle of paper and parcel of pasteboard, &c. to denote the duty, or shall affix on every such bundle or parcel a proper

19. *Paper.*

impression thereof on the label of every ream of paper, &c. before the same is sent out of the mill, and on each side of the wrapper.

Maker not giving a receipt for the stamps, or for not placing stamp as directed;

or having paper, &c. in possession for twenty-four hours after being so stamped, &c.;

or removing paper, &c. without such departure stamp, &c.;

forfeiture of paper, &c. and 200*l.* for every ream and parcel.

Directions to Excise officers for stamping paper, &c.

## 19. Paper.

Penalty for defacing marks on wrappers, &c.

Directions for affixing a label as soon as the paper, &c. shall be tied up;

and the number of the ream or parcel, the class, and other particulars to be written thereon.

Makers neglecting to do so.

label, to denote the duty being so charged, and shall write his name upon each, together with the date, day, and year on which the duty was charged; and if any person shall wilfully deface, obliterate, or alter the same, or any part thereof, or any impression of any such stamp or mark, he shall forfeit 50*l.* for every such offence.

By 56 Geo. III., c. 103, s. 6. "That all and every maker and makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard shall, as soon as any paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard has been made and tied up as is by law in that behalf directed, and before it is produced to the proper officer of Excise to be weighed and stamped to denote the charge of duty, firmly and permanently fix or cause to be fixed with warm paste, made of glue, flour, and water only, a label made of a certain kind of paper called tissue paper, of at least four inches square, and of a different colour from the cover or wrapper of the ream, to and upon one of the sides of the cover or wrapper of each and every ream of paper, and over the knot formed by tying together the two ends of the string thereof; and shall firmly and permanently fix or cause to be fixed as aforesaid, on each and every parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard, a label made of the said paper called tissue paper aforesaid, of at least nine inches square, over the knot formed by tying together the two ends of the string thereof, and to and upon another larger piece of paper of a different colour placed on the top or bottom of such parcel, and beneath such knot, and between the string and outer sheet of such parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard respectively; and shall write or print, or cause to be written or printed, on each and every such labels respectively, in distinct and legible characters, immediately after the same has been so affixed as aforesaid, and has become perfectly dry, the progressive number of the ream or parcel, and in words at length the class or denomination and sort or kind of the paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard, and if the paper has been so divided as aforesaid, the number of pieces into which the original sheet shall have been divided as aforesaid, and the weight of such ream or parcel as aforesaid; and shall also write, print, or mark thereon the number or letter by which the mill at which such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard has been manufactured shall be distinguished by the book or paper delivered to such maker or makers and then in use as hereinbefore mentioned; and on which label, when perfectly dry, but not before, shall also be impressed by the officer, after he has weighed such paper, button-board, button-paper, glazed paper, sheathing paper, or pasteboard, part of the stamp to denote the charge of duty, the other part thereof being impressed upon the wrapper of the ream of paper, or upon the larger piece of paper to which such label is affixed, upon each parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard as aforesaid; and if any maker or makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard shall not, as soon as any paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard has been made and tied up as is by law in that behalf directed, and before it is by him, her, or them produced to the proper officer of Excise to be weighed and stamped to denote the charge of duty, firmly and permanently so fix or cause to be so fixed with warm paste, made of glue, flour, and water only, such label as aforesaid to and upon one of the sides of the cover or wrapper of each and every ream of paper, and over the knot formed by tying together the two ends of the string thereof, or shall not firmly and permanently so fix or cause to be so fixed as aforesaid, on each and every parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard, such label as is before in that behalf mentioned, over the knot formed by tying together the two ends of the string thereof,

and to and upon another larger piece of paper of a different colour placed on the top or bottom of such parcel, and beneath such knot, and between the string and outer sheet of such millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard, or shall not write or print or cause to be written or printed on such labels respectively, immediately after the same shall have been so fixed and become perfectly dry as aforesaid, in distinct and legible characters, the progressive number of the ream or parcel, and in words at length the class or denomination and sort or kind of the paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard of which such ream or parcel consists; and if such paper has been so divided as aforesaid, the number of pieces into which the original sheet shall have been divided as aforesaid; and the weight of such ream or parcel, and also the number or letter by which the mill at which such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard has been manufactured, shall be distinguished as aforesaid, every such maker and makers respectively so offending shall, for each and every such offence, forfeit the sum of 200*l*."

19. Paper.

Penalty.

By 34 Geo. III., c. 20, s. 11. Any officer may open any such ream or bundle of paper, and take out a sample not exceeding one sheet out of each quire (paying a market-price for the same, if demanded); and if he shall discover therein any paper of a different class than that which shall be denominated on the cover, the same shall be forfeited and may be seized; and the person who shall have marked any such false class shall forfeit 50*l*. for every such offence.

Officers may take out samples, and may seize paper found of a different class than marked on the wrapper. Penalty for marking a false class on wrapper.

Sect. 8. The respective commissioners of Excise shall provide proper stamps or labels for stamping or marking paper, pasteboard, &c. made in Great Britain, and cause them to be distributed to the officers; and the said stamps or labels may be altered from time to time, as the said commissioners shall think fit.

Commissioners of Excise to provide stamps.

Sect. 9. If any person shall counterfeit, or cause to be counterfeited, any stamp, device, or label provided or directed to be used in pursuance of this act, or the impression of any such stamp, upon any wrapper of, or belonging to, or used with or upon any label affixed to any ream or quantity of paper, or upon any pasteboard, &c.; or shall have in his possession any such counterfeit stamp, knowing it to be such; or shall have in his possession or sell any paper, &c. with a counterfeit impression of any such stamp on the wrapper, or on any label affixed thereto, knowing it to be such; or shall, upon any paper not duly charged, knowingly put any wrapper having thereon such counterfeit impression or label, he shall forfeit 500*l*.

Penalty for counterfeiting stamps, &c.

or selling paper with a forged mark, &c.

By 47 Geo. III., sess. 2, c. 30, s. 13, so much of 34 Geo. III. c. 20, s. 9, as respects the penalty for counterfeiting or causing to be counterfeited any stamp, device, or label directed to be used for paper, &c. shall be repealed.

By 1 Geo. IV., c. 58, s. 8. "That every maker of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, to whom any such stamp as aforesaid called a departure stamp shall have been delivered as aforesaid, shall, upon the demand of any supervisor of Excise, or other officer of Excise of equal rank or degree, deliver back to such supervisor or other officer such stamp, together with every figure, letter, and part thereof, or thereunto belonging, or therewith used and employed, on pain of forfeiting for every such offence the sum of 50*l*."

Maker to deliver up to supervisor departure stamp when required.

Penalty 50*l*.

Sect. 13. "That from and after the 5th day of January, 1821, if any person or persons shall write, counterfeit, or forge, or cause to be imitated, counterfeited, or forged, any stamp, die, device, or label, or any figure, letter, or part of any stamp, die, device, or label, directed by or provided and used in pursuance of this act, or of any other act or acts of parliament made for securing the duties on paper, millboard, button-board, button-

Counterfeiting stamps, &c. used for securing the duties on paper, &c., having them in possession, using them on wrappers or la-



## 19. Paper.

bels, or selling paper, &c. with counterfeit stamps, &c. 1000*l.*, and for every wrapper, &c. 500*l.*

paper, glazed paper, sheathing paper, pasteboard, and scaleboard; or shall have in his, her, or their custody or possession any such false, counterfeit, or forged stamp, die, device, or label, or any false, counterfeit, or forged figure, letter, or part of any such stamp, die, device, or label, knowing the same to be false, counterfeited, and forged; or shall, upon any wrapper or cover of or belonging to or used with or upon any quantity of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, or upon any such label as aforesaid, imitate, counterfeit, or forge, or cause to be imitated, counterfeited, or forged, the mark or impression of any such stamp, die, or device, or of any figure, letter, character, or part of any such stamp, die, or device as aforesaid, or knowingly have the same in his, her, or their custody or possession; or shall have in his, her, or their custody or possession, or shall utter, vend, or sell, any paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard with a false, imitated, counterfeited, or forged mark or impression of any such stamp, die, or device, or any figure, letter, character, or part thereof, on the wrapper or cover of such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, or on any such label affixed thereto or thereupon, or to or upon any wrapper or cover thereof, or with any false, counterfeit, or forged label aforesaid, or any false, counterfeit, or forged figure, letter, character, or part of such label as aforesaid, or with any false, counterfeit, or forged printing or writing on any such label, knowing the same or any part thereof to be counterfeited or forged; or shall, upon any quantity of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, put or place any wrapper or cover, or part of any wrapper or cover, or any label or part of any label, having thereon or therein any false, counterfeit, or forged writing, printing, letter, figure, character, mark, or impression, knowing the same to be false, counterfeited, and forged; or shall, upon any ream of paper or parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard not taken account of and charged with duty by the proper officer of Excise, put or place any of the stamps or impressions directed by or provided or used in pursuance of this act, or any such other acts as aforesaid, every person so in either of the said cases offending shall, for every such false, counterfeit, or forged stamp, die, device, or label, or figure, letter, character, or part of such stamp, die, device, or label, forfeit and lose the sum of 1000*l.*, and for every such wrapper, cover, ream, or parcel respectively, the sum of 500*l.*; and every such false, counterfeited, and forged stamp, die, device, and label, figure, letter, character, and part of such stamp, die, device, or label, and every such false, counterfeit, and forged impression, and every such wrapper, cover, ream, and parcel respectively, shall be forfeited, and shall and may be seized by any officer or officers of Excise."

By 34 Geo. III., c. 20, s. 9. If any person shall knowingly wrap or cover any paper in any wrapper used before, or shall knowingly affix, tie up, or add any pasteboard, &c., having thereon the impression of any such stamp or label, whether such stamp or label be true or counterfeit, to any pasteboard, &c. which has not been duly charged, he shall forfeit 500*l.*

Forging stamps on paper, &c.

By 52 Geo. III., c. 143, s. 7. If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any mark, stamp, die, or plate which in pursuance of any act or acts of parliament shall have been provided, made, or used by or under the direction of the commissioners appointed to manage the duties on stamped vellum, parchment, and paper, or by or under the direction of any other person or persons legally authorized in that behalf, for expressing or denoting any duty or duties, or any part thereof, which shall be under the care and management of the said commissioners, or for denoting or testifying the payment of any such duty or duties, or any part thereof, or for denoting any device appointed

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### 19. *Paper.*

by the said commissioners for the ace of spades to be used with any playing cards; or shall forge or counterfeit, or cause or procure to be forged or counterfeited, the impression or any resemblance of the impression of any such mark, &c. &c. as aforesaid, upon any vellum, &c.; or shall stamp or mark, or cause or procure to be stamped or marked, any vellum, &c. with any such forged or counterfeited mark, &c. &c. as aforesaid, with intent to defraud His Majesty, his heirs or successors, of any of the duties or any part of the duties under the care and management of the said commissioners; or if any person shall utter or sell, or expose to sale, any vellum, &c., having thereupon the impression of any such forged or counterfeited mark, &c. &c., or any such forged or counterfeited impression as aforesaid, knowing the same respectively to be forged or counterfeited; or if any person shall privately or secretly use any such mark, &c. &c. which shall have been so provided, made, or used by or under such direction as aforesaid, with intent to defraud His Majesty, his heirs or successors, of any of the duties or any part of the duties under the care and management of the said commissioners; every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

Sect. 9. If any person (not being lawfully appointed or authorized so to do) shall make, or cause or procure to be made, or shall knowingly aid or assist in the making, or without being so appointed or authorized as aforesaid, shall knowingly have in his, her, or their custody or possession, without lawful excuse (the proof whereof shall lie on the person accused), any frame, mould, or instrument for the making of paper, with the words "Excise office" visible in the substance of such paper, or shall make or cause or procure to be made, or knowingly aid or assist in the making, any paper in the substance of which the words "Excise office" shall be visible; or if any person (except as before excepted) shall by any art, mystery, or contrivance cause or procure the said words "Excise office" to appear visible in the substance of any paper whatever; or if any person (not being so appointed or authorized as aforesaid) shall engrave, cast, cut, or make, or shall cause or procure to be engraven, &c. any mark, stamp, or device in imitation of or to resemble any mark, stamp, or device made or used by the direction of the commissioners of Excise in England or Scotland, or the major part of them respectively, for the purpose of printing, stamping, or marking of any paper to be used as or for a permit or permits, to accompany any exciseable commodity or commodities removing or removed from one part of Great Britain to any other part thereof, in pursuance of the directions of any of the several statutes requiring such permit, he shall, on conviction thereof, be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.

By 56 Geo. III., c. 103, s. 8. "That every maker and makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard shall once in every six weeks make a true entry in writing at the office of Excise within the limits whereof such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard respectively shall be made, of all paper, millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard charged on such maker or makers respectively within such period of six weeks, in which entries the number of reams and parcels of such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard respectively, separated into and distinguished by the different classes, denominations, sorts, and kinds of each, and the total weight of each day's charge respectively, shall be inserted and stated day by day as the same is or are stamped by the officer, to denote the charge of duty, and such entries shall be verified upon oath by the makers of such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard respectively, or his, her, or their chief workman or servant employed in making the same; and such maker or makers shall thereupon

Death.  
Making frames  
used in making of  
paper.

Death.  
Entries to be made  
at the Excise office  
every six weeks of  
all paper, &c.  
charged within  
that period, and  
stating other par-  
ticulars, to be  
verified on oath.

19. *Paper.*

## Penalty.

Makers travelling to make entries.

Maker to enter in a book the quantity of paper, &c. made by him daily.

Entries to be delivered to officer every six weeks, verified by signature.

Maker neglecting entry, or making a false entry, or concealing, &c. book, or otherwise offending as herein mentioned.

further make oath that no other paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard respectively, than is mentioned therein, has been within such period of six weeks (except such as may have been previously taken an account of and charged with duty) by him, her, or them removed, carried or sent, or caused, suffered or known to be removed, carried or sent, from his, her, or their premises, (which oaths the several collectors or supervisors of Excise are hereby respectively authorized to administer), on pain of forfeiting for each and every refusal or neglect to keep or make such entry or such oath as aforesaid the sum of 100*l*. Provided that no such maker or makers shall be obliged to go further than the market town next to the place where such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard respectively shall have been made for the making of such entries as aforesaid."

By 1 Geo. IV., c. 58, s. 1. "That from and after the 5th day of January, 1821, so much of the said act as is hereinbefore recited shall be and the same is hereby repealed; and that from and after the said 5th day of January, 1821, all and every maker and makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard in Great Britain shall from day to day enter or cause to be entered in a book or books or on a paper or papers to be delivered to him, her, or them for that purpose by the proper officer of Excise, and kept by such maker or makers in some public or open part of his, her, or their entered premises, of the number of reams and quires of paper, and of the number of dozens of sheets of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively, distinguishing the class of the paper and the denomination of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard, made daily, with their respective estimated weight, reckoning twenty-six of such sheets of paper (two of them being allowed for waste or damaged paper) for a quire consisting of twenty-four sheets when dried and finished, and thirteen of such sheets (one being allowed for waste) for a dozen sheets of millboard, button-board, button-paper, glazed paper, and sheathing paper respectively, when dried and finished, and shall make or cause such entries of each day's work at his, her, or their mills or manufactories to be made and completed before the hour of twelve at noon of the following day; which entries shall, at or after the end of every six weeks or forty-two days, be delivered to the proper officer by and verified by the signature of the christian and surname of such maker or makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard respectively, or his, her, or their chief workman or foreman employed in the manufactory; and if any maker or makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall neglect or refuse to make any such entry as aforesaid, or shall knowingly make, or cause or permit or suffer to be made, in any such book or paper as aforesaid, any false entry, or shall remove, conceal, or destroy any such book or paper so delivered to him, her, or them as aforesaid, or fail to keep the same in some open and public part of his, her, or their entered premises, or withhold or keep the same from the inspection of any officer or officers of Excise surveying his, her, or their manufactory, or by any means hinder, obstruct, or prevent such officer or officers from freely examining the same, and comparing the entries therein with his, her, or their stock, or shall erase, deface, or alter any of the entries therein or thereon, or shall, upon demand, refuse or neglect to deliver in a perfect state any such book or paper in which any such entry shall have been made or ought to have been made as aforesaid, at or after the end of the six weeks, or other time or period for which such book or paper shall have been delivered to him, her, or them as aforesaid, or to verify the same by such signature as aforesaid, every such maker or makers of paper, millboard, button-board, button-paper,

glazed paper, sheathing paper, pasteboard, or scaleboard, so offending, shall for each and every such offence forfeit and lose the sum of 200*l*."

By 10 Ann. c. 19, s. 4; 34 Geo. III., c. 20, s. 12, and 56 Geo. III., c. 103, s. 8, no such maker shall be obliged to go farther than the market town next to the place where the paper, &c. shall have been made, for the making of such entries, and see 7 & 8 Geo. IV., c. 53.

By 56 Geo. III., c. 103, s. 9. "Provided always, that if the quantity of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard contained and inserted in such entries, added to the uncharged stock of such maker or makers respectively, shall at any time from and after the 10th day of October be found to be less than five per cent. under and below the account entered and kept of the quantity of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard which shall have been daily made, and of which an account is so to be kept as aforesaid, it shall and may be lawful for the proper officer or officers of Excise to charge such maker or makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard respectively with the duties on such deficiency of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard respectively as shall be below five per cent. as aforesaid, according to the average weight of the paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard so missing and uncharged."

By 1 Geo. IV., c. 58, s. 19. "That no maker of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall, on comparing the quantity thereof respectively contained and inserted in the entries required by the said recited act, added to the uncharged stock of such maker, shall be charged with duties on any deficiency of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard respectively, unless the deficiency of such quantity contained and inserted in such entries, added to the uncharged stock of such maker, shall be found to be more than ten per centum under and below the account entered and kept of the paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard respectively which shall have been daily made by such maker, and of which no account is to be so kept as aforesaid, any thing in the said act to the contrary thereof notwithstanding; and every such maker as aforesaid shall, at the time of making such annual balance as provided and required by the said recited act, make out and deliver to the proper officer, at his request, a just and true account according to the best of his or her knowledge, information, and belief, and signed by him or her, or his or her foreman or manager, of the whole of his or her uncharged stock of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively, distinguishing the class and denomination and quantity of each, and the respective rooms and places and state and condition in which the same are deposited; and if any such maker shall knowingly or wilfully or negligently make out or deliver an untrue account thereof as aforesaid, or any such maker shall not make out, and upon request as aforesaid deliver such account as aforesaid, every such maker shall for every such offence forfeit and lose the sum of 200*l*."

And by 34 Geo. III., c. 20, s. 13. Every maker shall, within six weeks after he shall make or ought to have made such entry, pay the duties, on pain of forfeiting double duty.

By 34 Geo. III., c. 20, s. 14, and 42 Geo. III., c. 94, s. 15. No maker shall remove or suffer to be removed from the mill where the same shall be made any paper, &c. until such officer shall have taken an account thereof; nor shall remove any paper in any less quantity than a ream or bundle, nor without having thereon the cover in which the same was charged with the duty; nor shall remove any such pasteboard, &c. in any less quantity than the entire parcel in which the duty was charged, nor

19. *Paper.*

Penalty 200*l*.

If quantity contained in such entries added to uncharged stock be five per cent. under account kept daily, deficiency charged with duty.

No charge of duty for deficiency shall be made, unless the deficiency of the quantities contained in the entries added to the uncharged stock shall be found more than ten per cent. below the account kept.

Account of uncharged stock to be delivered to officer at his request.

Penalty 200*l*.

Within six weeks after such entry made, the duty to be paid, on penalty of double the amount.

No paper, &c. to be removed until an account shall be taken by the officer, &c.

**19. Paper.**

Penalty for default.

No paper, &c. to be removed till twenty-four hours after weighing.

Paper, &c. weighed to be kept separate from other parcels, that the supervisor may re-weigh it.

Penalty for default.

On forty-eight hours' previous notice, paper, &c. may be removed from one mill to another to be finished, on certificate from the officer, &c.

Makers on receiving paper, &c. which has been made at any other mill, or which has been returned, shall distinguish and keep same separate.

Penalty.

Paper, &c. returned to be marked with the number or letter by which the mill is distinguished, or with the word 'returned.'

and be kept separate, and notice given to the officer, who shall take an account thereof;

until weighed and charged, and stamped, marked, or labelled as aforesaid, nor the paper without having thereon the cover, nor the paper, pasteboard, &c. without the stamp or label, nor without the officer's name, together with the day and year when the duty was charged, and the several matters hereinbefore prescribed, marked or fixed on such cover, or on such pasteboard, &c., on pain of forfeiting the same, and also 50*l.* for every such offence, together with the package containing the same, and the horses, cattle, carriages, boats, barges, or other vessels used in removing thereof, which may be seized by any officer of Excise.

By 34 Geo. III., c. 20, s. 15. No maker shall remove any paper, &c. from the mill or other place where the same shall have been weighed and the duty charged, in less than twenty-four hours; and every maker shall keep such paper, &c. which shall have been so weighed separate from other paper, &c. for twenty-four hours, unless sooner reweighed by the surveyor or supervisor, on pain of forfeiting 50*l.* If, upon reweighing, any additional weight shall be found, the same shall be charged with the duty according to such weight.

Sect. 16. Nothing in this act shall prevent any maker from sending paper from the mill where made, upon giving forty-eight hours' notice in writing to the officer, to any other mill to be sized or finished, in order that such officer may attend and take an account thereof; and provided that the same be removed with a proper certificate from such officer; and that when so removed to such mill, the same shall be under the like directions, as to stamping and other matters, as if it had been finished and sized at the mill where made; and such maker shall, for the breach of any of the directions aforesaid, be subject to the like penalty as he would have been if such paper had not been removed.

By 56 Geo. III., c. 103, s. 7. "That all and every maker and makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard shall, when and so often as he, she, or they shall receive or have delivered at or on his, her, or their entered premises any paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard which has been made or charged with duty at any other mill or manufactory, or which has been returned to him, her, or them from any customer or customers, or other person or persons, mark, write, or print on and distinguish every such ream or parcel of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard respectively with the number or letter by which the mill is distinguished as aforesaid, and at which the same was manufactured, and from whence received, or with the words 'returned paper,' respectively, as the case may happen to be, and shall keep all such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard separate and apart from each other, and from all other paper, millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard, on pain of forfeiting for each and every such offence the sum of 50*l.*"

By 1 Geo. IV., c. 58, s. 9. "That when and so often as any such maker as aforesaid shall receive into his or her possession, or have delivered at or on his or her entered premises, any paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard which has been made or charged with duty at any other mill or manufactory, or which has been sent out by such maker and has been returned to him or her from any customer or customers, or other person or persons, every such maker shall mark, write, or print on and distinguish every such ream or parcel of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard respectively with the number or letter by which the mill or manufactory is distinguished at which the same was made or manufactured, or with the word 'returned,' respectively, as the case may happen to be; and shall keep all such paper, millboard, button-board, button-paper, glazed paper, sheathing paper,

pasteboard, and scaleboard respectively separate and apart from each other, and from all other paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard; and shall, on the next succeeding visit or survey of his or her surveying officer of Excise, give such officer notice in writing thereof, specifying in such notice the progressive number and weight of each such ream or parcel, the number of the mill or manufactory where made, the date of charge, the date of the departure stamp (if any), and the person from whom and place from whence and day when received by such maker; and shall, upon such visit or survey, produce to such officer all such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively, and assist such officer in taking a true and particular account thereof; and every such maker shall, before he, she, or they shall send out, remove, or deliver from his or her mill or manufactory any such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, write or print on the label of the wrapper or cover thereof the distinguishing number of his or her mill or manufactory, and put and fix as hereinbefore directed such impressions of the departure stamp as are hereinbefore directed in respect of paper made at such mill and sent out as aforesaid; and if any such maker as aforesaid shall neglect to give such notice as aforesaid, or shall give as aforesaid a false or untrue notice, or shall refuse or neglect to produce all such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard as aforesaid to such officer, or to assist such officer in taking a true and particular account thereof, or shall neglect to write or print upon the label of any such ream or parcel as aforesaid the distinguishing number of his or her mill or manufactory, or to fix such impressions of the departure stamp on the label and wrappers or covers of every such ream of paper or parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard when again sent out from such mill or manufactory, every such maker shall for every such offence forfeit and lose the sum of 100*l.* for every such ream or parcel in respect whereof the provisions and directions of this act are not complied with as aforesaid, and every such ream and parcel respectively shall be forfeited, and shall and may be seized by any officer or officers of Excise."

and on being removed the departure stamp to be affixed.

The said directions not being complied with;

paper forfeited, and penalty.

By 34 Geo. III., c. 20, s. 17. Every maker shall keep all paper, &c. which hath been charged and stamped, marked or labelled, apart from all paper which hath not been charged and stamped, marked or labelled, and also all paper of one class separate from paper of another class, on pain of forfeiting 50*l.*

Paper, &c. stamped to be kept separate from that unstamped; and one class apart from another.

Sect. 18. It shall be lawful for any officer of Excise, by day or night, (but if in the night in the presence of a constable), to enter into any mill, workhouse, or other place entered or made use of by any maker of paper, &c. and by weighing, tale, or otherwise, to take an account of the kinds and quantities of paper, &c. which shall have been made, and shall make a report thereof in writing to the commissioners of Excise, or whom they shall appoint, leaving a copy of such report under his hand with such maker (if demanded in writing); and such report shall be a charge upon such maker; and if such officer shall refuse to give or leave a copy of his report in writing at the time of taking such account (being demanded as aforesaid), he shall, for every such offence, forfeit 40*s.* to such maker.

Officers may enter mills, &c. and take an account of paper made, and make a report to the commissioners of Excise, leaving a copy with the maker if demanded.

Penalty for not leaving such copy.

By 10 Ann., c. 19, s. 50. The officers shall be permitted to take an account of the rags, cordage, and other materials for making paper, pasteboard, &c. and of the paper for printing, painting, or staining, and of the respective proceedings in making, printing, painting, or staining thereof.

Officers to take an account of rags, cordage, &c. in makers' custody, &c.

By 1 Geo. IV., c. 58, s. 3. "That from and after the said 5th day of January, 1821, it shall be lawful for the officers of Excise, when occasion shall require, or they may think fit, to inspect or take an account of the stock of paper, millboard, button-board, button paper, glazed paper,

Officer to take an account of stock.

## 19. Paper.

Makers to keep different classes of paper, &c. charged with duty from that which has not been charged, and so as the officer may easily see the stamp, and take an account of the number and weight of the reams, &c.

Obstructing officer, &c. Penalty, 100*l*.

Makers to keep scales and weights for the use of the officer, on penalty of 100*l*.  
Penalty for providing false weights or scales, &c.

Makers to assist the officer in weighing paper, &c.  
Penalty for neglect.

Officers to give the turn of the scale in favour of the crown, allowing the maker 2*lb*. per 100; but no weight less than 1*lb*. to be used, on penalty of losing the allowance.

Paper, &c. fraudulently hid, to be forfeited.

Officers may search for paper, &c. so concealed, on warrant for so doing.

sheathing paper, pasteboard, and scaleboard respectively, and of the quantities of each, in the custody or possession of such maker and makers as aforesaid; and all and every such maker and makers shall and is and are hereby required at all times to place and keep his, her, or their stock of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively, which has been charged with duty, distinct and separate from that which has not been charged with duty, and also distinct and separate according to its respective class or denomination, and shall place and keep such stock charged with duty in such manner that any officer or officers surveying the mill or manufactory of such maker or makers may at all times correctly, and without difficulty, see and distinguish on the side of each ream and parcel respectively the end of the label hereinafter mentioned, on which the impression is or ought to be or ought to have been or has been made of the stamp hereinafter mentioned called the departure stamp, and to take a just and true account of the number of reams of each class of paper, and of the number of parcels of each denomination of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively, whether charged or uncharged respectively with duty, and of the weight of any such ream or parcel, with the assistance of such maker or makers, or a sufficient number of his, her, or their servants, which assistance they the said maker and makers are hereby respectively required, on the request of such officer or officers, to give to the utmost of his, her, or their power; and if any maker or makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, or any other person or persons whatsoever, shall oppose, molest, obstruct, or hinder any officer or officers of Excise in inspecting or taking such account as aforesaid, or shall at any time refuse or neglect, when required, to give to any officer or officers such assistance as aforesaid, or shall at any time neglect or refuse to keep his, her, or their stock of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively in such manner as aforesaid, or hide or conceal any part thereof, all and every such maker and makers, or person and persons so offending, shall for every such offence severally forfeit and lose the sum of 100*l*.

By 34 Geo. III., c. 20, s. 19. Every maker shall keep sufficient and just scales and weights, and shall permit such officer to use the same; and if he shall not keep such, or shall not so permit, or shall use any false or insufficient scales or weights, or practise any device to prevent such officer from taking the true weight, he shall for every such offence forfeit 100*l*., together with such insufficient scales and weights, which may be seized by any officer of Excise.

Sect. 20. And every maker, when required by such officer, shall, with a sufficient number of his servants, assist in weighing and taking an account, and in reweighing, on pain of forfeiting 50*l*.

Sect. 21, 22. In weighing, the turn of the scale shall be in favour of the crown, and in lieu thereof there shall be allowed to the maker 2*lb*. upon every 100*lbs*., and so in proportion for a greater or a lesser quantity. Provided that no weight less than 1*lb*. shall be used, on pain of forfeiting such allowance.

Sect. 23. In case any paper, pasteboard, &c. shall be fraudulently hid or concealed, the same shall be forfeited, together with the packages containing the same, which may be seized by any officer of Excise; and if any such officer shall suspect that any such paper, &c. is hid or concealed in any place within the limits of the chief office in London, upon oath made before two commissioners or one justice for the county, city, or liberty where such place shall be, or if in any other part of Great Britain, then before one justice of the county or place where such officer shall suspect the same to be deposited or concealed, such commissioners or justice may, if they judge it reasonable, by special warrant, empower such

officer, by day or night (but if in the night in the presence of a constable), to enter such suspected place, and to seize and carry away all such paper, &c. as they shall there find so forfeited, together with the package containing the same; and the person in whose custody the same shall be found shall forfeit 50*l*.

Sect. 24. No stationer or dealer in paper shall receive into his possession any paper made in Great Britain which shall not, at the time of receiving it, be an entire ream or bundle [ream by stat. 42 Geo. III., c. 94, s. 15], and enclosed in a wrapper stamped or labelled as aforesaid, together with the officer's name, and day and year when the duty was charged, and the class marked thereon, on pain of forfeiting 50*l*. together with such paper, which may be seized by any officer of Excise.

Sect. 25, and 1 Geo. IV., c. 58, s. 11. "That no stationer or stationers, or dealer or dealers in paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, nor any other person or persons whatsoever, shall restore, return, redeliver, or send, or procure, permit, or suffer to be restored, returned, redelivered, or sent, to any maker or makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, nor to any mill, workhouse, storehouse, room, or other place to any such maker or makers belonging, nor to any other place or places whatever to or for the use of any maker or makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, any wrapper, cover, or label which has been before used as a wrapper, cover, or label to any paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, and marked or stamped with the marks, stamps, or impressions directed by this act to be used; but that all and every stationer and stationers, or dealer and dealers in paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, and other person and persons, shall, and they are hereby respectively required, upon opening any ream of paper, or parcel of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, forthwith to permanently cancel, deface, and obliterate the label, and the several stamps and impressions of stamps thereon, and on the wrappers and covers of every such ream or parcel, and every part of such label, stamps, and impressions respectively, without separating, detaching, or taking such label from off such cover or wrapper; nor shall any maker or makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard receive, or cause, procure, permit, or suffer to be received, restored, returned, redelivered, or sent to him, her, or them, or to be kept or deposited at any mill, workhouse, storehouse, room, or other place to him, her, or them belonging, or at any other place to or for his, her, or their use, any wrapper, cover, or label which has been before used as a wrapper, cover, or label to any quantity of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, or in or with which any paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard has been removed, carried, or sent out by any maker or makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard; on pain that every such stationer or dealer, or maker or makers of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, or other person and persons offending therein contrary to the directions and provisions of this act, shall, for every such offence, severally forfeit and lose the sum of 200*l*. in respect of every such wrapper, cover, or label, and every such wrapper, cover, or label shall be forfeited, and the same shall and may be seized by any officer or officers of Excise. Provided always, that nothing hereinbefore contained shall extend or be deemed or construed to extend to inflict the said penalty of 200*l*. for or on account of the not destroying or returning any wrapper or cover which hath been opened, containing therein the same identical paper, millboard, button-

19. Paper.

Penalty for such concealment.

No stationer shall receive into his possession any paper made in Great Britain but in an entire ream, &c.

Penalty for default.

Stationers not to return wrappers to makers, but to cancel them.

Makers not to receive such wrappers.

Penalty.

Proviso respecting wrappers returned with paper, &c. dialled on opening, and refused.



## 19. Paper.

Not to extend to wrappers returned with paper, &c. dialked on opening, and refused.

Persons buying paper liable to seizure shall, on giving information, receive the value paid by retailer, &c.

So much of 34 Geo. III., c. 20, s. 26, as requires the destroying of wrappers on opening bundles, repealed.

Paper, materials, utensils, &c. liable to the duties and to penalties.

Proof of paper being of the class marked on the cover to lie upon the owners.

Penalty for obstructing officers.

Oxford and Cambridge.

Saving for 22 Geo. III. c. 54.

Provision in 34 Geo. III., c. 20, as to an allowance for damage sustained from the loss of paper, &c. arising from the sinking of vessels conveying the same, repealed.

board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard which was removed, carried, or sent away by the maker or makers thereof, and which is returned to him, her, or them on account of the same being dialked and refused by the person or persons to whom the same was sent, for or on account of the not destroying or returning any label affixed to such wrapper or cover; any thing hereinbefore contained to the contrary in anywise notwithstanding."

By 34 Geo. III., c. 20, s. 26, and 1 Geo. IV., c. 58, s. 11. Nothing herein shall extend to inflict the said penalty of (100*l.* by 34 Geo. III., 200*l.* by 1 Geo. IV.), for not destroying or returning any wrapper which hath been opened, containing therein the same paper, &c. which was removed by the maker, and which is returned to him as dialked, or for not destroying or returning any label affixed to such wrapper.

By 1 Geo. IV., c. 58, s. 16. "That every retailer, stationer, or dealer in paper, or other person, who shall have bought, received, or agreed for any paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard respectively which may be forfeited or liable to seizure by this or by any other act or acts, and shall discover to and inform any officer or officers of Excise of the same, shall, on the condemnation thereof, and on conviction of the offender in the penalty or penalties incurred by such offence, be paid (by the officer seizing the same) the value of all such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively which shall be so seized and condemned, and for which such retailer, stationer, dealer, or other person shall have actually paid or be liable to pay and shall pay, and such payment shall be deemed a part of the expenses attending such seizure."

By 56 Geo. III., c. 103, s. 20. "That from and after the 10th day of October, so much of the said act as is lastly hereinbefore recited shall be and the same is hereby repealed, save and except as to any fine, penalty, or forfeiture, fines, penalties, or forfeitures, incurred by any person or persons whatsoever in respect thereof, or relating thereto, before or on the day last aforesaid."

By 34 Geo. III., c. 20, s. 27. All paper, pasteboard, &c., and all materials and utensils for the making thereof, in the custody of the maker, or other person in trust for him, shall be chargeable with all debts and duties for paper in arrear and owing by such maker, and shall also be subject to all penalties and forfeitures incurred for any offence against this act. See also 28 Geo. III., c. 27, s. 21; 7 & 8 Geo. III., c. 53.

Sect. 35. If any question shall arise whether any paper is belonging to the class marked on the cover or wrapper (although such paper shall appear to have been entered in the officer's books as belonging to such class), the proof thereof shall lie on the owner or claimant, and be decided by the oaths of two skilful and experienced persons.

Sect. 36. If any person shall assault, oppose, molest, obstruct, or hinder any officer in the due execution of this act, he shall forfeit 100*l.*

Sect. 37, 39, 40, 41, and 43 Geo. III., c. 69, sched. (C.) All paper of the first denomination used in printing books at Oxford or Cambridge, in Latin, Greek, Oriental, or Northern languages, and also bibles, testaments, psalm-books, or books of common prayer, printed either in those universities, or by the king's printer, shall have drawbacks allowed on certain conditions.

Sect. 47. Nothing herein shall extend to alter or affect the provisions contained in 32 Geo. III., c. 54.

By 1 Geo. IV., c. 58, s. 22. "That from and after the said 5th day of January, 1821, the said recited provision shall be and the same is hereby repealed; and that if any quantity of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall be inevitably destroyed, or so far inevitably damaged by fire, or by the unavoidable wreck of or other unavoidable injury to the vessel or

barge in which such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall be transporting, or be shipped on board to be transported from one part of this kingdom to another part thereof, as that such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall be no longer capable of use as such respectively, but must be wholly destroyed or remanufactured and charged again with duty, it shall and may be lawful to and for the maker of such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard, being at the time of such loss the proprietor and owner thereof, to make proof of such loss and the cause thereof, on the oath of one or more credible witness or witnesses, and of the duty in respect of such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard having been duly paid by such maker, before the justices of the peace of the county, riding, or division where such accident happened or was first discovered, at their general quarter-sessions, or before the commissioners of Excise for the time being, or any three of them, who are hereby severally and respectively empowered to summon before them the witnesses necessary to make such proof, under the penalty, for non-attendance, of 20*l.*, to be levied by distress and order of such justices or commissioners respectively, and to administer to such witnesses the oath hereinbefore mentioned; and upon such proof being made by such witnesses, or by legal documents, that such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard was inevitably destroyed or inevitably damaged, so far as aforesaid, by fire or by the unavoidable wreck of or other unavoidable injury to such barge or vessel as aforesaid, and that the duties thereon were paid as aforesaid, to grant a certificate thereof, and of the amount of such duties; and upon the production of such certificate by such maker as aforesaid to the collector of the Excise collection where such certificate shall have been granted, he shall be obliged to pay or allow to such maker, being the proprietor of the said paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard, out of the duties of Excise in or coming into his hands, so much money as the sum certified to have been paid for the duty on the paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard so lost or destroyed, and of which such proof shall have been so given as aforesaid, shall amount to. Provided always, that no such maker as aforesaid shall be entitled to any such relief or allowance as aforesaid, unless notice in writing of such accident, describing the nature, cause, and extent of such loss as aforesaid, shall be delivered to the supervisor of Excise of the district in which such accident shall have happened, or where such loss shall have been first discovered, within three days next afterwards, or unless such maker as aforesaid who shall have sustained such loss or damage, or his, her, or their agents, shall give or leave notice in writing with the supervisor or collector of Excise of the division or collection where such quarter-sessions shall be held, of the intention of such maker, being such proprietor and owner as aforesaid, to apply for such allowance or relief as aforesaid, or to the solicitor of Excise for the summary jurisdiction where such application is intended to be made to such commissioners as aforesaid, fourteen days at the least before the beginning of such quarter-sessions, or before such application to such commissioners, and shall apply for such relief within one month after such loss, or at the next general quarter-sessions of such justices happening after the expiration of such month; any thing in this or in any other act or acts to the contrary notwithstanding."

Sect. 23. "That nothing in this act contained shall extend, or be deemed or construed to extend, to repeal or alter any act or acts in force immediately before the passing of this act, relating to the duties on paper or pasteboard respectively, or any of the clauses or provisions therein contained, save and except so far as such act or acts, or the clauses, provisions,

*Paper, &c. destroyed by fire or wreck, maker, on proving loss before quarter-sessions or commissioners of Excise, and that the duty was paid, may recover the duty, on producing a certificate to the collector of Excise. Witnesses not attending, penalty 20*l.**

*Notice of application to be given to supervisor.*

*Not to affect any act relating to the duties on paper, unless where hereby altered.*

## 19. Paper.

Notice of intention to apply for such allowance to be given to the collector of Excise.

Allowances to clothiers and hot-pressers.

Drawback allowed to clothiers, hot-pressers, and other persons in the woollen manufactory, for glazed paper, on the conditions herein specified.

Penalty of perjury on false oaths for drawback.

Duty on painted paper.

Paper-stainer to enter his name and place of abode.

And of their places of drying, &c. on pain of 20*l*.

powers, or authorities therein contained, are repealed, altered, or controlled by this present act, or are repugnant to any of the provisions thereof; but that all and singular the said former acts, and the several provisions, rules, regulations, powers, and authorities therein contained or granted, and the pains, penalties, and forfeitures incurred or thereby imposed or provided for any breach or non-observance of the same, except as aforesaid, shall remain and continue in as full force and effect as if this act had not been made; any thing herein contained to the contrary in anywise notwithstanding."

By 34 Geo. III., c. 20, s. 50. The person who shall sustain such loss shall, three days before such sessions, give or leave notice in writing thereof with the collector of Excise of the district, and of his intention of applying to such sessions for such allowance.

And all the duties are allowed for such glazed or other press-papers for clothiers and hotpressers as shall be *bond fide* used and consumed in the pressing of woollen cloths and stuffs in Great Britain, 43 Geo. III., c. 69, *sched. (C.)*

By 42 Geo. III., c. 94, s. 6. Every person intending to claim any such drawback or allowance for glazed paper or press-paper shall, before he shall begin to make use thereof, produce the same to the officer of Excise in the original cover or wrapper in which it was charged with the duty, and give to such officer a note in writing, specifying the day and hour on which he intends to produce such glazed or press-paper, and also the quantity thereof, and the name and residence of the maker or person from whom and the time when it was received; and such person shall untie and open the same in the presence of such officer, who shall take account thereof, and destroy the duty-stamp on the covers or wrappers; and as soon as such paper shall have been so long used as to be incapable of being again employed for any purpose, upon application to the proper collector (such application not to be oftener than twice in each year), stating in writing the actual quantity of such glazed paper and press-paper so used as aforesaid, and making oath before such collector (who is empowered to administer the same) of the real quantity thereof so used, that the same has been actually employed in the pressing of woollen cloths or stuffs by the party applying for such allowance, and for no other purpose whatsoever, and that all such paper, and every part thereof, is by such use become unfit for any other purpose, and that no drawback has been before received for such paper or any part thereof, then such collector shall allow a drawback of the duties charged or paid for such glazed paper or press-paper, without any fee or deduction.

Sect. 17. Any person convicted of wilfully taking a false oath, in order to obtain a drawback or allowance, shall be liable to the pains and penalties of perjury.

And by 43 Geo. III., c. 69. For every yard square of paper which shall be *printed, painted, or stained* in Great Britain to serve for hangings or other uses (over and above the duties payable for such paper before the printing thereof), shall be paid by the printer, painter, or stainer, 1*½d*.

By 10 Ann., c. 19, s. 43. All persons who shall make any paper, pasteboard, &c., or *print, paint, or stain any paper* for sale, or not for sale, shall leave notice in writing at the next Excise office of his name and place of abode, and of the places usually made use of in making, printing, &c. the same, on pain of forfeiting 30*l*.

Sect. 44. No person shall use any drying-place, or other place for making the same fit for use, other than such of which he hath first given notice in writing to the officer, on the penalty of 20*l*.

By 42 Geo. III., c. 94, s. 11 & 12, certain regulations are enacted for regulating the making of pasteboard.

By sect. 13. No maker of pasteboard shall carry on the business of a maker of paper, nor carry on the business of making pasteboard, within one

quarter of a mile of any mill or manufactory for making paper, on pain of forfeiting 100*l*.

19. *Paper.*

Sect. 14. Pasteboard made in Great Britain of paper that has been duly charged with the duties shall not be charged with any further duties.

By 1 Geo. IV., c. 58, s. 18. "That every maker and manufacturer of pasteboard (not made at any mill) from paper of the first class and denomination only, for being cut into and sold by him or her as cards not exceeding the size of sixty-four square inches, or playing cards, and every maker of bottle-stands, spectacle-cases, tea-trays, or any other wares or articles of merchandise made from or with paper, pasted or united together, and moulded into such articles, shall be deemed a pasteboard-maker, and shall be subject and liable to take out and pay for a licence as a pasteboard-maker, and to make entry of his or her premises as such at the proper office of Excise; and that every such maker and manufacturer shall from time to time give notice as a pasteboard-maker, and as required by law of pasteboard-makers, of opening any reams of paper for the purpose of the sheets thereof being pasted or united together as aforesaid, and shall, at the end of every such quarter of a year as aforesaid, make and render to the proper officer of Excise an entry in writing, signed by such maker or his foreman with his christian and surname, of the whole weight of the paper, distinguishing the class or denomination thereof, used and employed by him or her in such quarter as aforesaid, and that he and she respectively have not in such quarter used or employed, or permitted to be used or employed as aforesaid, any other than such paper as was opened in the presence of the proper officer, and is mentioned and entered in such quarterly account as aforesaid; and if any such maker or manufacturer as aforesaid shall neglect or refuse to take out and pay for such licence as aforesaid, or to make such entry at the proper office of Excise as aforesaid, or to make or render such quarterly entry or account as aforesaid, or shall not make true and faithful entries and accounts as aforesaid, or any such pasteboard-maker for cards as aforesaid shall use or employ any other than first class paper for that purpose, or shall make or sell any pasteboard, except cut into cards not exceeding the size of sixty-four square inches, or playing cards, every such maker or manufacturer shall for every such offence forfeit and lose the sum of 100*l*.; and no such maker or manufacturer as aforesaid, who shall take out and pay for such licence and make such entry at the next office of Excise, and make and render such quarterly account as aforesaid, and observe, fulfil, and keep the conditions hereinbefore mentioned, shall be subject or liable to any other of the rules or regulations relating to makers of pasteboard; any thing to the contrary thereof in any other act or acts notwithstanding."

Sect. 14. "That every maker of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall daily and every day enter or cause to be entered in a book to be provided by him, her, or them for that purpose, an exact and particular account of the quantity and weight of each class of paper, and of each denomination of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively, and of the progressive number of every ream and parcel thereof respectively, which shall be sold, delivered, or sent out from his or her mill or manufactory by any such maker as aforesaid, and of the date of such impression of such departure stamp or die as aforesaid put and affixed thereon, and of the place to which and conveyance by which the same shall be sent; and shall daily, or on every successive survey by any officer of Excise of the entered mill or premises of such maker, deliver to such officer an account in writing signed by such maker or his foreman, containing the progressive numbers of all the reams of paper and parcels of millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard respectively delivered or sent out from such mill or manufactory on that day, or since the last survey of an officer of Excise, as the case

Who shall be deemed pasteboard-makers.

Pasteboard-maker to take out a licence and make entry of his premises. Notice to be given of opening reams, and an account rendered of the quantity used quarterly.

Penalty on neglect, 100*l*.

Not liable to any further regulations relating to pasteboard-makers.

Maker to enter in a book an account of the quantity and weight of each class of paper, &c. sold or sent from his mill, with the date of the departure stamp; and deliver an account of the progressive numbers of reams, &c. sent out since last survey.

## 19. Paper.

Book to be open  
to inspection.

Penalty for  
neglect or ob-  
struction, 200*l*.

Makers to place  
their uncharged  
stock yearly in  
such manner as  
to enable the  
Excise officers  
to make an an-  
nual balance of  
quantity of paper,  
&c. made and  
charged with duty.

Obstructing  
officer.

may be; and such book shall be at all times kept on the entered premises of every such maker as aforesaid, open to the inspection of any officer of Excise of superior rank to a supervisor, and to any supervisor or other officer of equal rank with the supervisor of Excise, when required by any written order of a collector of Excise, or other officer of Excise of superior rank to a supervisor, who shall visit or survey the same; and if any such maker as aforesaid shall neglect or refuse to keep such book, or daily make or cause to be made due entries therein as aforesaid, according to the true intent and meaning of this act, or shall make, or cause or permit to be made, any false entry therein, or shall cancel, alter, obliterate, or destroy any of such entries made therein, or tear thereout or destroy any of the leaves or part of such book or paper, or shall hinder or obstruct any officer of Excise of superior rank to a supervisor, or any supervisor, or any officer of equal rank with a supervisor, when required by any written order of a collector or other officer of Excise of superior rank to a supervisor, from or in examining or inspecting such book, or making any extract or extracts therefrom at his or their free will and pleasure, or shall refuse or neglect to deliver to the officer of Excise such paper as aforesaid, every such maker as aforesaid shall for every such offence forfeit and lose the sum of 200*l*."

By 56 Geo. III., c. 103, s. 19. "That for the purpose of enabling the proper officer or officers of Excise to make an annual balance of the whole quantity of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard respectively made by any maker or makers of paper in the preceding year, and of the quantity thereof respectively charged with duty, every such maker or makers shall, on the 5th day of July, in each year, or at such time or times as any such maker or makers shall decline or leave off business, or assign or transfer such business to any other person or persons not being a partner with such maker or makers, on notice being for that purpose given by the proper officer or officers of Excise to such maker or makers, seven days at the least before such account as is hereinafter mentioned shall be taken, and such balance made, lay and place the whole of his, her, or their uncharged stock and loose paper reduced into reams and odd quires as first hereinbefore mentioned, and millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard, in dozens and odd sheets, in such manner or order that the same may be conveniently numbered, weighed, or otherwise taken account of by such officer or officers of Excise; and all and every such maker or makers shall and are hereby required, with his, her, or their servants or workmen, to give all needful and requisite aid and assistance to such officer or officers in numbering, weighing, or otherwise taking account of such uncharged or loose paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard respectively, as by such officer or officers may be found necessary for making such balance as aforesaid; and that such account of the quantity of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard respectively, and of the kinds, sorts, and quantities of each in the custody or possession of all and every such maker or makers as aforesaid, shall, upon such notice as aforesaid, be first taken account of by such officer or officers as aforesaid on the 10th day of October, 1816; and if any such maker or makers, or any other person or persons whatsoever, shall oppose, molest, obstruct, or hinder any officer or officers of Excise in taking such account as aforesaid, or shall refuse or neglect to lay, place, and keep his quantity of uncharged or loose paper, millboard, button-board, button-paper, glazed paper, sheathing paper, and pasteboard in such manner or order as aforesaid, or shall refuse or neglect, when thereto required, to give to any such officer or officers such aid or assistance, or shall hide or conceal any such paper, millboard, button-board, button-paper, glazed paper, sheathing paper, or pasteboard from the sight and inspection of such officer or officers, or shall use any art, means, or contrivance to prevent any such

## II. PARTICULAR LAWS, &c. (19.) Paper.

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officer or officers from taking a just and true account thereof, every such maker or makers shall, for each and every such offence, forfeit and lose the sum of 200*l*."

By 1 Geo. IV., c. 58, s. 19. "That no maker of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard shall, on comparing the quantity thereof respectively contained and inserted in the entries required by the said recited act, added to the uncharged stock of such maker, shall be charged with duties on any deficiency of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard respectively, unless the deficiency of such quantity contained and inserted in such entries, added to the uncharged stock of such maker, shall be found to be more than ten *per centum* under and below the account entered and kept of the paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, or scaleboard respectively which shall have been daily made by such maker, and of which no account is to be so kept as aforesaid, any thing in the said act to the contrary thereof notwithstanding; and every such maker as aforesaid shall, at the time of making such annual balance as provided and required by the said recited act, make out and deliver to the proper officer, at his request, a just and true account according to the best of his or her knowledge, information, and belief, and signed by him or her, or his or her foreman or manager, of the whole of his or her uncharged stock of paper, millboard, button-board, button-paper, glazed paper, sheathing paper, pasteboard, and scaleboard respectively, distinguishing the class, and denomination, and quantity of each, and the respective rooms and places and state and condition in which the same are deposited; and if any such maker shall knowingly, or wilfully, or negligently make out or deliver an untrue account thereof as aforesaid, or any such maker shall not make out and upon request as aforesaid deliver such account as aforesaid, every such maker shall for every such offence forfeit and lose the sum of 200*l*."

By 1 Geo. I., stat. 2, c. 36, s. 17. Before any paper shall be printed, painted, or stained, the officer shall be permitted to take an account of the quantities and dimensions of all paper in the possession of any such printer, &c.; and shall mark every sheet and piece with a stamp, to denote that such account has been taken.

By stat. 26 Geo. III., c. 78, s. 2. Every paper printer, painter, or stainer shall once in every fortnight make entry in writing upon oath, or on the oath of his chief workman, at the next office for the said duties, of all paper by him printed, painted, or stained within that time, and such entry shall contain the kinds and quantities thereof respectively, on pain of 50*l*.

Sect. 3. And every stainer shall, within a fortnight after, pay the duties for all such paper, on pain of forfeiting double duty; and no person, after default in payment, shall sell or deliver out any paper until he hath paid the duty, on pain of forfeiting double the value thereof.

Sect. 5. Before any paper shall be printed, painted, or stained, the officer shall be permitted to take account of the dimensions, and shall stamp or seal every sheet and piece, to denote that such account hath been taken; and where a single sheet shall be painted, the same shall be produced to the officer, who shall take an account thereof; and if he finds that every sheet is marked or stamped, he shall measure the same, and mark such piece or sheet at both ends with a frame-mark, denoting the measure thereof, and with such other number or mark as the commissioners shall direct; and if any printer, &c. shall begin to print, paint, or stain any sheet of paper before it is so measured and marked, he shall forfeit 20*l*. and also such paper, which may be seized.

Sect. 9. As soon as any paper shall have been printed, painted, or stained with any colour or figure, the officer shall take an account and charge the duties, and shall stamp every piece, where a single sheet, at both ends; and if any such stainer shall remove or send away, or suffer to be removed or sent away, any piece or sheet of such paper before the same has been

### 19. Paper.

Penalty.

No charge of duty for deficiency shall be made, unless the deficiency of the quantities contained in the entries required by recited act, added to the uncharged stock, shall be found more than ten per cent. below the account kept.

Account of uncharged stock to be delivered to officer at his request.

#### Penalty 200*l*.

After June 1, 1716, before paper be painted, officer to take account of the quantities and dimensions, and stamp the same.

From Sept. 1, 1786, entries to be made every fortnight of all paper stained, &c. on penalty of 50*l*.

Duties to be paid within a fortnight after such entries made, on penalty of forfeiting double the duties. If goods are delivered before the duties are paid, double their value to be forfeited.

From Sept. 1, 1786, if paper be begun to be stained, &c. before measured and marked, to be forfeited, and 20*l*. penalty incurred for every piece.

Duties to be charged, &c. as soon as paper is stained.

## 19. Paper.

and 50*l.* penalty to be incurred for every piece of paper removed before stamped, with forfeiture of the paper. Officers to charge for paper missing. Pieces cut for samples must be marked by the officer on every sample. Paper removed before stamping forfeits 20*l.* &c.

Paper not charged with the duties to be kept separate, on penalty of 50*l.*

Persons fraudulently concealing paper to forfeit 100*l.*

Persons keeping paper in any place, of which notice has not been given to the officer, to forfeit 50*l.* and the paper.

Warrants may be granted to search for paper suspected not to be duly stamped, which may be seized.

Persons obstructing officers, &c. forfeit 50*l.* But no remnant of a piece of less length than the frame-mark to be forfeited, for not having stamps at both ends. Paper not having the frame-mark, or being marked at one end only, &c. to be forfeited, and also 50*l.*

Commissioners to provide proper marks, &c.; and the officers in using them to do the least possible damage to the paper. Penalty on forging marks, &c.

taken account of and stamped as aforesaid, he shall forfeit 50*l.*; and also such paper may be seized if found in the possession of any dealer in printed, painted, or stained paper.

By 1 Geo. I., stat. 2, c. 36, s. 17, and 26 Geo. III., c. 78, s. 10. If any officer shall miss any quantity of paper, whereof he had so taken an account, and shall not, on reasonable demand, receive satisfaction what it become of it, he may charge the duties for it.

By 26 Geo. III., c. 78, s. 8. Pieces cut into samples or remnants shall be stamped by the officer, to whom six hours' notice shall be given by such stainer of the time he intends to cut the same.

By 1 Geo. I., st. 2, c. 36, s. 18. No person shall remove any such painted paper until the officer hath taken an account of the quantity thereof, and until every piece or parcel shall be marked or stamped, on pain of 20*l.*; and the said paper being found in the possession of any stationer or other dealer, or other persons for his use, shall also be forfeited.

By 26 Geo. III., c. 78, s. 11. Every stainer shall keep all paper by him printed, painted, or stained, and which hath not been stamped and charged with the duties, separate from the paper that hath been charged, on pain of 50*l.*

Sect. 12. If any printer, &c. shall fraudulently hide or conceal any printed, painted, or stained paper, with intent to defraud His Majesty, he shall forfeit 100*l.*

Sect. 16. No stainer, &c. shall keep any paper which hath been marked and stamped, in any unentered place; and if any paper which hath been printed, painted, or stained, whether marked or stamped or not, shall be found in the possession of any stainer in such unentered place, he shall forfeit 50*l.* and also the paper, which may be seized.

Sect. 17. Upon oath made before two commissioners within their limits, or one justice, by any person, that he hath reason to suspect or believe that any such paper is in the custody of any stainer, or other person trading therein, without having thereupon such stamp as by this act is directed, the said commissioners or justice may issue their warrant or order, authorizing any officer of the said duties, with the assistance of a constable or other peace-officer, in the daytime, to search for the same, and to open doors, chests, trunks, and packages, and to seize such paper, and to bring the same to the next Excise office, which shall be forfeited; and if any person shall obstruct any officer from entering any such place, and in seizing or carrying away such paper, he shall forfeit 50*l.* Provided, that no remnant, being of less length than shall be expressed by the frame-mark thereon, so found having the stamp at one end thereof, shall be forfeited by reason of not having the stamp at both ends thereof.

Sect. 18. To prevent fraud by adding to the length of any piece of stained paper, after the same hath been stamped at both ends, if any piece or remnant of stained paper, not having such stamp and frame-mark thereon, or at one end thereof only, and being of as great or greater length than shall be expressed by such frame-mark, or having such marks at both ends thereof, shall be of a greater length by half a yard or more than expressed by such frame-mark, the same shall be forfeited, and may be seized, and the stainer, &c. or dealer in whose possession the same is found shall forfeit 50*l.*

Sect. 13. The commissioners of the duties shall provide numbers or marks to denote the measure, and stamps or seals to denote the charging the duties; and if any person shall counterfeit or forge any frame, number, or mark used by the officers, or the impression of the same, upon any paper to be printed, painted, or stained, he shall forfeit 100*l.*; or if he shall counterfeit or forge any stamp or seal to resemble those provided in pursuance of this act, or the impression of the same, upon any paper, in order to defraud His Majesty, he shall be guilty of felony without benefit of clergy; and if any person shall sell any paper with such counterfeit stamp

knowing the same, with like intent, he shall forfeit 100*l*. But see stat. 52 Geo. III., c. 143, *ante*, p. 546, 547.

Sect. 14, 15. If any stainer, &c. shall wilfully cut out, obliterate, or deface the frame-mark, number, or mark, or wilfully suffer the same to be done, or shall affix upon any piece or sheet of paper any frame-mark, or stamp, or seal which shall have been before affixed on any other piece or sheet of paper, with intent to defraud His Majesty, he shall forfeit 50*l*. and such piece or sheet.

Sect. 19. Printed, painted, or stained paper may be exported on certain conditions specified in the act; but the same shall not be permitted to be packed up in order to be exported, not having the stamps by this act directed, and also the frame-marks plain at both ends of every piece, where a single sheet; and the officer who shall attend to see such paper packed up shall measure the same, and see that the said stamps and frame-marks are cut off from both ends of every piece or single sheet.

Sect. 20. All penalties, fines, and forfeitures shall be sued for, recovered, levied, and mitigated as by the laws of Excise, (a) or in the courts at Westminster, half to the king and half to him who shall inform or sue.

And by 10 Ann. c. 19, s. 55, and 28 Geo. III., c. 37, s. 21, all paper, materials, and utensils in custody of the maker, or of any to his use, or in trust for him, shall be liable to all duties in arrear, and to all forfeitures relating to the said duties, in the same manner as if the offender or debtor were the lawful owner.

For the stamp duties on paper, see title *Stamps*, Vol. V.

Disputes between paper-makers and their workmen, see title *Servants*, Vol. V.

(20.) *PERRY*, see *Cpdr*.

19. Paper.

Defacing marks.

If paper stained before Sept. 1, 1786, is exported, oath to be made of the fact.

No paper stained after Sept. 1, 1786, to be permitted to be packed for exportation, unless legally marked, &c.

Officer to measure paper exported, and cut off the marks, &c. How fines are to be recovered and applied. Utensils liable.

(21.) *Plate*. (b)

[31 Geo. II., c. 32; 32 Geo. II., c. 24; 43 Geo. III., c. 68; c. 69; 53 Geo. III., c. 103; 55 Geo. III., c. 30; 59 Geo. III., c. 32; 1 Geo. IV., c. 14; c. 32; 3 Geo. IV., c. 27; 6 Geo. IV., c. 81; c. 111; c. 118; 9 Geo. IV., c. 49.]

We have seen that the general licensing act, 6 Geo. IV., c. 81, s. 35, which repeals all prior acts relating to licences, expressly except licences to persons trading in, vending, or selling gold and silver plate in Great Britain and Ireland; *ante*, 262.

By 31 Geo. II., c. 32, s. 2, 3. Each person trading in, selling, or vending gold or silver plate, is compellable to take out a licence.

And by 43 Geo. III., c. 69, *sch*. (A.) Every person trading in, vending, or selling (c) any gold or silver plate, or any goods

(20.) Perry.

(21.) Plate.

Licence.

(a) See *ante*, p. 282, 283, *et seq*.

(b) The 6 Geo. IV., c. 118, s. 2, places the duties on licences for trading in, vending, or selling any gold or silver plate, under the management of the commissioners of stamps, and they are to be deemed and taken to be stamp duties. However, it is deemed expedient to retain this head of revenue in this place.

(c) The statute 43 Geo. III., c. 69, described the persons who are to take out licences as persons using the trade of selling gold or silver plate, or any goods or wares composed of gold or silver, or in which any gold or silver shall be manufactured, and persons employed to sell

any gold or silver plate, or any such goods or wares as aforesaid, at any auction or public sale, or by commission: but a person who sold one piece of old plate to an innkeeper, at a price set upon it by a silversmith, as what it was worth for use, was held not to be liable to a penalty for selling plate without taking out a licence, this being only a singular and isolated instance. *The King v. Buckle*, 4 East, 346; and as to what is to be considered a dealing, see *Johnson v. Hudson*, 11 East, 180; *the King v. the Commissioners of Excise*, 2 T. R. 386, &c.; *Rex v. Little*, 1 Burr. 609; *Paley on Conv.* 71, *Bocawen*, 130.



## 21. Plate.

in which any quantity of gold exceeding two pennyweights, and under two ounces in weight, or any quantity of silver exceeding five pennyweights and under thirty ounces' weight, in one distinct ware, is manufactured, shall pay for every such licence

£. s. d.  
2 6 0  
2 6 0

Persons selling silver or gold watches in which are contained a certain quantity of those metals not liable to the licence duty of 2l. 6s. granted by recited act.

And by 55 Geo. III., c. 30, an additional sum of

£. s. d.  
2 6 0

But by 59 Geo. III., c. 32, s. 2. "That from and after the passing of this act, no person trading in, vending, or selling silver or gold watches, and who shall not trade in, vend, or sell, or offer or expose to sale, any other gold or silver plate, or any other goods or wares in which any quantity of gold exceeding two pennyweights and under two ounces in weight, or any quantity of silver exceeding five pennyweights and under thirty ounces in weight, in any one separate and distinct ware or piece of goods, is or are or shall be manufactured, shall be required or liable to pay for or upon any such licence as aforesaid the said sum of 2l. 6s. by the said recited act granted and imposed, any thing in the said recited act or this act to the contrary thereof notwithstanding."

Gold or silver goods offered for sale, &c. to be deemed as such, according to 55 Geo. III., c. 30, and 43 Geo. III., c. 69.

Sect. 3. "That all goods, wares, and merchandise which shall be sold or offered for sale, or taken in pawn, or delivered out as and for gold or silver respectively, shall be deemed and taken to be gold or silver respectively within the intent and meaning of the said recited act of the fifty-fifth year aforesaid, and of this act, and also of an act made in the forty-third year of His present Majesty's reign, for repealing the duties of Excise payable in Great Britain, and granting other duties in lieu thereof, and of all other acts now or which shall hereafter be in force relating to His Majesty's revenue of Excise."

And by 43 Geo. III., c. 69, *sch.* (A.) Every person trading in, vending, or selling any gold or silver plate, or any goods in which any quantity of gold of the weight of two ounces or upwards, or any quantity of silver of the weight of thirty ounces or upwards, in one distinct ware, is manufactured; and every pawnbroker trading in, vending, or selling gold or silver plate, or goods or wares in which any quantity of gold or silver is manufactured, or taking in or delivering out pawns of such plate, goods, or wares; and every refiner, for every such licence

£. s. d.  
5 15 0  
5 15 0

And by 55 Geo. III., c. 30, an additional sum of

£. s. d.  
5 15 0

By the 43 Geo. III., c. 69, these duties were imposed without limitation of time; those by the 55 Geo. III., c. 30, were granted till 5th April, 1819, but 3 Geo. IV., c. 27, extended them to 5th July, 1826; and see 9 Geo. IV., c. 49, *post*, 565.

By 31 Geo. II., c. 32, s. 4, and 32 Geo. II., c. 24, s. 3. The said licences are to be renewed annually ten days before the end of the year, on pain of forfeiting 20l.

In copartnerships, where trade is carried on in one house only, one licence is sufficient.

Executors, &c. of persons having licences may carry on trade till licences expire.

But by 31 Geo. II., c. 32, s. 7. Persons in partnership, carrying on their trade in one house or shop only, shall not be obliged to take out more than one licence for one year.

By 53 Geo. III., c. 103. "That, upon the death of any person or persons so licensed, or upon the removal of any person or persons so licensed from the house or premises in which such his, her, or their licence shall authorize him, her, or them to make or manufacture, trade, deal in, vend, or sell any of the commodities aforesaid, it shall and may be lawful to and for the commissioners of Excise in England and Scotland respectively for the time being, or any one or more of them, and to and for the several collectors and supervisors of Excise in England and Scotland respectively within their respective collections and districts, to authorize and empower the executors, administrators, or the wife or child of such deceased person, or the assignee or assigns of such person or persons so removing, who shall be possessed of such house or premises, in like manner to make or manufacture, trade, deal in, vend, or sell the several sorts of commodities men-

tioned in such licence in the same house or premises where such person or persons so licensed by virtue of such licence carried on such trade, during the residue of the term for which such licence was originally granted, without taking out a new licence during the residue of the said term."

By 32 Geo. II., c. 24, s. 1. No person shall be liable to take out any licence for trading in, vending, or selling any quantity of gold not exceeding two pennyweights, or of silver not exceeding five pennyweights, in any one separate and distinct ware or piece of goods.

By 31 Geo. II., c. 32, s. 6. All persons using the trade of selling gold or silver plate, or any goods or wares composed of gold or silver, or in which any gold or silver shall be manufactured, and also all persons employed to sell any gold or silver plate, or any such goods or wares aforesaid, at any auction or public sale, shall respectively be deemed traders in, sellers, or venders of gold or silver plate, and shall take out a licence for the same.

By 32 Geo. II., c. 24, s. 4. No pawnbroker shall (either publicly or privately) trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, nor shall any person use the trade of a refiner of gold or silver, without taking out and renewing yearly such a licence.

Sec. 4. And every such pawnbroker and refiner shall be deemed to use the trade of selling or vending gold or silver plate.

Sec. 4. If any pawnbroker shall trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or shall practise the business of a refiner, without such licence, or shall not have renewed the same yearly, and made such payment as aforesaid, he shall forfeit 20*l*.

By 31 Geo. II., c. 32, s. 7. No licence shall authorize any person to whom the same may be granted, and who shall sell such gold or silver plate in shops, to trade in or sell such gold or silver plate in any other shop or place, except in such houses or places thereunto belonging, wherein he shall inhabit and dwell at the time of granting such licence, or in booths or stalls at fairs or markets.

Sec. 11. Prosecutions for offences may be in the courts at Westminster, or otherwise: if within the limits of the chief office of Excise in London, the same may be before three commissioners of Excise; and, in case of appeal, before the commissioners of appeal; and elsewhere, before two justices residing near to the place where the offence was committed: and if either informers or defendants shall think themselves aggrieved by the judgment of such justices, it shall be lawful for them to appeal to the next quarter-sessions, who shall hear and determine the same, and whose judgment shall be final. See 7 & 8 Geo. IV., c. 53, *ante*, p. 286.

Sec. 11. The said commissioners of Excise and commissioners for appeals (in case of appeal) and justices respectively shall, upon complaint or information on oath, summon the party accused; and upon his appearance or contempt shall proceed to the examination of the fact; and on due proof made thereof by confession or oath of one witness shall give judgment, and issue warrants under their hands for levying the penalties by distress, and to cause sale of the goods levied upon (if not redeemed in 14 days), and for want of sufficient distress shall imprison the offender till satisfaction be made.

By 32 Geo. II., c. 24, s. 8. They may mitigate the said penalty of 20*l*. as by the laws of Excise.

Sec. 12. All forfeitures (the necessary charges for the recovery thereof being first deducted) shall be distributed half to the king, and half to him who shall inform or sue.

By 6 Geo. IV., c. 118, s. 2. "That from and after the said 5th day of July, 1825, the duties and sums of money granted and made payable by any act or acts now in force upon or in respect of licences to persons trading in, vending, or selling in Great Britain any gold or silver plate, and also upon

Traders in or venders of small gold and silver wares exempted from taking out a licence for the same.

Persons deemed traders in and venders of plate within the act, and liable to take out licences.

Pawnbrokers and refiners deemed traders in and venders of gold and silver wares, and liable to take a licence, and renew the same yearly;

on penalty of forfeiting 20*l*.

Licence to serve for the house, &c. only for which it was granted.

Prosecutions for recovery of penalties, when to be heard and determined by two justices; and in cases of appeal, by the justices at their quarter-session.

Summoning offenders; and proceeding to the examination of the matter of fact, and giving judgment, and awarding execution thereupon, and for want of distress to commit the party.

Mitigation of penalties.

Application of penalties.

21. *Plate.*

Duties on licences to sell in Great Britain gold or silver plate, and on licences to pawnbrokers and refiners, put under commissioners of stamps in Great Britain.

Gold or silver offered for sale, &c. deemed as such.

Gold or silver lace not deemed plate.

Powers of former acts relating to the duties on gold and silver plate, and to licences, shall be put in force by the commissioners of stamps in Great Britain and Ireland.

Penalties, &c.

how sued for.

Powers of former acts in relation to duties under commissioners of stamps, as far as they can be applicable to duties on gold and silver plate and to licences, shall be put in force with respect to the duties placed under their management.

or in respect of licences to pawnbrokers trading in, vending, or selling gold and silver plate, or taking in or delivering out pawns of such plate, and also the duty upon or in respect of licences to refiners of gold or silver in Great Britain, shall continue in force, and shall be paid and payable to and shall be under the management of the commissioners of the stamps in Great Britain for the time being, and shall be denominated and be deemed and taken to be stamp duties."

Sect. 3. "That all goods or wares which shall be sold or offered for sale, or taken in pawn, or delivered out as and for gold or silver respectively in any part of Great Britain, shall be deemed and taken to be gold or silver respectively within the intent and meaning of this act, or any other act or acts. Provided always, that gold or silver lace, or gold or silver wire, thread, or fringe, shall not be deemed gold or silver plate within the meaning of this act or any other act or acts, and that it shall not be necessary for any person or persons trading in or selling or vending gold and silver lace or gold or silver wire, and thread, or fringe, in Great Britain, to take out any licence for trading in or selling gold or silver plate in Great Britain."

Sect. 4. "That all and singular the powers and authorities, rules, regulations, and directions in any wise relating to the said duties upon gold and silver plate, or to the granting any such licences as aforesaid, or to the duties upon or in respect of all or any of such licences respectively contained in the said hereinbefore recited acts or any of them, or in any other act or acts relating to such duties or licences respectively in force on or immediately before the passing of this act (except so far as the same shall be inconsistent with the express provisions of this act), shall be used, executed, exercised, and put in force for the securing and collecting of any such duties as aforesaid, and for the granting of any such licences respectively by the commissioners of stamps in Great Britain and Ireland respectively, as fully and effectually to all intents and purposes as if all and singular such powers and authorities, rules, regulations, and directions had been originally given and granted to such commissioners of stamp duties respectively, and as if the same were repeated and re-enacted in this act; and it shall be lawful for such commissioners of stamps respectively to grant all such licences, and to manage all such duties respectively, in like manner as the commissioners of Excise respectively might have done before the said 5th day of July, 1825, under and by virtue of any of the said acts; and that all fines, penalties, and forfeitures imposed by any such act or acts in respect of any matter or thing to be done, or refused or neglected to be done, by any person or persons in any wise relating to such duties or any of them respectively, shall be incurred and forfeited, and shall and may be sued for, recovered, levied, mitigated, and applied upon or in respect of the doing or neglecting or refusing to do any acts, matters, or things relating to the said duties and licences respectively, by this act placed under the management of the said commissioners of stamps."

Sect. 5. "That all powers, provisions, clauses, regulations, and directions, and all fines, forfeitures, pains, and penalties contained in and imposed by any act or acts in force in Great Britain and Ireland respectively, immediately before the passing of this act, in relation to any of the duties under the management of the commissioners of stamps in Great Britain and Ireland respectively, so far as the said acts or any of them can be made applicable to the said duties on gold and silver plate, and to the duties on such licences as aforesaid respectively, shall be of full force and effect, and shall be observed, applied, enforced, and put in execution with respect to the duties by this act placed under the management of the said commissioners of stamps in Great Britain and Ireland respectively, and for the stamping and marking such plate, and the vellum, parchment, and paper on which any such licences shall be granted, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating to the said duties, as fully and effectually to all intents and purposes as if all such powers and authorities, rules, regulations, and directions, provisions, fines, pains, penalties, and forfeitures had been repeated and specially enacted in

this present act, and had been applied to the duties by this act continued in force, and placed under the management of the said commissioners of stamps respectively."

21. *Plate.*

Sect. 6. "That from and after the said 5th day of July, 1825, it shall be lawful for the commissioners of stamps in Ireland to stay the proceedings in any prosecution commenced by their direction for the recovery of any penalty or penalties incurred by any person or persons under this act, or under any other act or acts in force immediately before the passing of this act, relating to any of the duties under the management of the said commissioners of stamps, on payment of part only of any such penalty or penalties, with or without costs, or on payment only of the costs incurred in such prosecution, or any part thereof, as the said commissioners shall judge proper and expedient; and that it shall also be lawful for the said commissioners at their discretion to give all or any part of the sums paid by way of penalty in any such prosecution as aforesaid to or among the person or persons informing them of the offences in respect of which any such penalty shall be incurred or paid; any thing in any former act or acts contained to the contrary thereof notwithstanding."

Commissioners of stamps in Ireland may stay proceedings for the recovery of penalties, &c.

By 9 Geo. IV., c. 49, s. 12. "That every licence which shall have been granted at any time before the passing of this act, or which shall be granted at any time before the 31st day of July, 1828, to any person trading in, vending, or selling any gold or silver plate, or any gold or silver goods or wares, or to any pawnbroker trading in, vending, or selling any gold or silver plate, or taking or delivering out pawns of such plate, goods, or wares, or to any refiner of gold or silver, in Great Britain, or to any person for using or exercising the trade or business of a pawnbroker in Great Britain, shall cease and determine from the said 31st day of July, 1828; and that every licence which at any time after the 31st day of July, and before the 1st day of September, 1828, or in any subsequent year, shall be granted by the commissioners of stamps, or their proper officer, to any person for any of the purposes aforesaid, shall bear date on the 1st day of August in such year respectively; and that every such licence which shall be granted at any other time in the year 1828, or in any subsequent year, shall be dated on the day on which such licence shall be actually granted; and every such licence, whatever may be the date thereof, shall have effect and be in force from the day of the date thereof until and upon the 31st day of July then next following, and shall then cease and determine."

Plate and pawn-brokers' licences to expire annually on 31st July.

Sect. 13. "That it shall be lawful for the commissioners of stamps, and they are hereby authorized and required, to make and pay, in such manner and under such regulations as they shall direct, to any and every person who shall have obtained and be in possession of any certificate or licence which under the provisions of this act shall cease and determine before the expiration of the full term for which such certificate or licence shall have been originally granted, an allowance of a proportionate part of the stamp duty originally paid on such certificate or licence, according to the term or period then to come or unexpired thereon."

Proportionate allowance to be made upon certificates and licences unexpired.

Sect. 14. "That no such allowance shall in any case be made to any person who shall not take out a new certificate or licence under the provisions of this act, nor unless the certificate or licence in respect of which such allowance shall be claimed shall be delivered up to the said commissioners of stamps, or their proper officer, on or before the 5th day of April, 1829; and the said commissioners of stamps, or their officer, shall cancel all certificates or licences so delivered up, and on which such allowance shall be made."

Allowance not to be made in certain cases.

6 Geo. IV., c. 111, imposes certain duties of Customs upon plate imported, and which are stated *ante*, 139.

Duties of Customs.

By 1 Geo. IV., c. 14, s. 1. "That no drawback or allowance shall be paid, nor any debenture given, on the exportation to foreign parts of any plate of gold wrought or manufactured in Great Britain into rings; any law, custom, or usage to the contrary notwithstanding."

No drawback on exportation of plate gold made in Great Britain into rings.

## 21. Plate.

nor on any article of gold manufactured in Great Britain, unless it exceeds the weight of two ounces.

(22.) Powder.

(23.) Salt.

From Jan. 5, 1825, duties on salt or rock salt, &c. to cease.

Sect. 2. "That no drawback or allowance shall be paid, or any debenture given, after the 1st day of June, 1820, on the exportation to foreign parts of any articles of gold wrought or manufactured in Great Britain unless the same shall exceed the weight of two ounces."

And see tit. Plate, Vol. V.

(22.) POWDER, see *Starrh*.

## (23.) Salt.

[5 Geo. IV., c. 85; 6 Geo. IV., c. 81; c. 111.]

By 5 Geo. IV., c. 85, (a) intituled "*An act to repeal the duties and laws in respect of salt and rock salt*," it is enacted, that from and after the said 5th day of January, 1825, the several duties of Excise and Customs payable by law for or upon salt made at any salt work, or rock salt raised or taken out of any salt mine or salt pit in England; and all duties of Excise or Customs on the importation or exportation of any salt or rock salt into or from any part of the united kingdom of Great Britain and Ireland; and all duties upon salted flesh brought from Scotland into England; and all duties upon mineral alkali, called soda, made in Great Britain; and all duties upon licences for making oxymuriatic acid or oxymuriate of lime; and all drawbacks, bounties, and allowances for or in respect of any exportation or use or employment thereof, except as hereinafter excepted or provided for, shall cease and determine, and be no longer paid or payable; save and except as to any arrear of any such duties or drawbacks which shall be due and unpaid on the said 5th day of January, 1825; and that all provisions, regulations, and restrictions in any act or acts of parliament in force immediately before the passing of this act, relating to any such duties or such licences, or such drawbacks, bounties, or allowances respectively, or to any salt or rock salt, or such mineral alkali as aforesaid, or oxymuriatic acid, or oxymuriate of lime, or to any person making, raising, importing, exporting, removing, receiving, selling, using, or applying any salt or rock salt, or with relation to any salted flesh or fish or other provisions, or to such mineral alkali, or oxymuriatic acid, or oxymuriate of lime respectively as aforesaid, or any residuum thereof, or to any of them, from and after the said 5th day of January, 1825, shall be and the same are hereby wholly repealed, and shall then cease and determine; save and except as to any bond relating thereto, or any account to be rendered, or any act to be done under the said acts or any of them, and according to the provisions thereof, or any of them; and save and except as to the recovery of any penalty or forfeiture in respect thereof, which shall have been incurred on or before the said 5th day of January, 1825; and save and except as is hereinafter particularly excepted and provided for."

Proviso for acts for encouragement of fisheries.

Sect. 2. "Provided always, that nothing in this act contained shall extend or be construed to extend to repeal or alter any bounties or allowances granted or to be granted, allowed, and made payable under any act or acts for the encouragement and improvement of the *British and Irish* fisheries; any thing hereinbefore contained to the contrary in anywise notwithstanding."

Customs' duties repealed.

By 6 Geo. IV., c. 111, salt may be imported and exported free of duty, *ante*, 140.

Licence duty repealed.

6 Geo. IV., c. 81, s. 1, repeals all duties before payable in respect of any Excise licence in the united kingdom. *Ante*, 245. And by the schedule new duties are imposed upon licences required to be taken out annually by the several descriptions of persons therein mentioned; but the makers of salt are not included.

(24.) SILKS. (See *Linen Cloths*.)

SKINS. (See tit. *Leather*, &c. *ante*, 459.)

(25.) SNUFF. (See *Tobacco*.)

(a) Repealed as to revenue of Customs by 6 Geo. IV. c. 105.

(26.) Soap.

(26.) Soap.

[10 Ann., c. 19; 12 Ann. st. 2, c. 9; 1 Geo. I., st. 2, c. 36; 11 Geo. I., c. 30; 23 Geo. II., c. 21; c. 32; 24 Geo. II., c. 40; 5 Geo. III., c. 43; 10 Geo. III., c. 44; 12 Geo. III., c. 46; 17 Geo. III., c. 52; 23 Geo. III., c. 77; 24 Geo. III., sess. 2, c. 48; 26 Geo. III., c. 77; 27 Geo. III., c. 31; 28 Geo. III., c. 33; c. 37; 32 Geo. III., c. 21; 43 Geo. III., c. 69; 47 Geo. III., sess. 2, c. 30; 55 Geo. III., c. 30; 56 Geo. III., c. 44; 59 Geo. III., c. 52; c. 90; 3 Geo. IV., c. 25; c. 27; 6 Geo. IV., c. 81; c. 111.]

By 10 Ann., c. 19, s. 5. The commissioners of the treasury shall appoint commissioners for the duty on soap made in the kingdom, who shall substitute inferior officers.

Commissioners' officers for the duties on soap.

By 17 Geo. III., c. 52, s. 1. No person within the limits of the head office of Excise in London shall be permitted to make any soap, unless he occupy a tenement of 10*l*. a year, and be assessed to and pay the parish rates; and elsewhere, unless he be assessed to and pay to church and poor.

Who only shall be permitted to make soap.

6 Geo. IV., c. 81, s. 1, repeals all former duties payable upon Excise licences in the united kingdom, and by sect. 2 new duties are imposed; viz. upon every Excise licence to be taken out annually by every maker of soap for sale, a duty of 4*l*. *Ante*, 247.

Licence duties.

The several enactments as to licences, penalties, &c. are stated *ante*, tit. *Alc and Berr*, p. 245 to 310.

6 Geo. IV., c. 111, imposes certain duties on hard and soft soap imported into the united kingdom (*ante*, 143), and a duty of 10*s*. per cent. on the real value thereof upon soap exported, made in the united kingdom. See sched. of duties, *ante*, 143, 157.

Customs' duties.

By 43 Geo. III., c. 69, sched. (C), and 56 Geo. III., c. 44, certain duties are imposed upon soft soap and hard cake-soap or ball-soap.

Home duty.

And certain allowances shall be made for soap used in the manufactures in Great Britain, viz.:-

Allowance if used in manufactures.

By 56 Geo. III., c. 44, s. 2, For every pound weight avoirdupois of hard cake-soap, or ball-soap, made in Great Britain, which shall be consumed in Great Britain in the making any cloths, serges, kerseys, bays, stockings, or other manufactures of sheep or lamb's wool only, or manufactures whereof the greatest part of the value of the materials shall be wool, or in the finishing the said manufactures, or preparing the wool for the same

£. s. d.  
0 0 2½

By 43 Geo. III., c. 69. For every pound weight of soft soap made in Great Britain, which shall be consumed for like purposes

0 0 1

By 56 Geo. III., c. 44, s. 2. For every pound weight avoirdupois of hard cake-soap, or ball-soap, made in Great Britain, which shall be consumed in Great Britain in the whitening of new linen in the piece for sale

0 0 2

By 43 Geo. III., c. 69. For every pound weight of soft soap, which shall be consumed for like purposes

0 0 0¾

By 23 Geo. III., c. 77; 56 Geo. III., c. 44; 3 Geo. IV., c. 25. For every pound weight of hard soap made in Great Britain, which shall be consumed in Great Britain, on or before the 5th July, 1826, in preparing and furnishing any manufactures from flax or cotton for sale, (except such as shall be used in whitening new linen in the piece, in order to the sale thereof)

0 0 1½

By 23 Geo. III., c. 77; 43 Geo. III., c. 69; 3 Geo. IV., c. 25. For every pound weight of soft soap made in Great Britain, which shall be so consumed for like purposes

0 0 0¾

The allowances are to be paid to the manufacturer.

By 7 Geo. IV., c. 53, the whole of the duties paid on all soap consumed in the process of throwing, printing, or dyeing of silk, shall be allowed and paid to the person so using the same.

## 26. Soap.

Place of making  
to be entered.

By 10 Ann. c. 19, s. 6, and 47 Geo. III., sess. 2, c. 30, s. 6. No maker of soap shall set up, alter, enlarge, or use any boiling-house, workhouse, warehouse, storehouse, shop, room, or other place for the making or keeping of soap, or for the boiling or keeping any oil, tallow, potash, lime, or other materials proper to be made into soap, or use any copper, kettle, furnace, fat, cistern, trough, or other vessel for the boiling or making of soap, without first giving notice thereof in writing at the next office for the said duties, on pain of 200*l*. See also stat. 38 Geo. III., c. 65, s. 7.

By 10 Ann. c. 19, s. 19. All soap, oil, tallow, and other materials for making soap which shall be found in any private boiling-house, workhouse, warehouse, or other place, and all private coppers, kettles, furnaces, troughs, and other vessels, for which no entry shall be made or notice given, shall be forfeited, and the value thereof, and shall be seized by the officers for the duties on soap.

Summoning  
offenders.

And by 5 Geo. III. c. 43, s. 19. Whereas offenders frequently withdraw themselves to avoid the aforesaid penalty of clandestine making of soap, it is enacted, that a summons left at the place where discovery shall be made of such offence, directed to the person who shall be prosecuted for keeping or having made use of any place for the making or keeping of soap, or the boiling or keeping any oil, tallow, potash, lime, or other materials proper to be made into soap, or for using or having used any copper or other vessel for the boiling or making of soap, without notice given by his right or assumed name, shall be as effectual as if delivered personally, and directed to him by his proper name.

Covers and locks  
to be provided.

By 5 Geo. III., c. 43, s. 15, and 12 Geo. III., c. 46, s. 7. Every person who shall make any *hard* soap [and by 32 Geo. III., c. 21, the same is extended to *every* maker of soap] shall at his own expense provide sufficient wooden covers (to be approved of in writing by the surveyor or supervisor) to every copper, pan, or other utensil wherein he shall boil or make any hard soap; which vessels, &c. and also the pipes that convey the waste or salt lees therefrom, shall be locked and sealed down by the officer as soon as the fire is withdrawn, whenever any soap or any thing of a soapy quality shall be left therein; which said locks and keys, and all other necessary fastenings for securing the said vessels and pipes, shall be provided by the surveyor or supervisor at the expense of the maker. And if any person shall make any soap before he shall have affixed such covers, or shall refuse to pay for the locks and keys and other fastenings, or shall wilfully break or damage any such lock or seal or other fastening, he shall forfeit 100*l*.

Furnace doors,  
&c. to be locked.

By 17 Geo. III., c. 52, s. 8; 24 Geo. III., sess. 2, c. 48, s. 9; 32 Geo. III., c. 21. The cover and furnace door and ash-hole door of every copper, pan, or other utensil used by any maker of hard soap shall be securely locked and sealed down by the officer at all times except when the same shall be at work, or shall be opened for repairing the same, or for the inspection of an officer; and proper locks and keys and other necessary fastenings for securing the said covers and doors shall be provided by the surveyors and supervisors at the expense of such maker. And whenever such maker shall be desirous of opening such copper, pan, or other utensil, or the furnace or ash-hole door, he shall give, if in London, 12 hours', elsewhere 24 hours', notice thereof to the officer, who shall attend to open such doors; and if by any device any person shall open such copper, pan, or other utensil, or the furnace or ash-hole door thereof, after the same shall have been so locked and secured, or shall wilfully damage or hurt any such lock or other fastening, he shall forfeit 100*l*.

Officers to enter  
and survey.

By 24 Geo. III., sess. 2, c. 48, s. 7. 10. The officers shall at all times, by day or by night, and without waiting for a constable, be permitted, on request, to enter the house, boiling-house, warehouse, or other place used by any maker of soap, and by gauging, weighing, or otherwise, take an account of the quantity of soap, and also of all materials for the making thereof, in the possession of such maker, and shall be permitted to stay in

such house or other place so long as he shall think fit; and shall make a return thereof in writing to the commissioners, or whom they shall appoint, leaving a true copy, if demanded, with the maker; and if such officer shall refuse or neglect to leave such copy (after demand in writing), he shall forfeit 40s.; and if any maker shall obstruct such officer, he shall forfeit 50*l*.

26. Soap.

By 17 Geo. III., c. 52, s. 9. When any copper, pan, or other utensil used for the making of soap, or the furnace doors thereof, shall be secured as in this act, and by stat. 5 Geo. III., c. 43, is directed, the surveyor and supervisor or other superior officer shall, between the hours of five in the morning and eleven in the evening, be permitted, on demand, to enter every workhouse of such maker, and after entry to unlock and examine every such copper, pan, or utensil, and the doors thereof, and after such examination shall again lock and secure the same; and if any person shall obstruct the officer herein, he shall forfeit 100*l*.

Hours of entry by officer into soap-maker's work-house to examine coppers, &c.

Sect. 10, 11, 12. No maker shall have any private pipe or conveyance, by which any soap or materials making into soap may be conveyed from his copper, &c. into any place whatever, on pain of 200*l*. for every pipe or conveyance; and the officer, in the daytime, and in presence of a constable, on request made and cause declared, may break up the ground in any soap-house, or the ground near adjoining, or any wall, partition, or other place, to search; and if he finds any such pipe or other conveyance, he may break up the house, wall, partition, or place through which the pipe shall lead, and break up or cut the same; and if any person shall obstruct the officer in such search, he shall forfeit 100*l*.

Private pipe or conveyance.

Sect. 12. Provided, that if upon search no such pipe shall be found, the officer shall make good the ground, wall, or other place, or make satisfaction to the owner, to be adjudged by the two next justices; or such owner may bring his action for the damages.

Sect. 14. The maker shall once in every lunar month perfectly cleanse every copper, pan, or other utensil by him used in the boiling or making of soap, and shall give three days' notice thereof to the officer; and when cleansed, the officer shall make search, and if he find any hole not before known, such hole shall be deemed wilfully made for the purpose of conveying away soap from the sight of the officer before an account had been taken of the same; and the owner shall be liable to the penalties for concealing soap (that is, he shall forfeit 500*l*., stat. 1 Geo. I., st. 2, c. 36, s. 14, 15) unless he shall prove that it was made by bursting or other accident since the last survey, and that he had given notice thereof to the officer who first came on survey after such accident happened. And if such maker shall neglect perfectly to cleanse his copper, pan, or other utensil so used, or to give such notice as aforesaid, or shall obstruct the officer in searching and examining, he shall forfeit 50*l*.

Coppers, &c. to be cleaned.

By 59 Geo. III., c. 90, s. 1. "That from and after the 31st day of July, 1819, all and every maker and makers of white, yellow, brown, or soft soap shall, before he, she, or they shall begin to cleanse or take any such soap from or out of any copper, pan, or vessel by him, her, or them used for the boiling or making of such soap, give to the officer of the division or place where such soap is intended to be cleansed notice in writing of the particular time and hour when such maker of soap intends to cleanse or take such soap from or out of such copper, pan, or vessel, as hereinafter mentioned; (that is to say), if such soap is intended to be cleansed at any place within the limits of the chief office of Excise in London, then such notice shall be so given six hours next before the time of beginning to cleanse or take such soap from or out of such copper, pan, or vessel; and if such soap is intended to be cleansed at any place out of the limits aforesaid, then such notice shall be so given twelve hours next before the time of beginning to cleanse or take such soap from or out of such copper, pan, or vessel; and if any such maker or makers of soap shall begin to cleanse as aforesaid any white, yellow, brown, or soft soap, without giving such

Notice to be given to the officer of the time intended to cleanse or take soap out of the copper, &c.



**26. Soap.**Penalty 100*l*.Penalty 100*l*.  
To have one  
moveable pump  
only.Soapmakers to  
give notice of  
making soap.What deemed a be-  
ginning to work.Lees fit for soap  
shall not be manu-  
factured for sale,  
nor barilla exceed-  
ing 28lbs. be  
ground for sale.Penalty of 100*l*.  
and forfeiture.Melters of tallow,  
not being entered  
candlemakers, to  
give notice to  
officer of places to  
be used for melt-  
ing.Officer to enter and  
take an account.

notice as aforesaid, he, she, or they shall, for every such offence, forfeit and lose the sum of 100*l*.; and if any such maker or makers shall not begin to cleanse and take such soap from and out of the copper, pan, or vessel as aforesaid within the space of three hours next after the particular time or hour mentioned in any such notice, then such notice shall be void and of none effect; and every maker of soap who, after the expiration of the said space of three hours, shall begin to cleanse or take any soap from or out of any copper, pan, or vessel, without having first given a new and other like notice as aforesaid, shall forfeit and lose the sum of 100*l*."

By 24 Geo. III., sess. 2, c. 48, s. 8. No maker shall have any pipe or other conveyance from or to any copper or pan made use of in boiling or making soap, except one moveable pump for taking out salt or spent lees, which pump shall be taken out of such copper or pan before locked down by the officer; and no maker shall have any cock or hole in the side, or curb, or bottom, or cover of such boiler or copper (except small holes not exceeding one-eighth of an inch in diameter on the cover to let the steam through), nor shall have any part of the curb moveable, nor shall use any syphon, crane, or trinket, but shall take out all lees, soap, or other ingredients by a pump or ladle only, on pain of forfeiting 500*l*.

By 11 Geo. I., c. 30, s. 33. 35. Every maker of soap, before he shall charge his copper with any materials for making of soap, shall give to the officer notice in writing of the time and hour each making of soap is intended to be begun, if within the limits of the bills of mortality, 12 hours, and if in any other place, 24 hours, before the beginning of such making, on pain of forfeiting 50*l*.; and if such making shall not be begun in six hours within the bills of mortality, and in 12 hours in any other place, after the time mentioned in such notice, the same shall be void; and every maker who shall begin after the expiration of such times, without having given a new notice, shall incur the like penalty as if he had not given notice.

Sect. 34. Putting lees or lye into the copper, or other utensil used for making of soap, shall be deemed a beginning to work.

By 59 Geo. III., c. 90, s. 4. "That from and after the said 31st day of July, 1819, no person or persons whatsoever shall make or manufacture for sale or sell any lees, ley or lye, fit or proper for the making or manufacture of soap, or shall grind or pound for sale any barilla, or sell any ground or pounded barilla exceeding 28lbs. weight of such barilla at any one time; and if any person or persons shall make or manufacture for sale or sell any lees, ley or lye, fit or proper for the making or manufacture of soap, or shall grind or pound for sale any barilla, or sell any ground or pounded barilla exceeding 28lbs. weight of such barilla at any one time, every person so offending shall for each and every such offence forfeit and lose the sum of 100*l*., and all such lees, ley and lye, and ground or pounded barilla respectively, shall be forfeited, together with all vessels or packages containing the same, and shall and may be seized by any officer or officers of Excise."

Sect. 7. "That from and after the said 31st day of July, every melter of tallow, fat, grease, or kitchen-stuff, not being an entered maker of candles, shall give notice in writing at the office of Excise of every house, workhouse, room, and place made use of by him or them for the melting, rendering, or keeping of any tallow, fat, grease, or kitchen-stuff, within the compass or limits whereof such house, workhouse, room, or place respectively shall be situate, before he, she, or they shall so make use of any such house, workhouse, room, or place; and it shall and may be lawful for any officer or officers of Excise to enter every house, workhouse, room, and place entered or made use of by any melter or melters of tallow, fat, or grease for the melting, rendering, or keeping of tallow, fat, grease, and kitchen-stuff, or any or either of them, and to inspect and survey and take an account of all tallow, fat, grease, and kitchen-stuff, and other materials, in the custody or possession of any melter or melters thereof, and to take any sample thereof respectively, or of any part thereof,

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### 26. Soap.

not exceeding 1lb. for each such sample, paying for the same at the current value thereof; and if any melter of tallow, fat, grease, or kitchen-stuff shall make use of any house, workhouse, room, or place for the melting, rendering, or keeping of any tallow, fat, grease, or kitchen-stuff, without having first made entry of such house, workhouse, room, and place respectively at the office of Excise within the compass and limits whereof the same shall be situated; or if any such person or persons, not being an entered soap maker or makers, shall have in his, her, or their custody or possession any barilla, kelp, black ashes, or any lees, ley or lye; or if any such person or persons shall at any time obstruct or hinder any officer or officers of Excise in or from entering any house, workhouse, room, or place entered or made use of by any melter or melters of tallow, fat, grease, or kitchen-stuff for the melting, rendering, or keeping of any tallow, fat, grease, or kitchen-stuff, or in or from inspecting, surveying, or taking an account or sample aforesaid of any tallow, fat, grease, or kitchen-stuff, or other materials, barilla, kelp, black ashes, lees, ley or lye, in the custody or possession of any melter or melters thereof; such melter or melters and person and persons respectively so offending shall for each and every such offence forfeit and lose the sum of 200*l.*; and all barilla, kelp, black ashes, lees, ley or lye, found in the possession of any such person or persons, not being an entered soap maker or makers, shall be forfeited, and shall and may be seized by any officer or officers of Excise."

Barilla, &c. not allowed unless in a soapmaker's premises.

Officer not to be obstructed.

Penalty 200*l.*

By 24 Geo. III., sess. 2, c. 48, s. 12. Every maker of soap shall give to the officer of the division notice in writing of the particular hour when he intends to charge his copper or boiler with any materials for making soap, if within the limits of the head office of Excise in London, 12 hours; and if at any other place out of the limits, 24 hours, before the time of charging, on pain of forfeiting 100*l.*; and if he shall not begin to charge within three hours after the time mentioned in the notice, it shall be void; and every maker who, after the expiration of the said hour, shall begin to charge without having given a new notice, shall forfeit 100*l.*

Notice to officer before charging copper.

By 5 Geo. III., c. 43, s. 15. If by any device or contrivance any maker of soap shall open any copper, pan, utensil, or pipe, before the same shall have been unlocked or opened by the officer, he shall forfeit 20*l.*

Sect. 16. No maker of *hard* soap shall light a fire under any copper, pan, or other utensil used in boiling of soap, or for cleansing his foul goods, or in preparing any materials for the making of soap, without first giving notice, if within the limits of the head office, 12 hours, if elsewhere, 24 hours, of his intention, on pain of 20*l.*

Sect. 17. Every maker of *hard* soap shall make use of regular square or oblong frames only for the cleansing or putting his soap (whether perfect or not) into when taken out of the vessel where it was boiled and prepared; and the bottom, sides, and ends of every such frame shall be two inches thick at the least; and such frame shall not exceed 45 inches in length, nor 15 inches in breadth; and if any maker of *hard* soap shall make use of any other than such frames, he shall forfeit 20*l.*

Frame to be made use of in working.

By 47 Geo. III., sess. 2, c. 30, s. 9. No maker of *hard* soap shall, for cleansing or putting his soap (whether perfect or not perfect) into, when taken out of the utensil where the same was boiled, make use of any frame the sides and ends of each and every of the lifts whereof shall not be permanently mortised and nailed, or permanently dove-tailed and nailed together, nor make use of any frame of a less depth or height than that of forty-five inches, nor shall cleanse or put his soap, when taken out of the utensil where the same shall have been boiled, into any frame in any less quantity than to the depth in such frame of forty-five inches at the least; and if any maker shall, for the purpose aforesaid, make use of any other kind of frame, or shall, cleanse otherwise than as above in this section mentioned, he shall for every such offence forfeit 50*l.* Provided, that every such maker shall be at liberty to cleanse and put into one such soap-frame as is hereinbefore directed to be used the residue of any making of soap which shall remain after filling his other soap frame or frames to the

Hard soapmakers not to use any soap-frame whose sides and ends shall not be permanently fastened together, and which shall be less than 45 inches in depth, under the penalty of 50*l.*

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Makers of soap cleansing any copper except between certain hours.

What periods the soap shall be cleansed and taken out of the boilers.

Penalty 50*l*.

Regulations as to making of yellow or mottled soap.

depth of forty-five inches at the least, though such residue of soap should be of any less quantity than sufficient to fill such one soap-frame to the depth of forty-five inches.

And by s. 10. No maker shall cleanse or take, or begin to cleanse or take, his soap from or out of any copper, &c. by him used for the boiling or making of soap, at any other time than between the hours of seven in the morning and six in the afternoon. The remainder of this section is repealed by 59 Geo. III., c. 90, s. 2; which enacts that every maker and makers of soap who shall begin to cleanse or take any soap from or out of any copper, boiler, or vessel by him used for the boiling or making of soap shall cleanse and take the whole of the soap boiled or made in any such copper or vessel, from and out of the same within the times hereafter mentioned, viz. if any maker of hard soap shall begin to cleanse or take any hard soap out of any pan or vessel, and shall cleanse or put the same into six frames, or more than six frames, and shall not cleanse and take the whole of the soap boiled and made in such pan or vessel, out of the same within the space of three hours from the time of his having first begun to cleanse or take such soap out of such pan or vessel; and if any maker of hard soap shall begin to cleanse or take any hard soap out of any pan or vessel, and shall cleanse or put the same into three frames, or less than six frames, and shall not cleanse and take the whole of the soap boiled and made in such pan or vessel out of the same within the space of two hours from the time of his having first begun to cleanse or take such soap out of such pan or vessel, and if any maker of hard soap shall begin to cleanse or take any hard soap from or out of any pan or vessel, and shall cleanse or put the same into two frames, or less than two frames, and shall not cleanse and take the whole of the soap boiled and made in such pan or vessel out of the same within the space of one hour from the time of his having first begun to cleanse or take such soap from or out of such pan or vessel; and if any maker of soft soap shall begin to cleanse or take any soft soap out of any pan or vessel, which shall contain 20 barrels or 5120*lbs*. of soft soap, or more, and shall not cleanse and take the whole of the soap boiled and made in such pan or vessel out of the same within the space of three hours from the time of his having first begun to cleanse or take such soft soap out of such pan or vessel, and that if any maker of soft soap shall begin to cleanse or take any soft soap out of any pan or vessel, which shall contain 10 barrels, or 2560*lbs*., and less than 5120*lbs*. of soft soap, and shall not cleanse and take the whole of the soap boiled and made in such pan or vessel out of the same within the space of two hours from the time of his having first begun to cleanse or take such soft soap out of such pan or vessel; and that if any maker of soft soap shall begin to cleanse or take any soft soap out of any pan or vessel, which shall contain any such soft soap, and less than 10 barrels or 2560*lbs*. of soft soap, and shall not cleanse and take the whole of the soap boiled and made in such pan or vessel out of the same within one hour from the time of his having first begun to cleanse or take such soft soap out of such pan or vessel, all and every such maker of soap shall, for every such offence, forfeit 50*l*.

Sect. 3. Every maker of hard soap, who shall make any yellow or mottled soap, shall, when and so soon as such yellow or mottled soap shall have been cleansed and taken from and out of the pan or vessel, in which the same has been boiled and made, add and put into such pan or vessel all the fob and skimmings which have been taken out of such pan or vessel, and also grease, in the proportion of at least one hundred weight of grease for every ton of yellow or mottled soap respectively, which such copper, pan, or vessel shall be computed by the officer to boil and make, and shall immediately re-melt such grease in such pan or vessel, in the persence of the proper officer of Excise; and if any maker of soap shall make any yellow or mottled soap, and shall not, within the space of half an hour after such yellow or mottled soap shall have been cleansed and taken out of the pan or vessel, in which the same has been boiled or made,

add and put into such pan or vessel, &c. all the fob and skimmings which have been taken out of such copper, pan, or vessel, and also add fresh grease in the proportion aforesaid, or shall not immediately melt such grease in such pan or vessel, in the presence of the proper officer of Excise, every maker of soap so offending shall for every such offence forfeit 200*l*.

By 24 Geo. III., sess. 2, c. 48, s. 11. It shall be lawful for any officer of Excise to take an account as often as he shall think fit, by gauging, weighing, or otherwise, of all tallow, oil, rosin, and grease of every kind, and of all materials for making soap, which any maker of soap shall have in his possession; and such maker shall provide proper scales and weights, and assist the officer in weighing and taking such account, on pain of 20*l*. And in case such officer shall find any decrease in any materials for making soap, and shall not receive a satisfactory account thereof, he shall charge the maker with the duties for such decrease, according to the rates following; (that is to say,) for every 14 cwt. or 210 gallons of oil so missing, 20 cwt. of hard soap.

Officer to charge for materials missing.

For every 13 cwt. of rendered tallow so missing, 20 cwt. of hard soap.

For every 13½ cwt. of kitchen-stuff and tallow so missing, 20 cwt. of hard soap.

For every 14 cwt. of tallow, rosin, and oil missing, 20 cwt. of yellow, brown, or rosin soap.

Sect. 13. Every soapmaker shall, before he begins to charge his boiler or copper, weigh in the presence of the officer all the materials with which he intends to charge the boiler or copper, and all such materials shall be put into the copper or boiler in the presence of the officer; and in case the quantity of hard soap afterwards produced therefrom shall be found by the gauge in the frames to be less than ought to have been produced according to the rates aforesaid, such deficiency shall be charged with the duties thereupon, according to the rates before mentioned. Provided that if such boiler or copper shall have been charged with rough fat or rough kitchen grease, then 8lb. of rough fat shall be deemed equal to 7lb. of tallow, and 5lb. of rough kitchen grease to 4lb. of clean kitchen grease.

And by 27 Geo. III., c. 31, s. 19. Every maker of soap shall, when and as often as required by any officer, before he charge his copper or boiler with any materials for making soap, weigh such materials (except lye) in the presence of the officer, and put the same into such copper or boiler, on pain of forfeiting 50*l*.

Materials to be weighed.

By 10 Anne, c. 19, s. 16. No maker shall (on pain of 20*l*.) remove any soap of which no account hath been taken by the officer from where it was made, without giving the officer within the bills 24 hours' notice, and in other parts two days' notice, of his intention to remove the same.

Removing soap without notice.

Sect. 17. Makers shall keep all the soap made by them, and which shall not have been taken an account of by the officer, separate from that which hath been taken an account of for 24 hours after making, if within the bills, or two days in any other place, unless it shall have been sooner taken an account of, on pain of forfeiting 5*l*.

Soap unsurveyed to be kept separate.

By 1 Geo. I., stat. 2, c. 36, s. 14, 15. If any maker shall conceal any soap or materials, he shall forfeit the same, and also 500*l*. (a)

Concealing.

(a) A concealment of soap, in violation of the 1 Geo. I., stat. 2, c. 36, s. 31, may be in an entered place, and by mixing with other soap, and although done with the privy of the inferior attending officer. *Attorney-General v. Brewster*, 2 *Austr.* 560. But the statute 1 Geo. I., stat. 2, c. 36, enacts, that if any maker shall fraudulently conceal soap chargeable with duty under the statutes of

Anne, or any of the materials for making it, with intent to defraud his majesty, he shall forfeit 500*l*. besides the article concealed. (1 Geo. I., stat. 2, c. 36, s. 14.) An offence may be committed against this statute by fraudulently concealing soap, even in an entered place, and by mixing it with other soap, although the act be done with the privy of the inferior attending officer. (*The*

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Privately making soap.

And by 5 Geo. III., c. 43, s. 20. If the officer shall have cause to suspect that soap is privately making in any place, or that any soap is concealed with intent to avoid the duty; in such case, on oath made by such officer before a commissioner or one justice residing near to the place, setting forth the ground of his suspicion, such commissioner or justice may, if he shall judge it reasonable, by special warrant authorize such officer, by day or night, (but if in the night, in presence of a constable,) to enter into every such place suspected, and to seize and carry away as forfeited all such soap as he shall there find so privately making, together with all materials then ready or preparing for making of soap, and likewise all such soap as they shall find so concealed, together with the boxes or other package; and the person that shall be found privately making soap, or in whose possession such soap shall be found, shall forfeit 100*l*.

Penalty on persons assisting in making soap privately.

First offence, 20*l*.

Officers may arrest them and carry them before a justice, who may convict and commit.

Second offence, 40*l*. or four months' imprisonment.

Owners or renters of houses where soap shall be privately made to forfeit 200*l*;

By 47 Geo. III., sess. 2, c. 30, s. 7. When any officer of Excise shall discover that the making of soap is carried on in any boiling-house, work-house, storehouse, warehouse, shop, room, or other place whereof no notice in writing shall have been given at the office for the duties on soap next to the place where such soap shall be made, and shall at the same time discover in such boiling-house, &c. any person knowingly concerned in carrying on the making of such soap, the person so discovered shall forfeit 20*l* over and above all penalties and forfeitures that the proprietor or maker of such soap, or the owner, renter, occupier, or possessor of such boiling-house, &c. shall be liable to; and the officer and all other persons acting in his aid may stop and detain every person so discovered, and convey him before one justice of the peace for the county, &c. wherein so discovered; and such justice shall on confession, or on proof by the oath of one witness, convict the person so discovered, and he shall immediately on such conviction pay the said sum of 20*l*. into the hands of the officer who shall have conveyed such offender before such justice, to be applied as hereinafter directed; and on such offender refusing to pay the same, the justice so convicting shall by warrant commit him to the house of correction for the said county, &c. there to be kept to hard labour for two months, to be reckoned from the day of such commitment, or until he shall have paid the said twenty pounds, or until the expiration of the said two months. And in case the person so convicted shall be again discovered in any boiling-house, &c. whereof no such notice as aforesaid shall have been given, and where the making of soap shall be so carried on, in anywise concerned in carrying on such making of soap, he shall upon the like conviction forfeit for such second offence 40*l*., and in default thereof shall be committed to the house of correction as aforesaid, there to remain during the term of four months, or until the said 40*l*. shall be paid.

And by s. 8. Every owner or renter of any house, outhouse, or other place in which any boiling-house, &c. for the making or keeping of soap, or for the boiling or keeping any oil, tallow, potash, lime, or other materials

*Attorney-general v. Brewster & Norton*, 2 *Anstr.* 560.) But the statute only authorized the levying of a penalty on the soap and the materials for making it; and therefore a warrant of the commissioners of Excise, made in general terms, for levying on the goods of the offender, was holden to be bad (*Austin v. Whitehead*, 6 *T. R.* 438. *Vide*, as to levying, 10 *Anne*, c. 19, s. 20; 28 *Geo. III.*, c. 37, s. 21.); and it has been doubted whether the soap and materials for making it, which were the property of the bankrupt,

can be seized in the hands of his assignees for penalties incurred under the Excise laws previously to the bankruptcy, although they may be seized under such circumstances for duties due before the bankruptcy. (*Austin v. Whitehead*, 6 *T. R.*, 436; *Stracy v. Hulse*, Dougl. 411; see 28 *Geo. III.*, c. 37, s. 21.; and see as to soap, 2 *Burns, J.*, title *Excise*, sect. 5 (14), 216 to 227; 2 *Higmore*, 262 to 277; *Hunt*, 583 to 600; 59 *Geo. III.*, c. 90.

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proper to be made into soap, or any copper, furnace, or other vessel for the boiling or making of soap, shall, with his permission or knowledge, be erected or used, without notice given thereof, shall forfeit 200*l*.; and every other person in whose occupation any house, &c. in which, &c. or any copper, &c. for the boiling, &c. shall be erected, &c. without such notice, shall be found, shall forfeit 200*l*.

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and the occupiers of such houses shall forfeit 200*l*.

And by s. 11. So often as any maker shall have cleansed his soap into any frame wherein such soap shall be of the depth of fifty inches or under, every such maker shall, within 120 hours after such soap shall have been so cleansed into such frame, cut or divide such soap into cakes or bars, and remove every part thereof out of such frame; and when any maker of hard soap shall have cleansed his soap into any frame wherein such soap shall be of the depth of upwards of fifty inches, he shall, within 168 hours after such soap shall have been so cleansed into such frame, cut such soap into cakes or bars, and remove every part thereof out of such frame, on pain of forfeiting for every such offence respectively 50*l*.

Soapmakers not cutting up their soap into cakes or bars within a certain time to forfeit 50*l*.

By 10 Anne, c. 19, s. 8. Every barrel of soap shall contain 256*lbs*., avoirdupois; half-barrel, 128*lbs*.; firkin, 64*lbs*.; half-firkin, 32*lbs*., besides the weight or tare of the cask. And all soap (except hard cake-soap and ball-soap, 10 Anne, c. 26, s. 111) shall upon making thereof be put by the maker into such cask and none other.

Measure of soap.

And by 12 Anne, stat. 2, c. 9, s. 19. All soft soap that shall be filled in any other cask less than barrels, half-barrels, firkins, and half-firkins shall be forfeited, and also 5*l*.

By 24 Geo. III., sess. 2, c. 48, s. 14. No maker shall sell any hard soap but in the form of cakes or bars, or what is called *ball-soap*; and shall return all scraps and parings into the boiler in the presence of the officer immediately after the soap that has been put into the frames shall have been cut up for sale, on the penalty of 100*l*.

Hard soap to be sold in cakes, and the scraps returned.

By 28 Geo. III., c. 37, s. 14. If any scraps or parings of hard soap shall be sold or sent out by any maker, or shall be found removing or removed by land or water, the same shall be forfeited, together with the casks and packages, and shall be seized by any officer of Excise; and the maker who shall send out or sell the same shall for every such offence forfeit 100*l*.

By 17 Geo. III., c. 52, s. 3. The maker shall weekly make entry in writing at the next office of all the soap by him made within each week, setting forth the weight and what quantity was made at each boiling in that week, on pain of 50*l*. for every neglect; which entries shall be on oath (or if a quaker, affirmation) of the maker or chief workman, according to the best of his knowledge and belief. The said entry and oath, within the bills, to be at the chief office of Excise; and elsewhere with the collector and supervisor.

Entry and payment of the duties.

Sect. 4. And within one week after entry the maker shall pay and clear off the duties, on pain of double duty; and after such default in payment, he shall not sell or deliver out any soap until he hath paid off his duty, on pain of double value.

Sect. 5. No maker shall be obliged to go or send further than the market-town where the soap is made, or the next market-town, to make such entry or payment.

By 26 Geo. III., c. 77, s. 10, 11; 7 & 8 Geo. IV., c. 53, *ante*. Any person who shall knowingly receive, buy, or have in his possession any soap after the same shall have been removed from the place where it was made, and ought to have been charged with the duty, before the said duty hath been charged (except such as hath been condemned as forfeited), whether he claim any property or interest therein or not, shall forfeit the same, and treble the value thereof, to be estimated at the best price the like sort shall then bear in London.

Persons having soap in their possession which hath not been charged with the duty.

By 23 Geo. II., c. 21, s. 29, *cocquets* granted for shipping soap, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and

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where consigned; and if shipped without such cocquet, the same shall be forfeited and seized, together with the package.

Sect. 27. No soap shall be imported otherwise than in some package, containing at least 224 pounds of neat soap, and stowed openly in the hold, on pain of being seized and forfeited, together with the package, and the master or person taking charge of the vessel to forfeit 50*l*.

But by stat. 26 Geo. II., c. 32, s. 8. On information brought against any such master, he may detain the wages of the mariners till it be determined; and if it shall appear that the soap was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forfeiture.

By 23 Geo. II., c. 21, s. 28. The officers of Excise (in like manner as the officers of the Customs) may go on board any vessel, and search for and seize all soap forfeited, together with the package; and they may likewise seize such as, before entry and payment of duties, shall be found unshipping or unshipped.

Sect. 30, 31. The officers of Excise or Customs may seize any soap with the package that shall be found in any vessel, or shall be carrying in any cart or other carriage, where they shall have good reason to believe that the same was made in some private workhouse or other place, or clandestinely imported without payment of duty, or that the same has been exported and re-landed after repayment of the duty; and if the party in whose possession the same shall be found shall not at the hearing of the information make it appear that the duty hath been paid or secured, he shall forfeit 5*l*. for every 100 pounds weight, and so in proportion for any greater or lesser weight; and also the goods and package shall be forfeited.

Sect. 32. If any person shall knowingly harbour or conceal any soap unlawfully imported, or re-landed after shipping for exportation upon debenture, he shall, whether he claim any property therein or not, forfeit 50*l*. for every hundred pounds weight, together with the goods and package.

Sect. 33. Where any such soap shall be seized as forfeited, and no person shall claim the same in 20 days, if it is within the limits of the chief office of Excise in London, the officer who made seizure may cause notice, signed by the solicitor of Excise, to be affixed at the Royal Exchange, of the time of proceeding to trial and condemnation of the same by the commissioners of Excise; and if it is out of the said limits, then public notice shall be given by proclamation at the next market-town on the next market-day after the said 20 days, of the day and place where the justices will proceed to trial and condemnation thereof. And the judgment thereon shall not be liable to any appeal, or be removed by *certiorari*.

Scales and  
weights.

By 10 Anne, c. 19, s. 13. The maker shall keep just scales and weights where he makes his soap, and permit and assist the officer to use them, on pain of 10*l*.

And by 10 Geo. III., c. 44. If he shall use insufficient scales or weights, he shall forfeit 100*l*.; but not to be prosecuted both on this and the former act. And by 28 Geo. III., c. 33, s. 15, the same shall be forfeited, and may be seized by any officer.

Power of the jus-  
tices.

By 10 Ann., c. 19, s. 26; 11 Geo. I., c. 30, s. 39; 24 Geo. II., c. 40, s. 29; 43 Geo. III., c. 69, s. 4; 59 Geo. III., c. 90, s. 12, 13. The Excise laws shall be in force for managing these duties; and the penalties, except where it is otherwise directed, shall be recovered and mitigated as by the laws of Excise, or in the courts at Westminster; and distributed half to the king, and half to him that shall sue.

Proof to lie on the  
claimant.

By 23 Geo. II., c. 21, s. 35. Where any soap shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on claimant, and not on the officer.

Appeal.

Sect. 37. If the party is not satisfied with any judgment of the justices on the act of 23 Geo. II., c. 21, above mentioned, he may appeal to the

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next quarter-sessions (except in the case before mentioned, where no person shall claim the goods seized).

Sect. 38. On information on 23 Geo. II., c. 21, the mitigation shall not reduce the penalty to less than a fourth part, over and above the costs to be allowed.

And by 10 Ann., c. 19, s. 20; 28 Geo. III., c. 37, s. 21. All soap, materials, and utensils in the custody of the maker, or of any in trust for him, shall be liable to the duties and penalties, as if the debtor or offender were the lawful owner.

And whereas doubts have arisen whether the provisions of the aforesaid act, 5 Geo. III., c. 43, extend to the makers of *ball-soap*, it is declared by 28 Geo. III., c. 37, s. 13, that the provisions of the said act do extend to the makers of ball-soap.

By 59 Geo. III., c. 90, s. 6. "That from and after the said 31st day of July, when any soap exceeding the quantity of 28lbs. weight shall be removed or carried by land or by water, the word 'soap' shall be painted or marked in large and legible letters, of at least two inches in length, on every chest, basket, box, cask, and package wherein such soap shall be contained; and further, that when any soap exceeding the quantity of 28lbs. weight shall be removed or carried in any cart, waggon, or other carriage, by any person not being a known and public or common carrier of goods and merchandise from one part of Great Britain to another, the word 'soap' shall be painted or marked in large and legible letters, of at least three inches in length, on some conspicuous and uncovered part of every such cart, waggon, or other carriage; and all soap exceeding the quantity of 28lbs. weight, which after the said 31st day of July shall be removed or carried, or removing or carrying, in any chest, basket, box, cask, or package not having the word 'soap' painted or marked thereon in large and legible letters of at least two inches in length, or which shall be removed or carried, or removing or carrying, by any person not being a known and public or common carrier of goods and merchandise from one part of Great Britain to another, in any cart, waggon, or other carriage not having the word 'soap' painted or marked in large and legible letters, of at least three inches in length, on some conspicuous and uncovered part of such cart, waggon, or other carriage, shall be forfeited, together with the chest, basket, box, cask, or other package containing the same, and the boat or vessel, horse or horses, or other cattle, waggon, cart, or other carriage made use of in the removal or carriage of the same, and shall and may be seized by any officer or officers of Excise; and the person or persons in whose custody or possession such soap shall be found, or who shall be or shall have been employed or concerned in the removal or carriage thereof, shall forfeit and lose the sum of 100*l*."

Sect. 8. "That from and after the said 31st day of July, all and every maker and makers of soap, shall upon demand, receive from the proper officer of Excise a book or books, to be prepared with proper printed forms and titles for the purposes hereinafter mentioned, and to be kept by every such maker of soap in some public and open part of his, her, or their entered premises; and that from and after the said 31st day of July, no soap exceeding 28lbs. weight shall be sold, sent out, or delivered by any such maker of soap to any person or persons whatsoever, without being accompanied by a certificate filled up and cut out progressively from the printed forms of such certificates contained in such book as aforesaid, signed by such maker of soap selling, sending out, or delivering the same, or some person or persons on his, her, or their behalf, certifying the date thereof, the quantity, quality, sort, or kind of such soap, to whom sold, from whose stock delivered, and that the duty has been paid or secured to be paid thereon; and that the maker of soap selling, sending out, or delivering any soap exceeding 28lbs. weight as aforesaid shall at the same time make a correspondent entry thereof, containing the same particulars, in such book as aforesaid; and that such book, with such entries so made thereon as

### 26. Soap.

Mitigation.

Utensils liable.

5 Geo. III., c. 43, extended to makers of ball-soap.

In the removal of soap exceeding 28lbs. the word "soap" shall be put on the package, on penalty of 100*l*. and forfeiture.

Soapmakers to receive books containing certificates to be filled up and sent out with every quantity of soap sold exceeding 28lbs.

Books subject to the inspection of the officer.



## 26. Soap.

Penalty 200*l.* and  
forfeiture of soap.

aforesaid, shall at all times from the hour of six of the clock in the morning until the hour of seven of the clock in the evening lie open and exposed in the entered premises of such maker of soap as aforesaid to the perusal of any officer or officers of Excise, and shall be delivered and given up by such maker of soap as aforesaid to any officer or officers of Excise upon demand; and if any maker of soap shall sell, send out, or deliver any quantity of soap exceeding 28lbs. weight at any one time, unaccompanied by such certificate as aforesaid, or without making such entry in such book as aforesaid, or shall convey away or conceal any such book or books as aforesaid, or cancel, obliterate, destroy, or tear out any leaf or leaves therefrom, or entry or entries therein, or shall make any false entry or entries therein, or shall oppose, molest, obstruct, or hinder any officer or officers of Excise in inspecting any such book or books, or any such entry or entries therein as aforesaid, or shall at any time neglect or refuse, when required, to deliver or give up to any officer or officers such book or books as aforesaid, all and every such maker of soap so offending shall for every such offence forfeit and lose the sum of 200*l.*; and all soap exceeding 28lbs. weight, removing or removed without being accompanied by a true and lawful certificate, shall be forfeited, and shall and may be seized by any officer or officers of Excise, and the person or persons removing, carrying, or conveying the same, or who shall be or shall have been employed or concerned or aiding or assisting therein, or in whose custody the same shall be found, shall forfeit and lose the sum of 200*l.*"

Officers may demand the inspection of soap on its removal, with the certificate accompanying it.

Penalty on obstruction 200*l.* and forfeiture of soap, &c.

Sect. 9. "That all and every person and persons who shall at any time be found removing or attending and directing the removal of any soap from one part of Great Britain to any other part thereof, or shall have received any soap so removed for sale, shall, upon the demand of any officer or officers of Excise, produce the same, and such certificate as aforesaid, to such officer or officers, to be by him or them examined and inspected, and to compare such quantity and quality of soap with such certificate accompanying or which accompanied the same on such removal; and if any such person or persons shall refuse or neglect, upon such demand, to produce any such soap or certificate as aforesaid, or to suffer and permit such inspection, examination, and compare as aforesaid, or shall hinder or obstruct any officer or officers of Excise therein, or in executing any of the powers of this act, every such person and persons shall for every such offence severally forfeit and lose the sum of 200*l.*; and in every such case all such soap shall be forfeited, together with the boat, vessel, cart, waggon, and other carriage, horse, horses, and other cattle conveying or removing the same, and shall and may be seized by any officer or officers of Excise."

Books of specimens for recording entries to be left on the premises of traders or manufacturers.

Penalty on removing them, or defacing entries, 200*l.*

Sect. 10. "And whereas it is usual for the officers of Excise to leave on the premises of the traders and manufacturers under their survey certain books or papers commonly called *specimens*, for recording therein the entries in the books of such officers of the state of the manufactory, and the accounts and particulars of survey taken by them from time to time at such traders' or manufacturers'; and whereas such practice has been found beneficial to the revenue, and it is expedient to prevent the removal, obliteration, or destruction of such Excise specimens; be it therefore enacted, that from and after the passing of this act it shall and may be lawful for any officer or officers of Excise to leave and deposit in any house, workhouse, room, or place entered or made use of by any trader or traders, manufacturer or manufacturers, under or subject to the survey of any officer or officers of Excise, a certain book or paper commonly called a *specimen*, and at all times to have free access to such book or paper as last aforesaid; and if any person or persons, not being an Excise officer, shall remove, convey away, or conceal any book or paper commonly called a *specimen*, or shall injure, damage, or destroy the same, or deface or obliterate any entry or entries therein, or shall oppose, molest, obstruct, or hinder any officer or officers of Excise in or from having free access to, or

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in or from inspecting any such book or paper commonly called a *specimen*, or in making any entry or entries therein, or in removing or taking away any such book or paper as last aforesaid, as to such officer and officers respectively shall seem meet, the person or persons so offending shall for each and every such offence forfeit and lose the sum of 200*l*."

26. Soap.

The general regulations of the 7 & 8 Geo. IV., c. 63, *ante*, 227 to 310, apply to this subject.

### (27.) Spirituous Liquors.

(27.) Spirits.

As far as the removal of brandy and other spirituous liquors is affected by the provisions against smuggling, see *ante*, 174 to 197, of the Customs in general.

The revenue laws relating to smuggling may be properly arranged under the following heads.

#### 1. Relating to Foreign Spirits imported.

[1 Ann. st. 2, c. 14; 6 Geo. I., c. 21; 8 Geo. I., c. 18; 11 Geo. I., c. 36; 32 Geo. II., c. 29; 5 Geo. III., c. 43; 17 Geo. III., c. 52; 23 Geo. III., c. 70; 26 Geo. III., c. 70; c. 77; 43 Geo. III., c. 69; 1 & 2 Geo. IV., c. 94; 5 Geo. IV., c. 34; 6 Geo. IV., c. 80; c. 108; c. 111; 9 Geo. IV., c. 44; 1 W. IV., c. 48.]

Division of subject.

#### 2. Relating to Spirits made in England, and Distillers, Compounders, and Rectifiers.

[6 Geo. IV., c. 80; 9 Geo. IV., c. 44; 1 W. IV., c. 49.]

#### 3. Relating to Spirits made in England for Exportation, or to be shipped as Stores, or for Removal to Scotland or Ireland, or made in Scotland or Ireland for Removal to England.

[2 Geo. III., c. 5; 28 Geo. III., c. 37; 42 Geo. III., c. 93; 57 Geo. III., c. 128; 1 & 2 Geo. IV., c. 94; 6 Geo. IV., c. 58; c. 80; 7 & 8 Geo. IV., c. 52; 9 Geo. IV., c. 44.]

#### 4. Relating to Importers and Dealers in Spirits by Wholesale and Retail, and the Recovery and Application of Penalties.

[24 Geo. II., c. 40; 6 Geo. IV., c. 80; 9 Geo. IV., c. 44.]

#### 1. As to Foreign Spirits imported.

1. Foreign spirits.

By 6 Geo. IV., c. 111, the subsisting duties of Customs upon spirits imported were imposed, the amount of which we have before stated, *ante*, 144.

Duties of Customs on importation.

The 1 W. IV., c. 48, imposes an additional duty of 6*d*. per gallon to be paid on spirits, the produce of the British possessions in America, imported after 14th June, 1830.

And we have arranged the several provisions of the regulating-act, 6 Geo. IV., c. 107, and of the smuggling-act, 6 Geo. IV., c. 108, relative to

Smuggling.

## 27. Spirits.

## I. Foreign spirits.

the importing or attempting to import foreign spirits without payment of the duties, *ante*, 174 to 224.

The *Excise duties* granted by 43 Geo. III., c. 69, on the *importation of rum*, the produce of the British colonies in America, were reduced by 5 Geo. IV., c. 34, s. 1; but that act was repealed by the express terms of 6 Geo. IV., c. 105, and by 7 Geo. IV., c. 48, s. 52, *ante*, 111, 112, so that the amount of the duties on importation of rum are now regulated by 6 Geo. IV., c. 111, *ante*, 144.

Officers and importers may take samples.

By 32 Geo. II., c. 29, s. 1. It shall be lawful for the gaugers or other officers of Excise, at any time before the gauging, to take a sample, not exceeding half a pint in the whole, out of each cask or other package containing such spirituous liquors imported, without paying any thing for the same; and it shall be lawful for the importer or proprietor, or their agent, in the presence of the officers of Excise, and whilst the spirits are on shipboard, to take the like samples without paying any duty for the same.

And by 26 Geo. III., c. 73, s. 36. Any officer may take samples of foreign spirits in the custody of any distiller, rectifier, compounder, or dealer, not exceeding four gallons, paying for the same at the rate of 13s. per gallon; and if any person shall obstruct such officer, he shall forfeit for every offence 100l.

Landing French brandy without paying the duty.

By 1 Ann., sess. 2, c. 14, s. 2. If any person shall land or deliver out of any vessel or boat any French brandy before the duty be paid or secured, or without licence from the proper officer so to do, he and every person aiding therein, or concealing the same when landed, shall not only forfeit the same, but also double value; and if any officer of the Customs or Excise shall connive thereat, or shall be concerned therein, or conceal the same, or not give notice thereof, he shall be incapable to hold any office in the revenue, and forfeit 500l.

Excise officers may go on board.

By 11 Geo. I., c. 30, s. 1. The officers of Excise may go on board and enter any ship or vessel, and search, in like manner as the officers of the Customs may do, for any exciseable liquors, and seize all such as shall be forfeited, and such as shall be unshipped before entry and payment of the duties, together with the casks and other package.

Warrant to search for foreign spirits, &c. fraudulently concealed. (a)

Sect. 2. If any officer of the Excise have cause to suspect that any foreign brandy, rum, arrack, spirits, or strong water shall be fraudulently concealed in any place, entered or not entered, if within the bills of mortality, on oath made before two commissioners; if elsewhere, before one justice, where he suspects them to be concealed, setting forth the ground of his suspicion, he or they may by special warrant authorize such officer by day or night, but if in the night in presence of a constable, to enter, seize, and carry away the same as forfeited, together with the casks or vessels; and if any person shall obstruct such officer, he shall forfeit 100l.

Who only may seize.

By 8 Geo. I., c. 18, s. 24. All brandy, arrack, rum, spirits, and strong

(a) And see 11 Geo. I., c. 30, s. 16, under which it was held that a conviction of justices for *knowingly* harbouring and concealing smuggled spirits cannot be supported by evidence of finding the smuggled spirits concealed in the house of the party convicted, unless he was *present* at the time of finding, or some other direct proof be given of a *guilty knowledge*. *Ex parte George Ransley*, 3 Dowl. & Ry. 572.

But the term "*found*" in the 11 & 12 W. III., c. 10, s. 2, is, as there used, a word equivalent in import to *having been seen or discovered*, and held not to be

confined to a finding *by officers*, or other persons seeking the thing for the purpose of seizure, or with intent to institute proceedings for the recovery of penalties, or other hostile motive. A charge of the thing being "*found* in the custody of the defendant," in an information by the attorney-general on that statute, was held to be supported by proof of its having been seen in his possession *knowingly* and illegally, and exhibited by him as his property at any time and under any circumstances. *Attorney-General v. Delano*, 6 Price, 383.

## II. PARTICULAR LAWS, &c. (27.) *Spirits. I. Foreign.*

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waters, British or foreign, and all foreign exciseable liquors forfeited, together with the casks or other package, may be seized by any officer of the Customs or Excise, or persons deputed by warrant from the lord-treasurer or under-treasurer, or by special commission under the great or privy seal, and no other person.

Sect. 25. And if any person shall obstruct any officer of the Customs or Excise in seizing or securing any of the said liquors, or endeavour to rescue them after seizure, or shall after seizure stove or otherwise damage any cask or vessel, he shall forfeit 40*l*.

By 5 Geo. III., c. 43, s. 27. If any foreign brandy, arrack, rum, strong waters, or spirits of any kind shall be imported in any ship, vessel, or boat of 100 tons' burden or under, (except only for the use of the seamen, not exceeding two gallons each,) such vessel, with her tackle, &c., and also the brandy, &c., shall be forfeited.—6 Geo. III., c. 46, s. 9. Except rum or other spirits of the growth and manufacture of the British sugar plantations, which may be imported in vessels not being of less burden than 70 tons.

By 6 Geo. I., c. 21, s. 32. If the master, purser, or other person having charge of the vessel shall suffer any brandy (or other uncustomed goods) to be put out of the ship into any hoy, lighter, boat, or bottom, to be laid on land, he shall, besides the other penalties, suffer six months' imprisonment.

By 4 W. III., c. 5, s. 8. No brandy shall be imported in any vessel not containing sixty gallons at the least, on pain of forfeiting the same or the value.

By 1 & 2 Geo. IV., c. 94, it is enacted, "That it shall not be lawful to export or to enter for exportation from any part of Great Britain to the said islands of Jersey, Guernsey, Alderney, or Sark, or to any or either of them, under the penalty of the forfeiture thereof, to be seized by any officer or officers of the Customs or Excise, any rum of the production and manufacture of the British colonies or plantations, unless permission be first given for that purpose by the commissioners of His Majesty's Customs in England, or any four or more of them, by licence under their hands; and the said commissioners, or any four or more of them, are hereby authorized and required, on application to them in writing for that purpose, to grant their licence from time to time under their hands (such licence to continue in force thirty days from the date thereof and no longer) to any of His Majesty's subjects, to export from any port in England, in British-built ships, owned, registered, and navigated according to law, and not of less burden than seventy tons (according to the rules for admeasurement prescribed by law), to the said islands of Jersey, Guernsey, Alderney, and Sark, any rum of the production or manufacture of the British colonies or plantations, in such quantities to the said islands, as shall be approved of and directed from time to time by the commissioners of His Majesty's treasury, or any three of them."

By 26 Geo. III., c. 73, s. 59. No foreign spirituous liquors (except rum of the growth or produce of the British plantations, and arrack,) shall be imported in any vessel or cask which shall contain less than 100 gallons (excepting for the use of the seamen then belonging to and on board the ship in which the same shall be imported, not exceeding two gallons for each seaman), upon pain of forfeiting the same, and also the ship or vessel in which imported, of whatever burden, with all her guns, furniture, ammunition, tackle, and apparel.

Sect. 60. No person shall import any foreign brandy, arrack, rum, spirits, or strong waters of a greater degree of strength than that of one to nine over hydrometer proof; and if any foreign brandy, &c. shall be imported of any greater degree of strength, the same shall be forfeited, with the casks and packages containing the same, and may be seized by any officer of Customs or Excise; but nothing herein shall extend to the forfeiture of any rum or spirits of the growth, produce, and manufacture of the British sugar plantations, for being imported of any greater degree.

### 27. *Spirits.*

#### I. Foreign.

Obstructing the officer.

In what ships to be imported.

Unshipping into boats in order to be landed.

In what casks to be imported.

No rum of the British colonies shall be imported from G. B. to Jersey, &c. on pain of forfeiture, unless permission be given by the commissioners of Customs, who may grant licence to export rum under the conditions herein mentioned.

In what casks to be imported.

Of what strength.

27. *Spirits.*

I. Foreign.  
Places of keep-  
ing to be en-  
tered.

By 23 Geo. III., c. 70, s. 1. No seller of or dealer in foreign spirituous liquors residing within the limits of the head office of Excise in London (not being a retailer thereof, duly licensed) shall be permitted to make entry of any warehouse, storehouse, room, shop, cellar, vault, or other place for keeping any foreign brandy, arrack, rum, spirits, or strong waters, unless he shall inhabit in a tenement of 12l. a year or upwards, and for which he shall be assessed in his own name, and also pay to the parish rates; and no such dealer residing in any other part of the kingdom, unless he be assessed and pay to church and poor; otherwise he shall be liable to forfeit as dealing therein without entry.

Sect. 2. Where any entry shall be made of any warehouse, shop, &c., no other seller or dealer (not being a joint trader or partner with such seller or dealer), however qualified, shall make entry of the same or of any other warehouse, &c. within the same house, on pain of being subject to the like penalties as dealers without entry. See also 58 Geo. III., c. 65, s. 7.

Officers may  
enter and sur-  
vey and take  
samples.

By 26 Geo. III., c. 77, s. 15. Any officer of Excise may, by day or by night, (if in the night, in presence of a constable or other peace-officer,) upon previous notice of one hour or more having been given to any importer or proprietor of rum or spirits of the growth or manufacture of the British sugar plantations, or left at his dwelling-house, or with his agent or servant, to enter his warehouses, and by tasting, gauging, or otherwise, to take an account of all rum or other liquors found therein, and to take samples thereof not exceeding half a pint out of each cask, paying (if demanded) after the rate of 3s. a gallon. And if any such proprietor, his agent or servant, shall refuse to permit such officer to enter any such warehouse to take such account, or refuse to permit him samples, he shall forfeit 200l.

Sect. 16. Upon oath made by any person that he hath reason to suspect or believe that such proprietor or importer of rum or other spirits lodged as aforesaid doth intend, without the privity or knowledge of the officer, in the night-time, to go into such warehouse, or that such proprietor or importer, or other person, shall at any time actually be in such warehouse, without the privity or consent of such officer, one commissioner of Excise within the bills, or one justice in any other part of Great Britain, may issue his warrant requiring any officer of Excise, (with the assistance of a constable or other peace-officer) to enter such warehouse by force or otherwise; and if such proprietor or importer, or other person whatsoever, shall hinder or refuse the said officer or his assistant from entering such warehouse or executing such warrant, he shall forfeit 200l.

Officer finding  
any unfair increase  
or decrease of  
stock.

Sect. 17. If any officer shall find in such warehouse any *increase or decrease* in the stock of rum or spirits, such increase or decrease shall be deemed to have been made by the proprietor or importer having by some contrivance opened such warehouse not in the presence of the proper officer of Excise; and such proprietor or importer shall forfeit 500l.

By 17 Geo. III., c. 52, s. 15. If any proprietor or importer shall, by any device or contrivance, open the warehouse, except in the presence of the proper warehouse-keeper or Excise officer, he shall forfeit 500l.

Some of the provisions of 6 Geo. IV., c. 80, apply to *foreign* spirits, and will be found in that act, which is printed at length under the next division.

All penalties and  
forfeitures prose-  
cuted by order of  
commissioners of  
Excise shall be  
prosecuted and  
recovered accord-  
ing to 7 & 8 Geo.  
IV., c. 52.

By 9 Geo. IV., c. 44, s. 2. "That all penalties and forfeitures imposed by any act or acts relating to the revenue of Customs or Excise respectively, which by law the officers of Excise are authorized to prosecute, and which the commissioners of Excise shall order to be prosecuted, shall and may be so prosecuted, sued for, recovered, levied, mitigated, and applied, and in and by such ways, means, and methods, and in, under, and before such jurisdiction respectively, as penalties and forfeitures incurred or forfeited by reason of offences committed against any law or laws of Excise, are or may be sued for, recovered, levied, mitigated, and applied by an act passed in the last session of parliament, for consoli-

## II. PARTICULAR LAWS, &c. (27.) *Spirits.* I. *Foreign.*

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dating and amending the laws relating to the collection and management of the revenue of Excise throughout Great Britain and Ireland; any thing in any other act or acts to the contrary thereof in anywise notwithstanding.

Sect. 4. "That all and every act and acts now in force, or hereby declared to be in force as aforesaid, in England, relating to the revenue of Excise on tea, and relating to coffee, cocoa, pepper, foreign and colonial spirits and wine, shall be established, observed, executed, and put in force in and throughout the united kingdom of Great Britain and Ireland, in the same manner, to all intents and purposes whatsoever, as heretofore in England; any thing in any act or acts to the contrary thereof in anywise notwithstanding."

The general regulations of Customs, *ante*, 174 to 224, and many of the regulations of Excise, *ante*, 224 to 310, will be found applicable.

### 27. *Spirits.*

#### 1. *Foreign.*

Excise laws of Great Britain relating to tea, coffee, cocoa, pepper, &c. extended to the united kingdom.

## 2. *Relating to Spirits made in England, and to Distillers, Compounders, and Rectifiers.* 2. *British.*

The 6 Geo. IV., c. 80, intituled *An act to repeal the duties payable in respect of spirits distilled in England, and of licences for distilling, rectifying, or compounding such spirits, and for the sale of spirits, and to impose other duties in lieu thereof; and to provide other regulations for the collection of the said duties, and for the sale of spirits, and for the warehousing of such spirits, without payment of duty, for exportation*; is the principal act affecting British spirits, and contains regulations, properly arranged under this head, and also under the next two divisions. It is considered necessary to state the whole act in this place.

6 Geo. IV., c. 80.

Sect. 1. "That from and after the 5th day of January, 1826, so much and such parts of the several acts in force at and immediately before the commencement of this act, as grant any duty on wort or wash brewed or made for extracting spirits in England, or upon spirits extracted in England for home consumption, or extracted in Scotland or Ireland respectively, and imported into England, or duty on any licence for distilling, rectifying, or compounding British spirits, or for the sale of spirits, or as regulate or relate to the distillation of such spirits by persons licensed to make or distil such spirits in England, or the mode of charging the duty thereon, or on wort or wash brewed or made to extract such spirits, or as regulate or relate to the rectification or compounding of such spirits in England by persons duly licensed for that purpose, or the strength at which it is lawful to keep in stock or send out spirits, or as regulate or relate to the intercourse or removal of British spirits made in England, Scotland, or Ireland respectively, or as relate to the distillation of spirits in England for exportation to Scotland, or in Scotland for exportation to England, or to the several other matters and things expressly provided for this act, but not otherwise, and so much and such parts only as aforesaid of the said several acts shall be and are hereby repealed accordingly; save and except so far as the said acts or any of them repeal or repeals any former act or acts, or any part or parts of any former act or acts, and except also so far as the said acts or any of them relate or relates to the charging, recovering, prosecuting, suing for, levying, paying, accounting for, allowing, abating, or mitigating of any duty, or any arrear thereof, which shall have been or shall be chargeable or payable on any such spirits, or on any wort or wash, under the said acts or any of them, or of any fine, penalty, or forfeiture for any offence against the said acts or any of them, which shall have been or shall be committed at any time on or before the 5th day of January, 1826, all which suits or other proceedings, matters, and things shall and may be had and proceeded on, and shall remain, and be to all intents and purposes whatsoever, as if the said acts had not been repealed in manner aforesaid. Provided always, that it shall

From Jan. 5, 1826, so much of the acts in force for granting duties on British spirits and licences, and regulating the trade of distillers and sellers of spirits, &c. in England, repealed.

27. *Spirits.*

6 Geo. IV., c. 80.

II. British.

No spirits shall be made or distilled under the laws repealed after the 10th October, 1825. New duty granted on spirits. (a)

not be lawful to make or distil any spirits under the aforesaid laws and regulations hereby repealed from or after the 10th day of October, 1825, on pain of forfeiting the sum of 500*l.*, or 20*s.* per gallon for every gallon of the spirit so made or distilled, at the election of the commissioners of Excise, or person who shall inform or sue for the same."

Sect. 2. "That from and after the 5th day of January, 1826, there shall be granted, raised, levied, collected, paid, and satisfied unto and to the use of His Majesty, his heirs and successors, the several duties of Excise following; (that is to say.)

For and upon every one hundred gallons, imperial standard gallon measure, of spirits of the strength of hydrometer proof, as denoted by the hydrometer called Sikes' hydrometer, which shall be made or distilled in England by any person or persons whomsoever, the sum of 35*l.*, and so in proportion for any greater or less degree of strength, and for any greater or less quantity, to be paid by the first maker or distiller of such spirits :

For and upon every one hundred such gallons of spirits, of such strength as aforesaid, which shall have been or shall be made and extracted in Scotland or Ireland respectively, and warehoused there without payment of duty, and which shall be taken out of warehouse there for the purpose of being brought or imported into England for consumption, the sum of 35*l.*, and so in proportion for any greater or less degree of strength, or any greater or less quantity, to be paid by the distiller or proprietor thereof at the time of the delivery of such spirits from the warehouse in Scotland or Ireland respectively for the purpose of being brought or imported into England."

Sect. 3. "Provided always, that on all sweetened or compounded spirits imported into England from Scotland or Ireland, or into Scotland or Ireland from England, the duties aforesaid, according to the proportions aforesaid respectively, shall be computed upon the highest degree of strength at which spirits can be made.

For every licence to be taken out by any distiller or maker of low wines or spirits in England, the sum of 10*l.* :

For every licence to be taken out by any rectifier or compounder of spirits in England, the sum of 10*l.* :

For every licence to be taken out by any dealer in spirits in England, not being a retailer thereof, the sum of 10*l.*

For every licence to be taken out by any retailer of spirits in England, if the dwelling-house in which such retailer shall reside or retail such spirits at the time of taking out such licence shall not, together with the offices, courts, yards, and gardens therewith occupied, be of the value, or rated under the authority of any act or acts for granting duties on inhabited houses, at a rent of 10*l.* per annum, 2*l.* :

If at 10*l.* per annum or upwards, and under 20*l.*, 4*l.* 4*s.* :

If at 20*l.* per annum or upwards, and under 25*l.*, 6*l.* 6*s.* :

If at 25*l.* per annum or upwards, and under 30*l.*, 7*l.* 7*s.* :

If at 30*l.* per annum or upwards, and under 40*l.*, 8*l.* 8*s.* :

If at 40*l.* per annum, and under 50*l.*, 9*l.* 9*s.* :

And if at 50*l.* per annum or upwards, 10*l.* :

The said duties for licences to be paid by the respective distillers, rectifiers, compounders, dealers, and retailers taking out such licences respectively."

Duties on compounded spirits to be computed on the highest strength.

Duties :  
On licences to distillers.  
To rectifiers or compounders.  
To spirit dealers.  
Spirit retailers. (b)

(a) When spirits distilled and made in Ireland are imported from thence into England, they become *British spirits*, and are entitled, as such, to all the advantages of *British spirits* existing at the time of the act of union; as, for instance, to the provisions of the 26th of Geo. III., c. 73. *Attorney-Gen. v. M'Kenzie*, 11 Price, 284.

(b) It was held that a person who sells spirituous liquors by retail without a licence from two justices of the peace is liable to the penalties of the 5 Geo. III., c. 46, though he has a licence from the commissioners of the Excise to retail spirituous liquors. *Res v. Down*, 3 T. R. 560.

## II. PARTICULAR LAWS, &c. (27.) *Spirits.* II. *British.*

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Sect. 4. "That all moneys arising from the duties by this act imposed, the necessary charges of raising and accounting for the same excepted, shall from time to time be paid into the receipt of His Majesty's Exchequer, and shall be carried to and made part of the consolidated fund of the united kingdom of Great Britain and Ireland."

Sect. 5. "That the several duties and the drawback by this act imposed and granted shall be under the management of the commissioners of Excise, and shall be raised, levied, collected, recovered, secured, and paid by such persons, at such times, and in such manner, and by such ways and means as are hereinafter directed and set forth, and under such management, and under and subject to such rules, regulations, conditions, penalties, and forfeitures, and with such powers of adjudging and mitigating penalties and forfeitures, and with and subject to such powers, and to the like rules and directions, and by such methods, and in such manner and form, and in or by any of the general or special means, ways, or methods by which other duties and drawbacks of Excise may be raised, levied, collected, recovered, and paid, as fully and effectually to all intents and purposes as if the same, and every of them were particularly repeated and re-enacted in the body of this act, except only so far as the same are expressly altered or repealed by this act."

Sect. 6. "That from and after the commencement of this act it shall not be lawful for any person or persons in England to have or keep any still whatever, for the purpose of making or distilling or rectifying or compounding spirits, without having first obtained a licence for that purpose, under the provisions of this act, signed by the commissioners of Excise, or any two of them, or by some person or persons directed or employed by them to grant such licence, by a collector and supervisor of Excise within their respective collection and district, according to the law or laws of Excise for granting licences; and every such licence shall and may be according to such form and shall contain such particulars as the said commissioners of Excise shall and may from time to time direct; and every such licence to be granted under the provisions of this act shall continue in force until and upon the 10th day of October next after the date thereof, and no longer. Provided always, that persons in partnership, carrying on any one such trade or business in one house or place only, shall not be obliged to take out more than one such licence in any one year; and that no one licence which shall be granted by virtue of this act shall authorize or empower any person or persons to whom the same shall be granted to have, keep, or make use of any still, or to prepare or make any wort or wash, or to distil any wash, low wines, or spirits, or rectify or compound any spirits, in any other house or premises than the house or premises mentioned in such licence."

Sect. 7. "That it shall not be lawful for any person, at any time after the 10th day of October next, after the date of any such licence for keeping a still, which shall be granted to such person under this act, to continue to keep or work or to use any still, or to brew or make any wort or wash, or to distil any low wines, spirits, or feints, or to rectify or compound any spirits, until such person shall have obtained a new licence for that purpose, and shall have performed all such requisites as are required and directed by this act to be done, either previously or subsequently to obtaining the first or original licence, and so in every year, so long as such person shall continue the business of a distiller or rectifier or compounder of spirits; and if any person shall continue to keep or work or shall use any still, or shall make or brew any wort or wash, or shall distil any low wines, spirits, or feints, or rectify or compound any spirits con-

### 27. *Spirits.*

6 Geo. IV., c. 29.  
II. *British.*

Duties to be carried to the consolidated fund.

Duties and drawback to be under the management of the commissioners of Excise, and to be levied under this act and former general Excise laws.

No person shall keep any still whatever without a licence under the provisions of this act.

Licence to be renewed annually.

Penalty on distillers distilling, &c. without licence, 200*l.* &c. (a)

(a) The setting up of a private still without entry at the Excise, or licence, was held to be an offence under 36 Geo. III., c. 73, s. 53, subjecting the party to

the penalty of 20*l.* only, and not 200*l.*; and therefore a conviction for such an offence in the latter penalty was quashed. *Rex v. Bond*, 1 B. & A. 390.



27. *Spirits.*

6 Geo. IV., c. 60.  
II. British.

Penalty on distiller  
continuing to work  
whose licence is  
forfeited.

No person to be  
licensed, or to  
make entry of any  
house or still for  
making wash, low  
wines, or spirits,  
unless he shall  
occupy a tenement  
of 20<sup>l</sup>. per annum,  
and shall pay pa-  
rish rates; or un-  
less such distillery  
be in or within one  
quarter of a mile  
of a market town  
of 500 inhabited  
houses, except di-  
stillers established  
and licensed on  
the 5th April,  
1825.

No person to keep  
a still of less than  
400 gallons, or to  
use in any distil-  
lery more than  
two wash stills and  
two low wine stills,  
if he keeps any  
still of less content  
than 3000 gallons;  
penalty 100<sup>l</sup>.

All persons having  
wash fit for di-  
stillling, and a still,  
shall be deemed  
common distillers.

Distillers not to  
brew or employ  
a still on Sunday,  
on penalty of 50<sup>l</sup>.

trary hereto, every such person shall in every such case forfeit the sum of 500<sup>l</sup>.; and all such wort, wash, low wines, feints, and spirits, and every such still, with the head and worm thereof, and all other vessels and utensils therewith used or containing such wort, wash, low wines, feints, or spirits, shall be forfeited, and may be seized by any officer of Excise.

Sect. 8. "That if any distiller, rectifier, or compounder, whose licence shall be forfeited under the provisions of this act, shall afterwards, until newly licensed, make or brew any wort or wash, or shall distil any low wines, spirits, or feints, or shall rectify or compound any spirits, every such distiller, rectifier, or compounder shall forfeit the sum of 500<sup>l</sup>.; and all such wort, wash, low wines, spirits, and feints, and all vessels and utensils containing the same, shall be forfeited, and may be seized by any officer of Excise."

Sect. 9. "That no licence shall be granted to or be held by any person or persons to have, keep, or make use of any still for making or distilling spirits, nor shall any person or persons be permitted to make entry of any house or place or of any still or utensil for making or distilling wash, low wines, or spirits, unless such person or persons shall be an inhabiting householder, occupying a tenement or tenements of the yearly value of 20<sup>l</sup>. or upwards, and for which he, she, or they shall be accordingly assessed in their own name, and shall also pay to the parish rates in the several parishes or places in which they shall respectively reside, or unless such house or place (except any distillery established and licensed on the 5th day of April, 1825,) shall be situated within, or within one quarter of a mile of a market town containing at least 500 inhabited houses; and that no entry of any house, place, still, or utensil for making or distilling of wash, low wines, or spirits shall be of any avail to any person not so qualified, or for any longer time than the person or persons so making entry shall be so qualified, or where such house or place, except as aforesaid, shall not be so situated as aforesaid, and every person making or distilling wash, low wines, or spirits, and not qualified as aforesaid, or in any house or place except as aforesaid, not so situated as aforesaid, shall, notwithstanding any entry by him, her, or them made, be deemed and taken to be persons making and distilling wash, low wines, and spirits without entry, and shall be subject to the like penalties and forfeitures as persons making and distilling wash, low wines, and spirits without entry are by this act in such case made subject and liable."

Sect. 10. "That no licence to be granted under the provisions of this act shall authorize any person to have, keep, or make use of any still or other utensil for the making or distilling of low wines or spirits, the body of which without the head thereof shall be of less capacity or content than 400 gallons; and that it shall not be lawful for any distiller keeping or using any still of smaller content without the head than 3000 gallons to keep or use in any distillery at the same time more than two wash stills and two low wines stills, upon pain of forfeiting for every still kept or used by any such distiller at the same time, to distil wash or low wines respectively, above the number aforesaid, the sum of 100<sup>l</sup>. for every such further still, and for every time that the same shall be so used; and every such further still shall be forfeited, and shall and may be seized by any officer or officers of Excise."

Sect. 11. "That every person making or keeping any wash prepared or fit for distilling or making low wines or spirits, or any low wines or feints, and having in his, her, or their custody or use any still or stills, shall be deemed and taken to be and is hereby declared to be a distiller, liable to the several duties of Excise, and to the several penalties, fines, and forfeitures imposed by this act relating to distillers."

Sect. 12. "That if any wort shall be brewed or made by any distiller, or if any still shall be made use of by any distiller, rectifier, or compounder, at any time between the hour of eleven of the clock in the afternoon of any *Saturday* and the hour of one of the clock in the forenoon of the next suc-

## II. PARTICULAR LAWS, &c. (27.) *Spirits.* II. *British.*

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ceeding *Monday*, every such distiller, rectifier, or compounder in each and every such case shall forfeit the sum of 50*l*."

Sect. 13. "That every person who shall be licensed under this act to keep any still for distilling spirits, shall, after being so licensed, and before making such entry as is by this act required of any still or other vessel or utensil to be used by such person, erect and keep the several vessels hereinafter enumerated, and in the manner and for the purposes hereinafter described; that is to say, one vessel to be called a wash charger, one other vessel to be called a low wines receiver, one other vessel to be called a low wines and feints charger, one other vessel to be called a feints receiver, one other vessel to be called a spirit receiver, and, except as hereinafter mentioned, one other vessel to be called a spent lees receiver."

Sect. 14. "Provided always, that there shall not be erected or kept in any distillery more than one such wash charger and one such spirit receiver, nor more than two such low wines receivers, nor more than two such feints receivers, nor more than two such low wines and feints chargers; and if any greater number of such vessels and utensils as aforesaid shall be found in any distillery, the distiller in whose distillery the same shall be found shall forfeit 200*l*., and all such vessels exceeding the number aforesaid, together with the contents thereof, shall be forfeited, and may be seized by any officer of Excise."

Sect. 15. "That every such wash charger shall be a close covered vessel, and the content thereof shall not be less than that of the largest wash still; and every such wash charger shall be connected with the wash still or stills by one close metal pipe to each such still, having a cock or cocks thereon, one end of which pipe shall be fixed into the bottom of such wash charger, and the other end thereof shall be fixed into each such still; and to such wash charger there shall be one other close metal pipe, having a cock thereon, one end of which pipe shall be fixed into the pump or pumps placed in the jack back, if any such vessel shall be used, or otherwise to the pipe or trough communicating with the fermenting wash backs, and the other end of such pipe shall be fixed into such wash charger, and such charger shall not have any communication with any other vessel or utensil whatever; and every such low wines receiver shall be a close covered vessel, with a pump fixed therein, for the conveyance of low wines from such receiver into the low wines and feints charger or chargers, and there shall be one close metal pipe, externally visible for its whole length, attached to and leading directly from the safe at the end of the worm of the wash still, and fixed into every such low wines receiver or receivers, so that all low wines running into such pipe from such safe shall immediately be discharged therefrom into such receiver or receivers, which receiver or receivers shall not have any communication with any vessel or utensil whatsoever, except as aforesaid; and every such feints receiver shall be a close covered vessel, with a pump fixed therein, for the conveyance of feints from such receiver into the low wines and feints charger or chargers, and there shall be one close metal pipe, externally visible for the whole length, attached to and leading directly from the safe at the end of the worm of the low wines still, and fixed into every such feints receiver or receivers, so that all feints running into such pipe from such safe shall immediately be discharged therefrom into such receiver or receivers, which receiver or receivers shall not have any communication with any vessel or utensil whatsoever, except as aforesaid; and every such low wines and feints charger shall be a close covered vessel, connected with the low wines still or stills by a close metal pipe to each such still, having a cock or cocks thereon, one end of which pipe shall be fixed into the bottom of such charger, and the other end shall be fixed into each such still, and each such charger shall have communication with the low wines and feints receivers respectively by means of close metal pipes, one end whereof respectively shall be fixed to each such charger, and the other end whereof shall be attached to the pump or pumps, to be so fixed as aforesaid in the low wines receiver or receivers, and feints receiver or receivers respectively,

### 27. *Spirits.*

6 Geo. IV., c. 80.  
II. *British.*

After licence granted, and before distiller shall make entry of his distillery utensils, he shall erect certain chargers and receivers.

Number of chargers and receivers, &c.

Penalty for a greater number, 50*l*., &c.

Description of wash charger.

Description of low wines receiver.

Description of feints receiver.

Description of low wines and feints charger.

27. *Spirits.*

6 Geo. IV., c. 80.  
11. British.  
Description of  
spirit receiver.

Dipping rods to be  
fixed in chargers,  
receivers, &c.

Description of  
spent lees receiver.

Penalty for con-  
structing chargers  
or receivers con-  
trary hereto, 200*l.*  
and 30*l.* for every  
day during which  
they remain.

There shall not be  
any pipe or open-  
ing in any still,  
except as herein  
described, on  
penalty of 200*l.*

Distillers shall  
make holes or  
openings in the  
breast of their  
stills not less than  
two inches in

and such charger shall not have any communication with any other vessel or utensil whatever, except as aforesaid; and every such spirit receiver shall be a close covered vessel, and shall not have any communication with any vessel or utensil whatever, except with the safe of the low wines still, by means of one close metal pipe, externally visible for its whole length, attached to and leading directly from such safe at the end of such worm, and fixed into such spirit receiver in such manner as that all spirits running therein from such safe shall run directly and be discharged therefrom into such spirit receiver without resting in the said pipe, and in every such spirit receiver there shall either be a pump placed and fixed for emptying the same, or a proper discharging cock for drawing off the spirits therefrom; and that each and every such charger and receiver shall be erected and kept in a convenient and public situation in the still house, or to the approbation of the commissioners of Excise, and exposed to open view and easy of access and inspection to the surveying officer on all parts thereof, and each such charger and receiver respectively shall have a sufficient cover thereon, with a rectangular dipping hole cut in such cover, not more nor less than an inch square, and in which dipping hole there shall be placed such dipping rod as shall be provided by the proper officer, who shall secure such rod in such manner as to him shall seem expedient, to prevent the removal thereof out of any such charger or receiver; and every such spent lees receiver shall be a close covered vessel, and shall not have any communication with any vessel or utensil whatsoever, except with the low wines still, by means of one close metal pipe, externally visible for its whole length, attached to and leading directly from such still, and fixed into such spent lees receiver, and which pipe shall be the only discharge pipe of such still, having a cock thereon secured as the supervisor or surveyor surveying such distillery shall direct and approve, and in the bottom of which receiver shall be an internal safe and secure plug in a discharge hole, and every such receiver shall have one other opening, not more than one-third of the depth of such receiver from the top of such receiver, covered and secured by an internal metal plate, perforated with circular holes of not more than four-tenths of an inch in diameter, and such receivers shall have no other opening whatsoever; and if any charger or receiver, or pipe therefrom, or cock therein, shall be made use of in the distillery of any distiller which shall not be erected, kept, and constructed in manner herein directed, or which shall have any hole therein except the trap-door in the cover thereof, properly secured by the officer for examining or cleansing such receiver respectively, or any communication with any other vessel or utensil whatsoever, other than as by this act is required, authorized, and allowed, then and in every such case such distiller shall forfeit the sum of 200*l.*, and also the sum of 30*l.* for every day during which such charger or receiver, or pipe or cock, shall remain in the distillery of such distiller."

Sect. 16. "That if in any distillery, or any house for distilling, rectifying, or compounding spirits, or any place adjoining thereto, there shall be any pipe or conveyance whatsoever leading directly or indirectly to or from any still, or from the head thereof, or any opening whatever, into or out of any still, other than such pipes, conveyances, and openings as are prescribed by this act, or if there shall be any opening whatever into or out of the worm of any still, except the communication which such worm shall have with the still or the head thereof, and the opening into the safe at the end of such worm, save and except such air-valve or conductor as shall be approved of by the commissioners of Excise, or such person as they shall employ, then and in every such case the distiller, rectifier, or compounder so offending shall forfeit the sum of 200*l.*"

Sect. 17. "That in the breast of every still used by any distiller there shall be a hole or opening made, whereby the officers of Excise may be enabled to take gauges and samples, at the time and in the manner required by this act; and such hole or opening shall be not less than two inches in

## II. PARTICULAR LAWS, &c. (27.) *Spirits.* II. *British.*

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diameter, and shall be contrived so that the officers may take a sample or samples from the still with a phial, to be drawn perpendicularly through the same, and also, so that any such still may be thereby cleansed, subject to such directions as the said commissioners of Excise may think fit to give in that behalf; and proper locks and fastenings shall be provided by the supervisor of Excise for the district, at the expense and charge of every such distiller, for properly and sufficiently locking and securing the said hole or opening, and for securing the head of each and every still and the furnace door of each and every still respectively used by such distiller; and all such locks and fastenings shall be locked and sealed by the proper officer of Excise; and if any still shall be set up or used by any distiller, in the breast whereof such hole or opening of the size aforesaid shall not be made, or if any distiller shall not observe any directions which may be given by the commissioners of Excise as aforesaid in that behalf, or if such locks and fastenings shall not be paid for and maintained as aforesaid, or if the officer shall be prevented or hindered by any distiller, or his, her, or their servants or workmen, from affixing any lock or fastening as aforesaid, or if any of the locks, seals, and fastenings as aforesaid shall be wilfully and injuriously opened, broken, or damaged, or if by any means, device, or contrivance whatsoever, any furnace door, or any fastening on the head of any still, or on the hole or opening in the breast of any still, shall be wilfully and injuriously opened by any distiller, or by any person in the employ or under the command of such distiller, at any time after the same shall have been locked and secured by the officer of Excise, every such distiller shall for every such offence or neglect respectively forfeit and lose the sum of 200*l*."

Sect. 18. "That the end of every worm belonging to every still in the distillery of every distiller shall be enclosed and secured in such manner and by such mechanism and means as the commissioners of Excise shall direct, and shall for that purpose provide; and that all low wines, feints, and spirits, from time to time running from the end of such worm, shall run from thence into a safe, enclosed and secured as aforesaid, and shall be conveyed directly and by such a pipe and pipes as aforesaid, open externally to the inspection and examination of the officers for its or their whole length from such safe into the receivers respectively, as the case may be, of such distiller; and if, upon demand by the proper supervisor or surveyor, the end of every such worm in the distillery of such distiller shall not be enclosed and secured, and at the expense of every such distiller maintained and kept enclosed and secured by such mechanism and means as shall be so directed and provided as aforesaid, or if the whole of the low wines, feints, or spirits, coming from such worm, shall not be run into such safe so enclosed and secured as aforesaid, or if such low wines, feints, and spirits respectively, and every part thereof, shall not be successively conveyed from such safe, into the low wines receiver, feints receiver, and spirit receiver respectively, directly and by such a pipe or pipes as aforesaid, or if such mechanism and means of enclosing the end of such worm and safe as aforesaid shall not be affixed and kept and preserved affixed as aforesaid, or if at any time after the end of any such worm, and any such safe are enclosed and secured as aforesaid the mechanism or means by which the same shall be enclosed and secured as aforesaid, or any part thereof, shall be destroyed or injured, or if by any art or contrivance any access shall be gained or had, except by the sample cock of such safe, without notice to, and with the knowledge of, and in the presence of, the officer, to the enclosed end of such worm, or to any low wines, feints, or spirits, from the time of the extraction or distillation thereof in any such still, until the same have been taken account of by the officers in the proper receiver or receivers, or the officers shall be in any manner prevented from or hindered, baffled or defeated, in ascertaining by such apparatus the strength and quality of any low wines, fines,† or spirits, whilst running, or in taking a true account in such receiver or receivers of all the low wines,

### 27. *Spirits.*

6 Geo. IV., c. 80.  
II. *British.*  
diameter, through which officers may take samples.

Penalty on distiller not making such holes or openings, or not paying for and maintaining fastenings for securing the same, or for securing the still heads and furnace doors, or for opening or damaging any lock or fastening, &c. 200*l*.

The end of the worm of each still shall be enclosed and secured, and the spirits run into a close safe, &c.

Penalty 200*l*.

† Sic.

27. *Spirits.*

6 Geo. IV., c. 80.

11. British.

If enclosing the  
worm be found  
prejudicial, treas-  
ury may order  
disuse of such  
close safe.

Distiller shall keep  
a discharge cock to  
each still.

Penalty 50*l*.

Distiller shall keep  
a proper discharge  
cock or plug in  
each fermenting  
wash back.

Penalty 200*l*.

Construction of  
cock required to  
be used.

Penalty 50*l*.

feints, and spirits distilled or made by such distiller, then and in every such case every such distiller or other person or persons shall for every such offence forfeit the sum of 200*l*. Provided always, that if enclosing and securing the end of such worm or safe as aforesaid shall upon experiment be found to injure the quality of the spirits run therefrom, it shall be lawful for the commissioners of His Majesty's treasury of the united kingdom of Great Britain and Ireland, or any three of them, upon proof thereof made to their satisfaction, to order and direct, that no distiller as aforesaid shall be required to enclose any such worm end or safe as aforesaid."

Sect. 19. "That there shall be a discharge cock fixed to every still kept for the making or distilling of low wines or spirits, to be kept safely and securely locked by the proper officer of Excise, except when opened by such officer, on reasonable notice by the distiller, not oftener than once in six hours, and such discharge cock shall not be more than three feet distant from the body of such still, or eighteen inches from the brickwork, and shall be firmly attached to such still by a straight metal pipe; and such discharge cock and pipe shall be so fixed and placed, as that the officers of Excise may at all times have free and convenient access to the same; and if any distiller shall have or keep any still to which there shall not be a discharge cock attached, and safely and securely locked, in the manner herein directed, or if there shall not be such pipe as herein prescribed and directed, or if any distiller shall open, injure, or alter such cock, except on notice to and in the presence of the officer, and with his consent, then and in each and every such case such distiller shall forfeit the sum of 50*l*. Provided always, that no such discharge cock shall be locked by the officer where a spent lees receiver is provided and fixed, according to the provisions of this act."

Sect. 20. "That every distiller shall provide and fix, to the satisfaction of the supervisor, a proper discharge cock or plug and plug-hole in every fermenting wash back, through which cock or plug-hole the wash in such wash back shall from time to time be conveyed by a main pipe or open trough, into the jack back, if any, or into the wash charger; and such main pipe or trough shall be placed and fixed in such manner, that all wash or liquor put therein shall forthwith run and be discharged from thence into such jack back or wash charger, as the case may be, and not elsewhere, except by a sewer cock fixed on such main pipe, and properly secured and fastened; and there shall not be any other pipe or conveyance entering into or passing out of any such wash fermenting back, except the pipe for conveying wort into such fermenting back from the coolers; and if such discharge cock or plug shall not be provided and fixed as aforesaid, or if such pipe or trough shall not be placed and fixed as aforesaid, or if such sewer cock thereon shall not be fixed and secured as aforesaid, or if there shall be any other pipe or conveyance to or from any fermenting back, except as aforesaid, then and in every such case such distiller shall forfeit the sum of 200*l*. Provided always, that nothing herein contained shall prevent any distiller from placing any close metal pipe or pipes in, but not opening into, any wash back, for the purpose of conveying through such back hot or cold air, or water, for the purpose of promoting or retarding the fermentation of the worts or wash contained in such back."

Sect. 21. "That every cock required by this act to be kept or used shall be made and constructed in such manner as shall be from time to time prescribed and directed or approved by the commissioners of Excise; and if any cock required by this act to be kept or used shall be made, constructed, or used otherwise or differently than as shall at that time be directed, prescribed, or approved by the commissioners of Excise, the distiller, rectifier, or compounder by whom such cock shall be kept or used shall forfeit the sum of 50*l*."

Sect. 22. "That every distiller, and rectifier, or compounder shall, at

his own expense and charge, provide, maintain, and keep the several utensils, cocks, pumps, pipes, and troughs which are required by this act, and shall also provide, maintain, and keep, at the expense and charge of such distiller, rectifier, or compounder, proper and sufficient fastenings for securing the several cocks and plugs required by this act to be secured, and for securing the covers of or belonging to the chargers and receivers hereinafore mentioned respectively, and also for securing the pumps, vessels, and utensils permitted, allowed, or required for the purposes mentioned in this act; and it shall and may be lawful for any officer of Excise surveying the distillery of any distiller to lock, secure, and fasten the several cocks, plugs, covers, pumps, pipes, vessels, and utensils, for which fastenings are required to be provided, in such manner as the commissioners of Excise may direct as aforesaid, and to keep the same and each and every of them so locked, secured, and fastened at all times, except when such officer shall be required, under the provisions of this act, to attend and shall attend to open and unlock the same."

Sect. 23. "That all such cocks, plugs, pumps, fastenings, pipes, troughs, and other utensils required or permitted or allowed by this act, shall be made, placed, affixed, and kept at the expense of the distiller, rectifier, or compounder, in proper repair and condition, to the satisfaction of the supervisor of Excise, and shall from time to time be altered and repaired at the expense of such distiller, rectifier, and compounder, as such officer shall require; and that the several locks and keys which shall be necessary for the locking and securing any still or any other vessel or cock, or other utensil, shall be supplied by such supervisor at the expense of such distiller, rectifier, and compounder; and such officer shall and may from time to time cause all and every or any such locks and keys to be altered, repaired, or renewed, as he may think fit and necessary for the purposes of this act, at the expense of such distiller, rectifier, or compounder; and if any distiller, rectifier, or compounder shall not, at his own expense and charge, before he shall proceed to brew or distil, rectify or compound spirits, provide, place, and affix, and shall not afterwards maintain, all such coverings, fastenings, cocks, pipes, pumps, troughs, and utensils, or any of them, to the satisfaction of the proper supervisor, or shall not cause the same or any of them to be altered, amended, repaired, or renewed, or shall not on demand pay such supervisor for any such locks or keys as such supervisor shall supply, alter, amend, repair, or renew for the purposes aforesaid, or if at any time any such cover, fastening, cock, pipe, pump, lock, or key shall be broken, damaged, or injured, or if any person, not being the proper officer of Excise, shall open the same or any of them, or shall make, procure, or use, or cause to be made, procured, or used, any false or duplicate key, or any instrument for breaking or opening any such cock, lock, or fastening, or if any distiller, rectifier, or compounder shall, in the construction of any such cover, fastening, cock, pump, or pipe, cause or procure the same to be so made, or shall knowingly use the same or any of them when so made, as that the said vessels or utensils, or any of them, may be employed, opened, removed, filled, or emptied in the absence of the proper officer of Excise, so as to avoid or in any manner defeat the security intended to be given or provided by any of the regulations of this act, every such distiller, rectifier, or compounder, or person so offending shall for each and every such offence forfeit the sum of 200l."

Sect. 24. "That at or near the top of every fermenting wash back, and at or near the top of every fixed and entered vessel for storing or keeping spirits in the premises of any distiller, rectifier, or compounder, dealer in or retailer of spirits, there shall be an opening or dipping place, at which the officer may conveniently take his dip or gauge of the contents of such vessel, and a plate of brass or other metal shall be fixed and shall always remain fixed at such dipping place, to secure the same from being worn or altered, and all such backs and vessels respectively shall be gauged and tabled by the officers of Excise in such manner as shall be directed by the

**27. *Spirits.***

6 Geo. IV., c. 80.

II. *British.*

Distiller shall provide all such proper cocks, pumps, and fastenings, &c. at his own expense.

All such cocks, fastenings, &c. shall be kept and affixed to the satisfaction of the officer.

**Penalty 200l.**

Each back and fixed vessel for keeping spirits shall have a dipping place, constructed as herein, on penalty of 200l.

**27. Spirits.**

6 Geo. IV., c. 50.  
11. British.

Penalty if dipping  
place of any vessel  
be altered, 200*l*.

Penalty if position  
or size of any  
vessel be altered  
without notice,  
200*l*.

Commissioners of  
Excise may au-  
thorize distillers to  
use their present  
utensils.

Officer may order  
water to be drawn  
off from the worm  
tub, for examina-  
tion of worm and  
tub.

commissioners of Excise in that behalf, and shall be placed and kept in convenient situations, and shall be at all times easy of access to the officer, for his more readily and effectually inspecting and examining it in every part, and taking the dip or gauge thereof; and if in any such back or vessel there shall not be such opening or dipping place so constructed and secured as aforesaid, or if any such back or vessel shall not be placed and kept in a convenient situation, and easy of access to the officer as aforesaid, or if the officer shall at any time, by any means whatever, or in any manner whatever, be prevented from ascertaining the quantity and gravity, or either of them, of any wort or wash contained in any fermenting wash back, or the quantity or strength of any low wines, feints, or spirits in any vessel, then and in every such case such distiller, rectifier, or compounder, dealer, or retailer, offending therein, shall forfeit the sum of 200*l*."

Sec. 25. "That if the opening or dipping place, or the level of any still, back, receiver, or other vessel or utensil as aforesaid, shall be in any manner altered, or if any device or contrivance whatever shall be used to deceive any officer in taking any dip or gauge of any still, back, receiver, or other vessel or utensil, as aforesaid, or to prevent any officer from taking a true account of the quantity of wort, wash, low wines, feints, or spirits which may be contained in any still, back, receiver, or other vessel or utensil as aforesaid respectively, then in each and every such case such distiller, rectifier, or compounder, dealer, or retailer offending therein shall forfeit the sum of 200*l*."

Sec. 26. "That if the situation or position of any entered still, back, receiver, or other vessel, utensil, or pipe as aforesaid, shall be in any manner altered at any time after such entry as is by this act required shall have been made or given thereof, or the size of any still, back, receiver, or other vessel or utensil as aforesaid shall be in any manner altered at any time after the proper officer shall have ascertained the capacity or content thereof, unless on such notice as is herein provided, then in each and every such case such distiller, rectifier, or compounder, dealer, or retailer offending therein shall forfeit the sum of 200*l*. Provided always, that it shall and may be lawful for such distiller, rectifier, or compounder, dealer, or retailer to alter the size, situation, or position of any entered still, back, receiver, or other vessel, or utensil, or pipe, or to erect and set up any new still, back, receiver, or other vessel, utensil, or pipe, on giving two days' notice in writing of such intended alteration to the proper officer, specifying the particular still, back, receiver, or other vessel, utensil, or pipe, and the size, situation, or position of which is intended to be altered, and making entry of such new still, back, receiver, vessel, utensil, or pipe in manner hereinbefore mentioned, and conforming in all respects to the regulations in this act contained in that behalf."

Sec. 27. "Provided always, that it shall and may be lawful for the commissioners of Excise, by any instrument in writing under the hands of two or more of them, to permit and allow any licensed distiller or rectifier, working under the regulations of any act or acts in force prior to the passing of this act, to keep or use such of the vessels or cocks already fixed or used in the distillery of such distiller, as shall in the judgment of such commissioners be secure, and adapted to the purposes for which such vessels or cocks are respectively prescribed or required by this act; and that no distiller to whom such permission shall be granted shall be liable to any of the penalties imposed by this act, in respect of such distiller keeping or using any such vessels or cocks so permitted, although the same may not be conformable with the provisions of this act; any thing heretofore contained to the contrary notwithstanding."

Sec. 28. "That whenever any officer of Excise shall require that the water contained in any worm tub in or belonging to any distillery, at any time when such still shall not be at work, shall be drawn or run off, and the tub and worm cleaned, the water shall forthwith be drawn or run off, and the tub and worm cleansed by the distiller, his or her servants, or

workmen accordingly; and if the water shall not be so drawn or run off at the request of such officer, and the tub and worm forthwith cleaned, and the water kept and continued out of such worm tub for the space of two hours, or until the surveying officer has finished his inspection and examination of such tub and the worm therein, the distiller in whose distillery such worm tub shall be situate shall forfeit the sum of 200*l.*; and it shall be lawful for such officer to draw or run off and keep drawn and run off such water, or so much thereof, and for so long time, as he shall think necessary."

Sect. 29. "That every distiller, rectifier, or compounder, and dealer in spirits, shall cause to be legibly cut, branded, or painted on the outside of both of the heads or ends of each rolling or moveable cask used by him or her for keeping or delivering out spirits, and shall at all times keep thereon so cut, branded, or painted, the full and true number of gallons which every such cask shall be capable of containing, together with his or her name or firm of trade, and the name of the place where his or her stock is kept; and every such cask which shall be found containing spirits without the full and true number of gallons which the same is capable of containing, and the name and place aforesaid, being so cut, branded, or painted thereon, together with the spirits contained therein, shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 30. "That before any distiller shall give any notice of brewing or making any wort or wash, as by this act is required, and also before such distiller shall commence to brew or make any wort or wash, and before any rectifier or compounder shall receive, rectify, or compound any spirits, or any dealer or retailer shall receive or sell any spirits, each distiller, rectifier, or compounder, dealer, and retailer respectively shall make entry by delivering or causing to be delivered to the proper collector of Excise, or other officer authorized to receive the same, an account in writing, signed by such distiller, rectifier, or compounder, dealer, and retailer respectively, to be entered and registered by such collector or other officer, setting forth his or her name or names, and place or places of abode, and the place where the premises intended to be entered of such person or persons is or shall be situated, and also setting forth a true description of all and every vessel and vessels, and utensil and utensils whatsoever, erected and intended to be therein used in or for the purposes of such trade or business respectively, and the number of gallons which each and every or any still, together with the head thereof, is capable of containing, and specifying fully and distinctly in every such account the purpose for which each vessel and utensil is intended to be used; and also an account of the several houses, rooms, and places wherein any part of the business of such person is to be carried on, or for distilling, rectifying, or compounding any spirits, or in which any spirits are to be kept; and in such written account every such utensil, and also every such house, room, or place, shall be distinguished, by the separate and distinct number and name relating thereto respectively, which shall have been painted thereon pursuant to the provisions of this act; and every such account shall be in such form, and shall contain such particulars, as shall be from time to time directed and required or authorized by the commissioners of Excise."

Sect. 31. "That every distiller, rectifier, or compounder, dealer, and retailer respectively, shall paint, or cause to be legibly painted, and shall keep or cause to be kept so painted, upon some conspicuous part of every utensil intended to be used by him or her in his or her trade or business respectively, and on the outside of the door of every apartment and place wherein any part of the trade or business of such person is to be carried on, or wherein any spirits are to be kept, the name of each such utensil, apartment, or place, according to the purpose for which the same is respectively intended to be used; and shall also paint in manner aforesaid separate numbers relating to each and every such utensil, apartment, and

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27. *Spirits.*

6 (sec. IV., c. 80.  
II. British.  
Penalty for  
refusal, 200*l.*

True content to be  
cut, branded,  
or painted on  
moveable casks,  
and also the name  
and place of  
stock of the trader.

Entry to be made  
of the several  
places and utensils  
of trade.

Utensils and  
stores shall be  
marked.

Penalty for  
neglect, 50*l.*



27. *Spirits.*

6 Geo. IV., c. 80.

II. British.

Drawing or description shall be given, showing the course of every fixed pipe in distillery.

Pipes used in distillery to be painted.

Penalty 50*l*.

Distiller shall not enter any utensil to be used for more than one purpose, on penalty of 200*l*.

Penalty for having any utensil or place not entered, &c. 500*l*.

Houses for rectifying or compounding spirits not to be used within one quarter of a mile of a still house, nor shall a still house be used within one quarter of a mile

place, in arithmetical progression, beginning with number one for each denomination, kind, or description of utensil, apartment, or place, upon pain of forfeiting for every neglect thereof the sum of 50*l*."

Sect. 32. "That together with every such account there shall be delivered a drawing or drawings, or description or descriptions, distinctly showing the course, direction, construction, and use of all fixed pipes to be used by any distiller, rectifier, or compounder, and of all and every branch and branches thereof, and of all and every cock and cocks therein, together with every place, vessel, or utensil from or to or with which any such pipe shall lead or communicate; and every pipe to be used by such distiller, rectifier, or compounder, except for the conveyance of water and spent wash only, shall be so fixed and placed as to be capable of being inspected and examined by the officer for and through the whole of its length or course, and shall be painted and kept painted as hereinafter mentioned; that is to say, every pipe for the conveyance of wort or wash shall be painted of a red colour, every pipe for the conveyance of low wines or feints shall be painted blue, every pipe for the conveyance of spirits shall be painted white, and every pipe for the conveyance of water shall be painted black; and if any pipe shall be used by any distiller, rectifier, or compounder, not set forth as aforesaid, or for any other purpose than shall be set forth as aforesaid, or which, except as aforesaid, shall not be fixed or placed or painted and kept painted as herein directed, or which shall be painted otherwise than as herein directed, such distiller, rectifier, or compounder shall forfeit the sum of 50*l*."

Sect. 33. "That it shall not be lawful for any distiller to set forth in the account by this act required to be signed and delivered, that any still or vessel mentioned therein is intended to be used for more than one purpose respectively; and every such entry in which any still or other vessel shall be described by any distiller as intended to be used for two or more purposes shall, in respect to such still or vessel, be deemed and taken to be void; and such distiller shall in every such case forfeit the sum of 200*l*."

Sect. 34. "That if any still or vessel, or utensil whatever, shall at any time be used or applied by any distiller, rectifier, or compounder for or to any purpose connected with the distillation, rectification, or compounding of spirits, or if any fixed cask shall at any time be used by any distiller, rectifier, or compounder, or dealer or retailer as aforesaid, for holding or keeping spirits; or if any house, room, or place shall be used by any distiller, rectifier, or compounder, dealer or retailer of spirits, for the carrying on any part of the process of distillation, rectification, or compounding of spirits, or for the keeping of any spirits, which still, vessel, utensil, cask-house, room, or place shall not have been set forth, or shall not have been numbered as set forth, or shall be in any other place than shall be set forth, or shall be used or applied for or to any other purpose than shall be set forth, or shall not in all respects correspond with the representation thereof, as set forth in the account by this act required to be signed and delivered by such person; then and in every such case he or she so offending shall forfeit the sum of 500*l*. for every such offence; and every such still, vessel, or other utensil, or cask, and all spirits, or materials for distilling spirits, which shall or may be contained in any such still, vessel, utensil, or cask, or which shall or may be found in any such house, room, or place, shall be forfeited, and may be seized by any officer of Excise."

Sect. 35. "That no person or persons whomsoever shall erect, set up, enter, or make use of any house or premises whatsoever, in England, for rectifying or compounding spirits, or for receiving or keeping spirits, by any rectifier or compounder of spirits, or for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits, within the distance of one quarter of a mile in a direct line from any other house or premises which shall be entered or

used for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits; nor shall any person or persons whomsoever erect, set up, enter, or make use of any house or premises whatsoever, in England, for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits, within the distance of one quarter of a mile in a direct line from any other house or premises which shall be entered or used for rectifying or compounding spirits, or for receiving or keeping spirits, by any rectifier or compounder of spirits, or for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits, on pain of forfeiting, in each and every such case, the sum of 500*l.* for every week that any such house or premises shall be erected, set up, entered, or used respectively, contrary to such prohibition as aforesaid; and all and every entries or entry of any such house or place so made use of contrary to the true intent and meaning of this act shall be null and void to all intents and purposes whatsoever. Provided always, that the prohibition and penalty aforesaid shall not extend or apply, or be deemed or construed to extend or apply, to or in respect of any house or premises which may have been erected, set up, entered, used, occupied, or employed contrary to the prohibition aforesaid for preparing wort or wash, or making or distilling spirits, or for rectifying or compounding or for receiving or keeping spirits respectively by any distiller or maker of spirits, or any rectifier or compounder of spirits, on the 5th day of April, in the year 1825, so long as such house or premises continue to be so entered and used, and so long as no part of any such house or premises entered, used, occupied, or employed by any distiller or maker of spirits, and any part of any such house or premises, entered, used, occupied, or employed by any other distiller or maker of spirits, or any rectifier or compounder of spirits, shall have any way, opening, or communication whatsoever by which any wort, wash, or spirits can be removed or conveyed from the one into the other of such houses or premises, other than by carriage of a cart or waggon through and by an open street or road."

Sect. 36. "That no distiller or maker of spirits, or rectifier or compounder of spirits, shall upon the same premises carry on the trade or business of a distiller or maker of spirits, or of a rectifier or compounder of spirits, and of a brewer of beer, or of a maker of sweets, vinegar, cyder, or perry, or of a refiner of sugar; nor shall any distiller or maker of spirits enter or make use of any house or premises for preparing wort or wash, or making, distilling, or keeping spirits; nor shall any rectifier or compounder of spirits enter or make use of any house or premises for rectifying or compounding or for keeping spirits, having any communication, opening, or way, internally, or with or into, or through any enclosed or private yard, garden, field, passage, private road or place, with another house or premises used or employed by any brewer of beer, or maker of sweets, vinegar, cyder, or perry, or refiner of sugar, or by any dealer in or retailer of spirits, on pain of forfeiting for every such offence the sum of 200*l.* Provided always, that where any house or premises shall appear to have been so entered and made use of as aforesaid by any person or persons on the 5th day of April, 1825, and shall continue to be so entered and used on the 10th day of October, 1825, it shall be lawful for the commissioners of His Majesty's treasury, or any three of them, to grant, by order in writing, their special licence to such persons to continue such use of such premises, for such time, and upon such terms and conditions, and upon payment of such annual sum or sums of money for defraying the expenses of extra survey of such premises, as they may think fit."

Sect. 37. "That no distiller who shall have made entry of any distillery, place, or utensils for the purpose of distilling spirits shall be permitted to withdraw such entry whilst any wash, low wines, or other

27. *Spirits.*

8 Geo. IV., c. 56.  
II. British.  
of a house for  
rectifying or com-  
pounding spirits,  
or of another di-  
stillery: penalty,  
500*l.* per week.

Distiller and rec-  
tifier or com-  
pounder not to be  
a maker of beer,  
sweets, vinegar,  
cyder, or perry, or  
refiner of sugar,  
&c.  
Penalty 200*l.*

No entry of any  
distillery or uten-  
sils shall be with-  
drawn, whilst  
wash or other ma-

27. *Spirits.*

6 Geo. IV., c. 80.  
II. British.  
materials for distillation are remaining therein.

Distillers, rectifiers, and compounders shall affix board over distillery gate, importing they are licensed, on penalty of 50*l.*

Penalty on unlicensed persons affixing such board, 50*l.*

If any officer shall know of or suspect any private still, &c. within the limits of the head office, and make oath thereof before a justice or the commissioners; or in any other part, and shall make oath thereof before a justice of the county, &c.; a special warrant to break open such suspected house, and to seize such stills, spirits, &c. may be granted;

and if not claimed by the owner within ten days, the same shall be

materials preparing, or fit for distillation, are remaining in any of the places or in any of the utensils so by him or her entered as aforesaid; but in every such case the officer of Excise under whose survey such distiller shall then be shall continue to survey the distillery, places, and utensils mentioned in each such entry until all the wash, low wines, and other materials shall be worked off, and the duties charged on the produce thereof paid, or until the spirits made therefrom shall be legally removed from and out of the said entered places, and then, and not till then, shall any such entry made as aforesaid be withdrawn."

Sect. 38. "That every distiller, rectifier, or compounder who shall be licensed under this act shall forthwith cause to be painted, with letters publicly visible and legible, at least three inches long, the name or firm of such distiller, rectifier, or compounder, at full length, and, after such name, the words 'licensed distiller,' 'rectifier, or compounder,' as the case may be; and every such distiller, rectifier, or compounder shall cause such painting to be in some conspicuous place on the outside of the front of the distillery or entered premises of such distiller, rectifier, or compounder, over the gate or entrance door thereto, not more than three feet from the top of such gate or entrance door; and every such distiller, rectifier, or compounder shall preserve and keep up such painting during the continuance of his, her, or their licence; and in default of making such painting, or keeping the same so made, every such distiller, rectifier, or compounder shall for every such offence forfeit the sum of 50*l.*; and if any person, on or before whose house or other place any painting, board, or sign shall be affixed or erected, importing that such person is a distiller, rectifier, or compounder, or exercises or carries on the trade of a distiller, rectifier, or compounder, or purporting that such person is licensed so to do, shall not at the time be duly licensed for such purpose, then and in every such case every such person shall forfeit the sum of 50*l.*"

Sect. 39. "That in case any officer or officers of Excise shall know or have cause to suspect that any private or concealed still, back, or other vessel, for making worts or wash, or for making or distilling low wines or spirits, or any privately made spirits or low wines, or any wash or other materials preparing for distillation, are set up or kept in any house or place, then and in such case, if such house or place shall be within the limits of the chief office of Excise, upon oath made by such officer or officers before one or more justice or justices of the peace of the county, city, or liberty where such house or place shall be, or before the commissioners of Excise, or any two or more of them; or, in case the same shall be in any other part of England, upon oath made by such officer or officers before one or more justice or justices of the peace of the county or place where such officer or officers shall suspect the same to be so set up and kept, setting forth the ground of such his or their suspicion, it shall and may be lawful to and for the said commissioners of Excise, or justice or justices of the peace respectively, before whom such affidavit or affidavits shall be made, if he or they shall judge it reasonable, by warrant under his or their respective hands and seals, to authorize and empower such officer or officers, by day or by night (but if in the night-time, then in the presence of a constable or other lawful officer of the peace, who are hereby required to be aiding and assisting therein), to break open the doors or any part of such house or place, where he or they shall so know or suspect such private or concealed still, back, or other vessel, spirits, low wines, wash, or materials for distillation, are so set up and kept, and to enter into such house or place, and to seize all and every such still, backs, or other vessels, and all such spirits, low wines, wash, and other materials preparing for distillation, which he or they shall find and discover, and either to detain and keep the same in the house or place where found, or to remove the same to the office of Excise next to the place where the same shall be so discovered and found; and in case the same shall not within ten days next after such seizure be claimed by the true and lawful owner

thereof, then the said stills, backs, and other vessels, spirits, low wines, wash, and other materials for distillation, shall be absolutely forfeited, and the proprietor of any such private or concealed still, back, or other vessel, or the person in whose custody the same shall be found, whether such seizure be claimed or not, shall forfeit and lose for every place in which every such private still, back, or other vessel shall be so found, and also for every such still, back, and vessel found therein, the sum of 200*l.*; and if any person or persons shall obstruct, oppose, molest, or hinder any officer or officers of Excise, or others acting in their assistance, in the due seizing any such private or concealed stills, backs, or other vessels, spirits, low wines, wash, or other materials for distillation, or in detaining or keeping the same in the place where found, or in removing the same, or any of them, after seizure, to the next office of Excise as aforesaid, then and in every such case every person so offending shall forfeit the sum of 200*l.*"

Sect. 40. "That it shall and may be lawful for any officer or officers of Excise at all times, as well by night as by day, to enter into every house, distillery, still house, outhouse, and place whatsoever of or belonging to or made use of by any distiller of spirits, and to gauge, measure, and take an account of every still or other vessel or utensil of any kind of or belonging to or kept therein by any such distiller, and to gauge and take an account of the quantity and strength of all spirits, low wines, and feints which shall be from time to time made or distilled, and of the quantity and gravity of all wort and wash which shall be from time to time made use of in the distillery of such distiller, and of all bub and other compositions for exciting or producing fermentation in any wort or wash, and of all such spirits and materials for making or distilling of spirits which shall be in such distillery or in the possession of such distiller; and if any officer of Excise, or any person or persons acting in his aid or assistance, shall be hindered, obstructed, or prevented by any distiller, or by any servant or person acting for or in the employment of such distiller, from entering, or shall not be permitted to enter into any distillery, or any house, outhouse, or other place whatsoever, of or belonging to or made use of by such distiller, or, having entered, shall be hindered, obstructed, or prevented from doing or executing any part of his duty in the execution of this act, such distiller shall for every such offence respectively forfeit the sum of 200*l.*"

Sect. 41. "That in case any officer of Excise, after having demanded admittance into the distillery of any distiller, rectifier, or compounder, and having declared his name and business at the gate or entrance door or at any window of such distillery, shall not be immediately and without delay admitted into such distillery, such distiller, rectifier, or compounder shall for every such offence forfeit the sum of 200*l.*; and if such officer shall not be immediately and without delay admitted into such distillery of any distiller, rectifier, or compounder, after having so demanded such admittance, it shall and may be lawful for such officer, and any person or persons acting in his aid or assistance, at all times, as well by night (if in the presence of a constable or other peace officer) as by day, to break open by force any of the doors or windows or break through any of the walls of such distillery as shall be necessary to enter such distillery."

Sect. 42. "That if, on demand of any officer of Excise, made in the distillery of any distiller, or in the entered premises of any rectifier or compounder of spirits, strong, safe, and convenient ladders shall not be provided, and conveniently and firmly placed, and of length sufficient to enable the surveying officer to ascend to and examine and descend from any vessel or utensil in any such distillery, or rectifying or compounding house or premises, or to gauge or ascertain the content or capacity of any vessel or utensil therein; or if any such ladder shall not be fixed at or in any part of such vessel or utensil where such officer shall require; or if on any visits made by any officer of Excise, on demand of any such officer, sufficient lights and sufficient aid or assistance shall not be supplied for

27. *Spirits.*

6 Geo. IV., c. 86.  
II. British.

forfeited, and the proprietor, &c. shall pay 200*l.* for every such place and still, &c. found therein. Penalty on obstructing officer, 200*l.*

Officers empowered to enter distilleries; and if obstructed, distillers to forfeit 200*l.*

Penalty on not giving admission to officer after declaring his name and business, 200*l.* and the officer may break open distillery.

Distillers, rectifiers, and compounders shall furnish officer with ladder and lights, on penalty of 100*l.*

27. *Spirits.*

s Geo. IV., c. 80.  
II. British.

Officers may  
break up  
ground in  
distillery, to  
search for  
private pipes,  
&c.

Distillers shall  
not distil at  
the same time  
spirits from  
grain and  
from sugar,  
or any other  
material.

Penalty 200*l.*, &c.

Notice to be  
given by  
distiller of  
his intention  
to use sugar  
or potatoes.

Penalty for  
using grain  
after such  
notice, 200*l.*

Distiller using  
sugar or po-  
tatoes may com-  
mence using  
grain at the  
expiration of  
one month,  
on giving no-  
tice.

the purposes of his or their gauging or ascertaining the content or capacity of any vessel or utensil, or of searching for and gauging and taking an account of all wort, wash, bub, low wines, feints, and spirits, and of all materials fit or proper for distillation in such distillery, or in the possession of such distiller, and all spirits in the possession of such rectifier or compounder, as well by day as by night, every distiller, rectifier, or compounder so offending, or on whose entered premises such neglect or offence shall take place, shall in any of the cases aforesaid for every such offence forfeit the sum of 100*l.*"

Sect. 43. "That it shall and may be lawful to and for any officer or officers of Excise, or any person or persons acting in his or their aid or assistance, by night or by day to break up any ground in any part of the distillery or entered premises of any distiller, rectifier, or compounder, or any ground near adjoining such distillery or premises, or any wall or partition thereof or belonging thereto, or other place, to search for any pipe or cock, or any private conveyance or utensil, and upon finding any such pipe or conveyance leading therefrom or thereto, to break up the ground, house, wall, or other place through or into which such pipe or other conveyance shall lead, and to break up or cut away any such pipe, cock, or other conveyance, and to turn any cock or cocks, and to examine whether such pipe or other conveyance may or can convey or conceal any wort, wash, or other liquor fit for distillation, or low wines, feints, or spirits, from the sight or view of the officer, so as to hinder or prevent him from taking or keeping a true account thereof."

Sect. 44. "That it shall not be lawful for any distiller to make or brew at the same time any wort or wash, or to make or distil any spirits, from malt, corn, or grain, or any mixture thereof, and from sugar or potatoes, or any mixture thereof, respectively, or to make or brew any wort or wash, or distil any spirits, from any other materials whatsoever; and if any such distiller shall at the same time make or brew any wort or wash, or shall make or distil any spirits, from malt, corn, or grain, or any mixture thereof, and from sugar or potatoes, or any mixture thereof, respectively, or shall at any time make or brew any wort or wash or distil any spirits from any other materials whatsoever, such distiller shall forfeit the sum of 200*l.*; and all such wort, wash, and spirits shall be forfeited, and may be seized by any officer of Excise."

Sect. 45. "That every distiller who shall under the regulations of this act intend or desire to distil spirits from worts or wash brewed and made from sugar or potatoes only shall, six days before he shall commence to brew or make any wort or wash, give notice in writing to the proper officer surveying such distillery, in which notice shall be stated that such distiller intends to use sugar or potatoes only, not being mixed with any other materials whatever; and if, at any time after such notice shall have been given, any corn, grain, or malt, ground or bruised, or other material for distillation, except sugar or potatoes, according to such notice as aforesaid, shall be found in such distillery, or in any store, mill, or other premises thereto belonging; or if any wort or wash made of any materials, save and except sugar or potatoes only, as the case may be, according to such notice, shall be found in the distillery of such distiller, or in any store belonging to such distillery, then and in each and every such case such distiller shall (except in the case hereinafter provided) forfeit the sum of 200*l.*"

Sect. 46. "Provided always, that if any distiller who shall have given any such notice of using sugar or potatoes only as aforesaid shall intend to commence or to recommence to use the other of them, or to use corn or grain and malt, at any time when there shall not be any wort or wash, or sugar or potatoes respectively, in the distillery of such distiller, such time being at least one calendar month distant from the time such distiller began to use sugar or potatoes only under any such notice, it shall be lawful for such distiller, on giving six days' previous notice to the proper officer, so to commence or recommence to use the other of them, or to use

corn or grain and malt, and such distiller shall not thereafter be liable to any such penalty aforesaid. Provided also, that if any distiller using corn or grain and malt shall be desirous of commencing or recommencing to use sugar or potatoes only as aforesaid, at any time when there shall not be any wort or wash, or malt, corn, or grain in the distillery of such distiller, such time being at least one calendar month from the time such distiller shall have commenced or recommenced using corn or grain and malt as aforesaid, it shall be lawful for such distiller, on giving six days' notice as aforesaid, so to commence or recommence to use sugar or potatoes only."

Sect. 47. "That from and after the 5th day of January, 1826, it shall be lawful for any licensed distiller in Scotland or Ireland to make or brew any wort or wash and to make or distil spirits from sugar only, or from potatoes only, any thing in any other act or acts of parliament to the contrary notwithstanding. Provided always, that whenever sugar or potatoes are used for that purpose, the same shall be done under the like rules and regulations as are contained in a certain act, made in the fourth year of the reign of His present Majesty, for granting certain duties of Excise upon spirits distilled from corn or grain in Scotland and Ireland, and upon licences for stills for making such spirits, and to provide for the better collecting and securing such duties, and for the warehousing of such spirits without payment of duty, for making or brewing wort or wash and making and distilling spirits from malt only, unmixed with any unmalted corn or grain, except that in the annual account of every such distiller, so far as shall relate to spirits made or distilled from sugar, he shall be chargeable and charged with duty after the rate or proportion of one gallon of proof spirits for every four degrees of the declared gravity of the worts from which such spirits were made or distilled."

Sect. 48. "Provided always, that if at any time or times during the recess of parliament it shall, from the excessive price of corn, appear expedient to His Majesty, his heirs or successors, to prohibit the making of low wines and spirits from barley, malt, and any other sort of grain, and from meal and flour, or any mixture thereof, it shall and may be lawful to and for His Majesty, his heirs and successors, from time to time, by his or their royal proclamation or proclamations, to be issued by and with the advice of his or their privy council, or by his or their order in council, to be published in the *London Gazette* from time to time, to prohibit the making, extracting, or distilling of any kind of low wines or spirits from barley, malt, and any other sort of grain, and from meal and flour, or any mixture thereof, for any time or times during such recess, or until twenty days after the commencement of the then next session of parliament."

Sect. 49. "That all wash which shall be made in the distillery of any distiller shall be fermented in the fermenting wash backs of such distiller, and shall be conveyed directly from thence into the wash charger, and shall be conveyed from such charger into the wash still or stills, there to be made or distilled into low wines, and all low wines shall be conveyed directly from the safe at the worm end of the wash still or stills into the low wines receiver or receivers, and shall from thence be pumped up or conveyed into the low wines and feints charger or chargers, and shall be conveyed directly from such charger or chargers into the low wines still or stills, there to be redistilled, and all spirits produced by such redistillation shall be conveyed directly from the safe at the worm end of the low wines still or stills into the spirits receiver or feints receiver or receivers, and so much of such spirits as shall be conveyed into such feints receiver or receivers shall be pumped or conveyed directly from thence into the low wines and feints charger or chargers, and shall be conveyed directly from such charger or chargers into the low wines still or stills to be redistilled, and the produce of the last-mentioned redistillation, and of every other redistillation, shall in like manner be conveyed directly from the safe at

27. *Spirits.*

6 Geo. IV., c. 80.  
II. British.

Distiller using grain may commence using sugar or potatoes only at the expiration of a month, on giving notice.

Scotch and Irish distillers may distil from sugar or potatoes.

During the recess of parliament, the king may, by proclamation, prohibit the distillation of spirits from corn.

General directions as to the mode and course in which wash, &c. shall be conveyed through the several utensils.

27. *Spirits.*

6 Geo. IV., c. 50.  
11. British.

Penalty on  
default 200*l.*  
or 20*s.* for every  
gallon of wash,  
&c. not so con-  
veyed.

Distiller shall  
brew and distil  
in alternate  
periods only.

Penalty for  
acting contrary  
hereto, 50*0*l.**

Distiller shall  
give notice of  
each brewing  
of wort, on pe-  
nalty of 50*l.*

the worm end of the low wines still or stills into the spirit receiver, or into the feints receiver or receivers, and no feints conveyed into such feints receiver or receivers shall in any case be removed from thence, except by pumping or conveying such feints directly into the low wines or feints charger or chargers, from whence such feints shall be conveyed directly into the low wines still or stills for redistillation, until the whole of such feints shall be made into spirits, and conveyed and run into the spirit receiver, and no spirits conveyed into the spirit receiver shall be redistilled or shall be removed from such receiver, except into the cellar or storeroom of the distiller, in the manner hereinafter provided; and if any distiller shall ferment or suffer to be fermented any wash, or shall remove or distil or suffer to be removed or distilled any wash, low wines, feints, or spirits, contrary or otherwise than according to the directions and provisions aforesaid, or shall not convey and run the whole of the spirits made or distilled by him into the spirit receiver, such wash, low wines, feints, and spirits respectively, together with all vessels and utensils wherein the same may be contained, shall be forfeited, and may be seized by any officer of Excise; and the distiller so offending shall in every such case forfeit the sum of 200*l.*, or 20*s.* for every gallon of such wash, low wines, feints, or spirits so removed or distilled, and not conveyed and run into the spirits receiver, at the election of the commissioners of Excise, or person who shall inform or sue for the same."

Sect. 50. "And for more effectually securing the duties on spirits granted by this act, and regulating the process of the distillation of such spirits, be it enacted, that in the distillery of every distiller, the periods of brewing and distilling shall be always alternate and distinct periods—one to be called the brewing period, and the other the distilling period; and that no wort, wash, low wines, or feints shall be distilled in any such distillery, and that no still in any such distillery shall be made use of from the commencement of any such brewing period until twelve hours after the expiration thereof; that is to say, from the commencement of any process of wetting, brewing, or mashing any malt, corn, or grain, or sugar, or potatoes, until twelve hours after every such process shall have ceased, and all the wort or wash in such distillery shall have been collected into the fermenting backs in such distillery; and that no malt, or corn, or grain, or sugar, or potatoes shall be wetted, brewed, or mashed, nor shall any wort or wash be made or produced in any distillery during any distilling period; that is to say, from the commencement of the distillation of any wort or wash in any distillery, until after all the wort or wash in such distillery, or possession of such distiller, and all the low wines or feints in such distillery, or possession of such distiller, shall have been distilled into spirits and conveyed and run into the spirits receiver of such distillery, save and except such feints as shall have been produced by the last redistillation of the last charge of the low wines still or stills, and until the several furnace doors of each and every still in such distillery shall have been locked and secured by the proper officer; and if at any time during such brewing period any wort or wash or low wines or feints shall be distilled, or if any still shall be made use of in the distillery of any distiller, or if at any time during such distilling period any malt, or corn, or grain, or sugar, or potatoes shall be wetted, brewed, or mashed, or any wort or wash shall be made or produced in the distillery of any such distiller, then and in each and every such case such distiller shall forfeit the sum of 500*l.*"

Sect. 51. "That every distiller shall from time to time, at least six hours before he shall mash or brew as aforesaid, deliver to the proper officer of Excise a notice in writing, in which shall be set forth the day and hour when such mashing or brewing is to be commenced and made, and shall then, or within six hours after any such brewing shall be finished, deliver as aforesaid the true quantity and weight of the materials intended to be or which shall have been used or employed, and whether grain, or

sugar, or potatoes respectively; and in case any mashing or brewing of any materials is commenced or made in the distillery of any distiller without such notice having been given as aforesaid, such distiller shall forfeit the sum of 50*l.*; and it shall not be lawful for any such distiller to mix or cause to be mixed in any fermenting back or vessel the produce of two or more different brewings of wort or wash, or any part thereof, on pain of forfeiting for every such offence the sum of 200*l.*."

Sect. 52. "That every distiller, after having made such entry as is by this act required, shall, before commencing to brew or make any wort, and in like manner every such distiller who shall at any time have discontinued making or brewing any wort for any longer period than one calendar month shall, before recommencing to make or brew any wort, give six days' notice in writing to the supervisor or officer surveying the distillery of such distiller, in which notice shall be set forth the day on which and sorts of materials with which such distiller intends to commence or recommence (as the case may be) making or brewing wort, and specifying the gravity of the wort or wash intended to be made in the distillery of such distiller; and in any such notice such gravity as specified shall not be less than fifty degrees, nor more than ninety degrees; and in case such distiller shall at any time be desirous of using wort of any other gravity than shall have been specified in such notice, but not being of a gravity less than fifty degrees, nor more than ninety degrees, such distiller shall in like manner, six days before the day on which he shall intend to use wort at any other gravity, deliver a notice, specifying the gravity of the wort intended to be used in such distillery after the day specified in such last-mentioned notice, such distiller not having on such day any wort or wash in the distillery or possession of such distiller, and such day being at least one calendar month distant from the day mentioned in any last preceding notice which shall have been given by such distiller; and if any distiller shall commence or after such discontinuance shall recommence the brewing or making any wort, or if any wort or wash shall be found in the distillery or possession of any such distiller who shall not have given such notice in manner and in the respective cases aforesaid, or at any time before the day set forth as aforesaid in any such notice, or if at any time there shall be found in the distillery or possession of any distiller, except in the mash tun or wort underback or coolers or coppers in such distillery, any wort or wash, the gravity whereof shall exceed the particular gravity which shall have been specified in any such notice, then and in each and in every such case all such wort or wash shall be forfeited, and may be seized by any officer of Excise, and such distiller shall forfeit the sum of 200*l.* Provided always, that no vessel used by any distiller shall be deemed a wort underback within the meaning of this act, unless the depth of such vessel shall be in every part thereof three feet at the least, nor unless such vessel shall be so situate in the distillery of any distiller as that the wort shall run directly into the same from the mash tun."

Sect. 53. "Provided always, that any such saccharometer may be used for ascertaining the gravity of wort or wash under this act, as shall from time to time be prescribed for that purpose by any order of the commissioners of Excise, or any four of them; and that every degree of gravity to be ascertained by any saccharometer under the provisions of this act shall be calculated in the following manner; that is to say, that distilled water being assumed as unity at the temperature of sixty degrees by *Fahrenheit's* thermometer, every degree of such gravity shall be correspondent to a thousandth part of the specific gravity of such water; and all wort or wash shall for the purposes of this act be deemed and taken to be of the gravity at which the said saccharometer shall, on the application thereof, denote or indicate such wort or wash to be."

Sect. 54. "That all wort intended to be run or conveyed into any fermenting back of any such distiller shall be conveyed into and collected

27. *Spirits.*

6 Geo. IV., c. 80.  
II. *British.*

The produce of each brewing to be kept separate, on penalty of 200*l.*

Notice to brew, and to recommence brewing.

Penalty on neglect, 200*l.*, &c.

Any saccharometer prescribed by the commissioners of Excise may be used.

How degrees shall be ascertained.

Declaration shall be given of the quantity and gravity of the



27. *Spirits.*

6 Geo. IV., c. 80.

II. British.

wort when collected in fermenting back.

Penalty on giving an untrue declaration, &c. 200*l.*Penalty on increase of gravity of wort, 200*l.*Penalty if wort or wash shall be found to exceed in gravity or quantity the gravity or quantity previously ascertained by the officer, 200*l.*

Regulations for distillers making bub or other composition for exciting fermentation.

therein within the space of eight hours after the running or conveyance of such wort shall have commenced into any such back, and the distiller shall immediately and without delay reduce all such wort to, should it exceed, the particular gravity which shall have been specified in any such notice, and deliver to the proper officer a declaration in writing, specifying the number of the back or backs in which such wort is contained, and the particular gravity of such wort, and also setting forth the quantity thereof, by stating the number of dry inches, that is to say, the number of inches not occupied or wetted by the wort, being the space between the proper dipping-place of such back and the surface of the wort therein; and no yeast, or barm, or bub, or other matter or thing capable of causing fermentation, shall be added to or mixed with the wort, or allowed to be in such fermenting back, for the space of two hours next after such wort shall have been collected in such fermenting back or backs, and reduced as herein directed, and after such declaration shall have been given thereof as aforesaid, unless the proper officer shall, within such two hours, have taken an account of the quantity and gravity of such wort; and if any wort shall be conveyed into and collected in any fermenting back or backs in any other manner than as is herein directed, or if the gravity of all such wort shall not be reduced as herein directed, or if such declaration shall not be given as herein required, or if any untrue declaration shall be given of the quantity or gravity of any such wort, or if any yeast, barm, or bub, or other matter or thing capable of causing fermentation shall be so added to or mixed with any wort, or allowed to be in any such fermenting back, contrary hereto, then and in each and every such case the distiller shall forfeit the sum of 200*l.*"

Sect. 55. "That if at any time after any such declaration as aforesaid shall have been delivered, the gravity of any such wort shall be found to exceed the gravity specified in such declaration, or if the quantity of any such wort or wash shall be found to exceed by five *per centum* the quantity of wort mentioned in such declaration, as the quantity collected as aforesaid, then and in each and every such case such distiller shall forfeit the sum of 200*l.*"

Sect. 56. "That if at any time after any officer of Excise shall have taken an account of and ascertained the gravity or quantity of any wort or wash in any fermenting back, any wort shall be found in such back, or any wash in process of fermentation shall be found in such back, which shall exceed in gravity the wort or wash in such back of which such account had been taken, or which shall exceed in quantity, by five *per centum* or more, the wort or wash in such fermenting back of which such account had been previously taken, all such wort or wash in such back shall be considered as new wort or wash, and not included in any former charge against the distiller in whose possession such wort or wash shall be found; and such distiller shall be charged with duty in respect of the whole wort or wash in such back, in like manner as such distiller is by this act chargeable in respect of any wort or wash not before charged, and the wort or wash of which such account had been previously taken in such back shall be deemed to be distilled or decreased, and the distiller shall be charged for a quantity of spirits in respect of such wort or wash so deemed to be distilled or decreased, in like manner as such distiller is chargeable under this act for any wort or wash actually distilled or decreased; and such distiller shall also, for every such offence, forfeit the sum of 200*l.*"

Sect. 57. "That every distiller who shall intend to make or prepare the composition called bub, or any other composition for inducing or increasing the fermentation of any wort or wash, shall from time to time, at least six hours previous to the beginning to make or prepare any such composition, give or cause to be given a notice in writing to the proper officer surveying the distillery of such distiller, specifying the time when and the particular vessel or vessels in which such composition is to be made or prepared, and the particular wash, fermenting back or backs into which the same is to

be put, and also specifying the quantity of such composition to be put into every such back, which quantity shall not exceed the proportion of five gallons for every 100 gallons of the wort or wash to which such composition is to be so added; and it shall not be lawful for any distiller to have or use at any time any such composition of greater gravity than the gravity of the wort which such distiller shall at such time be authorized to use under the provisions of this act; and if any such composition shall be made or prepared in the distillery of any distiller contrary to the directions hereinbefore prescribed, or if the gravity of any such composition shall be increased at any time after the officer shall have taken an account thereof, or if the whole quantity of such composition shall not, as herein directed, be conveyed into the particular fermenting wash back or backs specified in such notice, within twenty-four hours after the time specified in such notice for making such composition, then and in each and every such case the distiller in whose distillery every such offence or default shall be committed or made shall forfeit the sum of 200*l.*"

Sect. 58. "That when the whole wort or wash brewed or made in any distillery during any brewing period shall be collected into the fermenting wash backs in such distillery, and before the commencement of any distilling period in the distillery of such distiller, and before any still shall be made use of in such distillery for the distilling of such wort or wash, a declaration in writing, by or on behalf of such distiller, shall be delivered to the proper officer, that the whole wort and wash in the distillery of such distiller is collected into the fermenting wash backs in such distillery, and thereupon it shall be lawful for the officer surveying such distillery at any time, not being less than twelve hours subsequent to the delivery of such declaration, and such officer is hereby authorized and required to open any still or stills in such distillery, by removing such fastenings as prevent such still or stills from being used; and if any still in the distillery of any distiller shall be made use of before such declaration shall have been delivered as aforesaid, or before the expiration of such twelve hours as aforesaid, or if all the wort and wash in any such distillery shall not then be collected as stated in such declaration, then and in every such case such distiller shall forfeit the sum of 200*l.*"

Sect. 59. "That eight hours before any wash shall be conveyed from any fermenting wash back in the distillery of any distiller, a notice in writing shall be given to the proper officer, by or on behalf of such distiller, in which shall be stated the number of the back in which such wash is contained, and the day and hour when such wash is to be removed; and such officer shall attend at the time specified in such notice, and after he shall have locked the charging cock or cocks of the wash still or stills, he shall remove all such fastenings as prevent the conveyance of such wash from any back mentioned in such notice into the wash charger, and thereupon forthwith and without delay all the wash which shall be contained in such fermenting wash back, or so much of such wash as such charger shall be capable of containing, shall be conveyed into such charger in manner prescribed in this act; and such officer, after having affixed and secured the fastenings which he had so removed, shall be at liberty and authorized to take an account of the true quantity thereof, and shall thereupon unlock the charging cock or cocks aforesaid; and if any wash shall be removed before such notice shall have been given, or shall be removed or conveyed from any other fermenting back, or at any other time or manner than shall have been mentioned in such notice, or before the proper officer shall have removed or secured respectively such fastenings as before mentioned, and taken account of the true quantity of the wash in such charger, such distiller shall in each and every such case forfeit the sum of 200*l.*"

Sect. 60. "That it shall and may be lawful for any such officer as aforesaid, and he is hereby authorized and empowered to take and convey away out of such distillery, from any wash back or charger in the distillery of

27. *Spirits.*

6 Geo. IV., c. 56.  
II. *British.*

Penalty on acting  
contrary to such  
regulations, 200*l.*

Distiller shall  
declare, before  
beginning to  
distil, that all  
wort and wash  
is collected into  
fermenting backs,  
on penalty of  
200*l.*

Distiller to give  
eight hours' notice  
before moving  
wash from fer-  
menting back  
to the wash  
charger.

Penalty on re-  
moval without  
notice, &c. 200*l.*

Officer may distil  
sample of wash.

27. *Spirits.*

6 Geo. IV., c. 80.  
11. British.

Distiller shall clean out low wines receiver, and assist officer in distilling a charge of wash out of any wash back required by officer.

Penalty on default, 200*l.*

Penalty if produce of wash distilled exceeds the proportion of one gallon and a quarter of proof spirits for every five degrees of gravity attenuated, 200*l.*, &c.

Penalty on removing wash till the whole contents of one back shall be conveyed to the still, 200*l.*

any distiller, a sample not exceeding the quantity of twenty gallons of the wash contained in any such back or charger, and to cause such sample of wash to be distilled into low wines in any still provided for that purpose by the commissioners of Excise; and such officer shall gauge or measure the quantity and ascertain the strength of the low wines produced by the distillation of such wash."

Sect. 61. "That it shall be lawful for any officer of the rank of supervisor of Excise at any time to require that any low wines receiver in the distillery of any distiller shall be emptied and cleaned out, and that any quantity of wash shall be conveyed into any wash still in the distillery of such distiller, and from any wash back as such officer shall direct or require, in order that such wash may be forthwith distilled into low wines; and all persons in the employ of such distiller shall, on reasonable notice, give and provide aid and assistance and fuel to such officer at his request in distilling such wash into low wines, and in conveying the whole of such low wines directly into such low wines receiver which shall be so cleaned out, and such low wines shall be kept in such receiver, unmixed with any matter or thing whatsoever, until such officer shall have taken an account of the quantity and strength of such low wines; and if such low wines receiver shall not be emptied and cleaned out, or if such wash shall not be conveyed into such wash still, or from such wash back, as shall be required by such officer, or if such aid and assistance and fuel shall not be given to such officer in the distilling such wash into low wines, or in conveying the whole of such low wines into such receiver, or if such low wines shall not be kept in such receiver, unmixed as aforesaid, until such officer shall have taken such account as aforesaid, then and in every such case every such distiller shall for each default or offence forfeit the sum of 200*l.*"

Sect. 62. "That in every such case, whether such low wines shall have been produced from wash distilled in any wash still in such distillery, and conveyed into any low wines receiver in such distillery as aforesaid, or shall have been produced from any sample of wash taken by such officer as aforesaid, and distilled in any still provided by the commissioners of Excise as aforesaid, such officer shall ascertain the quantity of proof spirit in and equivalent to such low wines, according to the strength of such low wines; and if such quantity of proof spirits so computed shall, in any of the respective cases aforesaid, exceed the rate or proportion of one gallon and one quarter of a gallon of proof spirits from each and every one hundred gallons of such wort or wash, for and in respect of every five degrees of the gravity of such wort or wash which shall have been attenuated, as taken by the surveying officer; that is to say, for every five degrees of difference between the highest gravity of the wort from which such wash was produced, as declared by such distiller pursuant to this act, or as appearing on any account thereof taken by the officer, and the lowest decreased gravity of such wort or wash, as taken by the officer previous to the distillation thereof as aforesaid; then and in each and every such case respectively every such distiller shall forfeit the sum of 200*l.*; and also the sum of 6*d.* for every gallon of wort or wash contained in the wash back from which such wash so distilled was removed or taken. Provided always, that such officer shall pay to such distiller the value of every sample of wash which he shall so take away from such distillery, or return the produce thereof, and mix the low wines with the low wines of the wash back to which they belong. Provided also, that such distiller, or any person acting in his behalf, shall and may be present at the distillation of any such wash, if such distiller or other person shall desire to be so present."

Sect. 63. "That after any wash shall have been removed from any fermenting back in any distillery, it shall not be lawful to remove any wash from any other fermenting back in such distillery, until the whole contents of such first-mentioned back shall have been taken a separate account of by the proper officer in the wash charger, and conveyed into

the wash still or stills; and if any wash shall be removed contrary hereto, the distiller in, whose distillery such offence shall be committed shall forfeit the sum of 200*l*."

Sect. 64. "That four hours at least before any low wines, or feints, or spirits respectively shall be removed out of any of the respective receivers of low wines, or feints, or spirits in the distillery of any distiller, a notice in writing, specifying the day and hour when such low wines, or feints, or spirits respectively are to be removed out of such receivers respectively, shall be given to the proper officer, by or in behalf of any such distiller; and such officer shall attend at the time specified in such notice, and after having taken an account of the quantity and strength of such low wines, or feints, or spirits respectively, as the case may be, such officer shall remove the fastenings of the pumps or other conveyances used for the removal or conveyance of low wines, or feints, or spirits, and of the receivers containing such low wines, or feints, or spirits respectively, and forthwith and without delay all the low wines or feints which shall be in such low wines or feints receiver or receivers respectively shall be removed and conveyed into the low wines or feints charger or chargers; and all the spirits which shall be contained in such spirit receiver shall be removed and conveyed into the entered spirit storehouse of such distiller; and if any low wines, or feints, or spirits respectively shall not be removed and conveyed as aforesaid, or shall be removed from any such receiver without such notice, or at any other time than shall have been specified in such notice, or before the officer shall have removed the several fastenings, as herein directed, or if, after such officer shall have taken an account of the quantity and strength of the low wines or feints or spirits respectively in any such receiver, any other low wines, or feints, or spirits shall be conveyed into any such receiver, until the whole of the low wines, or feints, or spirits of which such account shall have been taken shall have been removed or conveyed from any such receiver, and the fastenings thereof shall have been again secured by such officer, then in each and every such case the distiller in whose distillery such offence shall be committed shall forfeit the sum of 200*l*."

Sect. 65. "That all the low wines produced by the distillation of the wash contained in each fermenting back in the distillery of any distiller shall be collected and kept in the low wines receiver or receivers separate and apart from and unmixed with any low wines produced by the distillation of any wash contained in any other fermenting back, or with any other matter or thing whatever, until an account of the quantity and strength of such low wines so separately collected shall have been taken by the proper officer; and upon such account having been taken, all such low wines shall be removed from such receiver or receivers into the low wines or feints charger or chargers, before any other low wines shall be made or produced from any subsequent distillation of wash in such distillery; and all the spirits and feints produced by the redistillation of such low wines, of which such account shall have been taken, shall in like manner be collected in the spirits and feints receiver or receivers respectively, and kept therein separate and apart from and unmixed with any other matter or thing (save as is hereinafter provided) until an account of the quantity and strength of such spirits and feints respectively shall have been taken by the proper officer; and if the whole quantity of low wines which shall be produced by the distillation of all the wash contained in each fermenting back in the distillery of any such distiller shall not be collected in the low wines receiver or receivers, separate and apart and unmixed as aforesaid, or if all such low wines so collected shall not remain and be kept in such receiver or receivers, until an account of the quantity and strength of such low wines shall have been taken therein by the proper officer, or if all such low wines shall not be removed from the receiver or receivers, as herein directed, or if all the spirits and feints respectively produced by the redistillation of such low wines, of which such account shall have

27. *Spirits.*

6 Geo. IV., c. 80.

II. *British.*

Notices to be given for removing low wines, feints, or spirits from receivers.

Penalty for removing spirits without notice, &c. 200*l*.

Low wines, spirits, and feints produced from the wash in each back to be kept separate until account thereof shall be taken, on penalty of 200*l*.

27. *Spirits.*

6 Geo. IV., c. 80.  
II. British.

May redistil  
feints.

Officer to take an  
account of the  
spirits and feints  
produced on such  
redistillation.

Modes of charging  
duty:  
1st, By per centage  
from wash, ac-  
cording to the  
attenuation of the  
gravity thereof,  
one gallon for  
every five degrees  
attenuated.

been taken, shall not be so collected and kept separate as aforesaid (except as herein provided) until an account of the strength and quantity of such spirits and feints respectively shall have been taken by such officer as aforesaid, then and in every such case every such distiller shall forfeit the sum of 200*l*. Provided always, that it shall and may be lawful to mix with any such feints so collected in such receiver or receivers, or with the low wines from which such feints are produced, any feints (if any) which shall have been produced by and which may remain on hand after the redistillation of the last charge of the low wines still with the feints produced from the low wines of the preceding back of wash. Provided also, that nothing herein contained shall extend to prevent any distiller in whose distillery any feints shall have been collected, and an account thereof taken as aforesaid, from redistilling, under the provisions of this act, the whole of such feints, and in like manner to redistil the whole of any feints produced by such redistillation; and also, in like manner, to repeat the process of redistilling the whole of any feints produced by any such redistillation so often as it shall appear expedient to such distiller so to do. Provided nevertheless, that it shall and may be lawful for any officer of Excise, and such officer is hereby authorized to take an account of the spirits and feints respectively produced and collected as aforesaid on each and every such redistillation as aforesaid, and to compute and ascertain the quantity of proof spirits in and equivalent to such spirits and feints respectively, according to the strength of such spirits and feints respectively; and such distiller shall be chargeable and charged with duty, under the provisions of this act, for the greatest quantity of proof spirits which shall appear to have been produced or deemed to have been produced, under the provisions of this act, from the whole of the low wines which shall have been collected and taken an account of, as before mentioned, whether such greater quantity of proof spirits shall appear from the first redistillation of such low wines, or from any such subsequent redistillation as aforesaid."

Sect. 66. "That for and in respect of every 100 gallons of wort or wash which shall be brewed or made in the distillery of any distiller, the officer of Excise shall charge such distiller with duty for a quantity of spirits at the rate of one gallon of proof spirits for every five degrees of gravity of such wort or wash which shall be attenuated; (a) that is to say,

(a) The duty on spirits attaches upon the wash after it has been gauged, and before distillation, by 26 Geo. III., c. 73, s. 1; and the distiller is therefore liable to pay the duty, although the still burst, and the wash was lost before it was made into spirits: and *per Macdonald, Ch. B.*: "I believe it is a very general rule now adopted, on making these revenue acts, to avoid providing for contingencies of this kind, which would open a great door to fraud; and where a real misfortune happens, by a proper application to the Treasury, from the liberal manner in which these matters are conducted, a party is sure of relief." *The Atty.-General v. —, 2 Austr. 558*. In the same case, the counsel for the defendant admitted that the tax on malt cannot be taken back, although it is afterwards consumed by accident before being used in brewing or distillation. An act of parliament was passed to relieve *Mess. Meux & Co.* from a loss to the extent of the duty on

an immense quantity of beer lost by the bursting of a vat.

In another case it was held that, after the duties of Excise are charged on wash made for extracting spirits, by 26 Geo. III., c. 73, if any part of the wash is lost by accident, the manufacturer cannot be relieved from the respective proportion of the duty as for an overcharge, under the 1 W. & M., which only authorizes relief against a charge which was excessive at the time it was made, and does not extend to protect the distiller from an accident which happens to the article after the duty had been regularly assessed upon it. *Rex v. Sikri, 7 T. R. 56*.

In the case of malt there was an express provision declaring that a return of duty shall be demandable in case of destruction of the commodity. See 9 Geo. I., c. 3, s. 35, 36, 37. *Ex parte Calvert, 1 Austr. 270*.

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for every five degrees of difference between the highest gravity of such wort or wash, as declared by such distiller pursuant to this act, or as appearing on any account taken thereof by the officer in any fermenting back or backs, and the lowest decreased gravity of such wort or wash, as appearing on any account thereof taken by the officer previous to the distillation of such wort or wash; and the officer shall also charge at the same rate and proportion of spirits for any lesser quantity of such wort or wash, and for any less decrease of gravity than five degrees."

Sect. 67. "That when any officer of Excise shall take an account of the quantity and strength of the low wines which shall have been produced from the distillation of the wash contained in any fermenting back in the distillery of any distiller, such officer shall compute and ascertain the quantity of proof spirits in and equivalent to such low wines, according to the strength and quantity of such low wines; and such quantity of proof spirits shall be deemed and taken to have been distilled or produced from the wash contained in such back, and duty shall be payable, and the officer shall charge the distiller with duty, on the quantity of proof spirits so ascertained, after making an allowance of two *per centum* on such quantity."

Sect. 68. "That whenever any officer of Excise shall take an account of the quantity and strength of spirits and feints respectively which shall have been produced from the whole of the low wines distilled from the wash contained in any fermenting back, together with any feints which may have remained from any previous redistillation in the distillery of any distiller, such officer shall compute and ascertain the quantity of proof spirits in and equivalent to such spirits and feints respectively, according to the strength of such spirits and feints respectively, and shall deduct from the quantity of proof spirits so ascertained a quantity of proof spirits, computed and ascertained as aforesaid, equivalent to the quantity of feints (if any) which may have remained on hand after any such previous redistillation, and which may have been included in the account of spirits and feints so taken as aforesaid; and after such deduction the remaining quantity of proof spirits so computed and ascertained shall be deemed and taken to have been distilled and produced from the low wines distilled from the wash contained in such fermenting back, and duty shall be payable, and the officer shall charge the distiller with duty, upon such last-mentioned quantity of proof spirits."

Sect. 69. "That every distiller shall, in respect of all wort, wash, and bub in the distillery of such distiller, be chargeable and charged according to the highest gauge of quantity which shall at any time be taken thereof, and according to the highest amount of gravity thereof at any time declared by such distiller or ascertained by any officer of Excise, without any allowance for waste, bub, dregs, yeast, or other matter whatever; and when any decrease shall take place in the quantity of wort, wash, and bub in the distillery of any distiller, the amount of such decrease shall be deemed and taken to have been distilled by such distiller, and such distiller shall be chargeable and charged with a quantity of spirits in proportion to the decrease of any such wort, wash, and bub, according to the directions of this act."

Sect. 70. "That it shall not be lawful to mix with or add to any low wines, feints, or spirits in the distillery of any distiller any sugar, syrup, or any glutinous or saccharine or other matter or thing, whereby the gravity of such low wines, feints, or spirits shall be increased, or so as to prevent the strength thereof respectively being ascertained by the hydrometer; and if it shall at any time be found that any sugar, syrup, or other glutinous or saccharine or other matter shall be so mixed with or added to any low wines, feints, or spirits in the distillery of any such distiller, contrary hereto, such distiller shall forfeit for every such offence the sum of 200*l.*; and all low wines, feints, and spirits so mixed respect-

### 27. *Spirits.*

8 Geo. IV., c. 50.  
II. *British.*

2d, By the produce as found in the low wines.

2d, By the produce on the re-distillation of low wines into spirits and feints.

Wash to be charged from highest gauge, without allowing for waste or dregs.

Distiller shall not mix sugar or other material with spirits, &c. to prevent the strength being ascertained.

Penalty 200*l.* &c.

27. *Spirits.*

6 Geo. IV., c. 80.

II. British.

If the produce of spirits from wash shall exceed the proportions herein mentioned as to the gravity of wort, &c. duty shall be charged accordingly.

ively, together with all such mixtures, shall be forfeited, and may be seized by any officer of Excise."

Sect. 71. "That whenever the quantity of spirits which shall be actually distilled or produced, or which, under any of the provisions of this act, shall be deemed to be distilled or produced from any wort or wash contained in any fermenting back, shall exceed the rate or proportion of one gallon and one-fifth part of a gallon, of proof spirits from each and every 100 gallons of such wort or wash, for and in respect of every five degrees of gravity of such wort or wash which shall have been attenuated, as taken by the officer; that is to say, for every five degrees of difference between the highest gravity of the wort from which such wash was produced, as declared by such distiller, pursuant to this act, or as appearing on any account taken thereof by the officer, and the lowest decreased gravity of such wort or wash, as taken by the officer previous to the distillation thereof, then and in every such case the officer shall keep a distinct account of every such excess quantity, and shall set forth the same in his book or books, and in his return or charge against such distiller under the head of "undue excesses;" and in case the quantity of spirits charged upon any distiller during the continuance of the licence of such distiller, exclusive of such undue excesses as aforesaid, shall be less in respect of every 100 gallons of wort or wash distilled or decreased in the distillery of such distiller, than after the rate or in the proportion of one gallon of proof spirits for every five degrees of the gravity of the wort when made from malt, or corn or grain, or any mixture thereof, or from potatoes, or any mixture thereof, or than after the rate or proportion of one gallon of proof spirits for every four degrees of the gravity of the wort when made from sugar, or any mixture thereof, which shall have been specified in any notice which shall have been delivered by any such distiller pursuant to this act, then and in every such case such distiller shall be chargeable with the quantity of spirits after the proportion aforesaid respectively which shall appear so deficient, and the officer shall, within one month after the expiration of such licence, make a return, and shall charge such distiller with duty on the quantity of spirits which shall appear so deficient, and such distiller shall pay such duty within ten days next after such return shall be made, or ought to have been made, or shall for default forfeit 20*l.*, together with a sum equal to double the amount of such duty."

Officer shall make a return on the distiller for the quantity of spirits chargeable, who shall pay the duty accordingly, on penalty of 20*l.*, with a sum equal to double the duty.

Sect. 72. "That the proper officer of Excise shall, from time to time, make out and deliver to the collector of Excise, or to such person or persons as the commissioners of Excise shall appoint to receive the same, a return of the quantity of spirits for which such distiller shall, from time to time, be chargeable with duty, and of the duty payable thereon under this act; and any such officer shall and may make out and deliver any such return or account from time to time, and at any time, and for any period, as shall be directed by the commissioners of Excise; and every such officer is hereby required in every such return to charge such distiller, and such officer shall charge such distiller, according to such of the several modes of charging prescribed by this act as shall produce the highest amount of duty; and such officer shall, if required in writing by such distiller, deliver or leave with every such distiller, or at such distillery, an account in writing, signed with his name, setting forth the quantity of spirits specified in such return, with the amount of duty thereon, and the period comprised in such return; and the return of such officer shall be a charge on every such distiller, and such distiller shall pay the duty appearing by such return, or which shall be chargeable upon and have become due and payable from such distiller, within such time and times, and in such manner, as shall from time to time be directed by the commissioners of Excise for that purpose, or shall for every default forfeit 20*l.*, together with a sum equal to double the amount of such duty."

Sect. 73. "That at the end of every distilling period every distiller

shall, under the proper hand of such distiller, or under the hand of one of such distillers, if more than one in partnership, make a true and particular entry or return in writing to the proper supervisor of the district of the whole quantity of the wort or wash which shall have been decreased from the wash backs, or distilled in the distillery of such distiller into low wines or spirits, and of the whole quantity of spirits, computed at the strength of proof spirits, which shall have been made or distilled in the distillery of such distiller within the preceding brewing and distilling period, and of the whole quantity of feints remaining undistilled; and shall at the end of every quarter of a year, if demanded by the commissioners of Excise, make a return, in such manner as aforesaid, to the commissioners of Excise, of the whole quantity of malt used by such distiller in the preceding quarter; and in case of omission, neglect, or default in the making of such respective entry or return, or if any false entry or return shall be made, every such distiller shall for every such omission, neglect, or default, and for any such false entry, forfeit the sum of 200*l*."

Sect. 74. "Provided always, that no distiller shall be compelled to travel for the making of the said entries or returns, or for the payment of the said duties, or for any other cause relating to or concerning the same, to any other place than to the market town of or nearest to the entered distillery of such distiller."

Sect. 75. "That no spirits whatever shall be received or conveyed into or kept in the stock of any distiller, other than such spirits only as shall have been distilled in the distillery of such distiller, and as shall have been conveyed thereto, according to the directions of this act, from the spirits receiver in such distillery; and if any spirits other than such only as shall have been distilled by and in the distillery of such distiller shall be received or conveyed into, or shall be kept, or shall at any time be found in the stock of such distiller contrary to this act, such distiller shall forfeit the sum of 200*l*.; and all such spirits shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 76. "That all and every distiller, rectifier, or compounder of and dealer in spirits shall and is are hereby required to keep sufficient and just scales and weights, and a one gallon measure, in his, her, or their entered warehouses, storehouses, and premises, and in every warehouse for warehousing spirits for exportation under the provisions of this act, and also to maintain the same conveniently placed and ready for use; and shall permit and suffer any officer or officers of Excise to use the same for the purpose of weighing, measuring, and taking an account of the spirits and casks, and other vessels and packages used or fit for conveying and removing spirits, which shall at any time be in the possession of such distiller, rectifier, or compounder or dealer; and if any such distiller, rectifier, or compounder or dealer shall not keep and maintain such scales and weights and measure, or either of them, or shall not permit or suffer any officer or officers of Excise to use the same as aforesaid; or if any such distiller rectifier, or compounder or dealer shall, in the weighing or measuring of any such spirits, casks, vessels, or other packages, use or cause, or procure or suffer to be used, any false, unjust, or insufficient scales or weights or measures, or shall practise any art, device, or contrivance, by which any such officer or officers may be hindered or prevented from taking the just and true weight and measure of any such spirits, casks, vessels, or other packages, then and in every such case such distiller, rectifier, or compounder or dealer, shall, for each and every such offence, forfeit the sum of 100*l*.; and all such false, unjust, or insufficient scales and weights and measures respectively shall likewise be forfeited and lost, and shall and may be seized by any officer or officers of Excise."

Sect. 77. "That all and every such distiller, rectifier, or compounder of, or dealer in or retailer of spirits shall, when and so often as he, she, or they shall be thereunto required by any officer or officers of Excise, and with a sufficient number of his, her, or their servants, aid and assist to the

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27. *Spirits.*

§ Geo. IV., c. 22.  
II. *British.*

Every distiller, &c. to make entry at the end of every distilling period, by declaring the true quantity of wash distilled and spirits made in each brewing and distilling period, and once a quarter the quantity of malt used, on penalty of 20*l*.

Distiller not to travel for making such returns, &c. except to the next market town.

No spirit shall be received into distiller's stock, except such as shall be distilled in his distillery, on penalty of 20*l*. and forfeiture of spirits.

Sufficient and just scales and weights, and a gallon measure, to be kept by distillers and rectifiers or compounders of and dealers in spirits, and officers permitted to use them; and no art to be used to deceive in weighing.

Penalty 100*l*.

Assistance to be given the officer in taking account.



27. *Spirits.*

6 Geo. IV., c. 80.

II. British.

Penalty *sol.*

Officer may take  
samples of wort,  
wash, spirits, &c.  
in any distillery.

Such samples shall  
be deemed true  
samples.

Distiller's stock  
account of proof  
spirits to be kept  
by officer.

Penalty for in-  
crease or decrease  
in such stock,  
forfeiture of  
spirits, and 20s.  
for every gallon of  
excess.

Limitations as to  
excess.

The licences, en-  
tries, notices,  
declarations, &c.  
may be in such  
form as the com-  
missioners of  
Excise shall direct.

No spirits to be  
removed from  
distillery in less  
quantity than  
eighty gallons, nor

utmost of his, her, or their power such officer or officers in weighing, measuring, and taking an account of all spirits and casks, vessels and other packages, for keeping, conveying, or removing spirits in the possession of him, her, or them, on pain of forfeiting for every neglect or refusal thereof the sum of 50*l.*"

Sect. 78. "That it shall and may be lawful for any officer of Excise, from time to time, and whenever and as often as such officer shall deem expedient so to do, to take any sample or samples of any wort, wash, low wines, feints, and spirits respectively, in any back, receiver, charger, or other vessel or utensil in the distillery of any distiller, in order that such officer may ascertain the gravity or strength of such worts, wash, low wines, feints, and spirits respectively, and from such part of any such back, receiver, charger, or other vessel or utensil as the officer shall think proper; and the gravity or strength of any such sample so taken shall be and be held to be the true and correct gravity or strength of the whole contents of the back, receiver, charger, or other vessel or utensil from which any such sample shall be so taken. Provided always, that before any such sample shall be so taken, all the liquor contained in any such back, receiver, charger, or other vessel or utensil may be stirred and mixed up and mixed together by such distiller, or any person in the employ of such distiller, if they shall think fit so to do."

Sect. 79. "That the proper officer of Excise shall, as often and at such time and times as he shall think fit, take and shall keep an account, by way of debtor and creditor, of the stock of spirits in the distillery of every distiller, and shall, in such account, credit such stock with the full quantity of spirits, computed at hydrometer proof, which shall be, from time to time, duly conveyed, pursuant to this act, into such stock, from the spirit receiver in such distillery, and shall debit such stock with the full quantity of spirits, computed at hydrometer proof, which shall be from time to time sent out of such stock under legal permit; and if at any time the quantity of such spirits which shall be found in the stock or possession of any such distiller shall be greater than the quantity of spirits which by the stock account, so kept by such officer, ought to be in the stock or possession of such distiller, all such excess quantity of spirits shall be forfeited, and may be seized by any officer of Excise, and every such distiller shall forfeit the sum of 20*s.* for each and every gallon of such excess quantity of spirits; and if at any time the quantity of spirits in the stock or possession of any distiller shall be less than the quantity of spirits which by the stock account, kept by such officer, ought to be in the stock or possession of such distiller, every such distiller shall forfeit the sum of 20*s.* for every gallon of spirits which shall be so deficient. Provided always, that no distiller shall be liable to such last-mentioned penalty in any case where such decrease shall not exceed two gallons of proof spirits *per centum* on the quantity of spirits formed by the balance left on the last stocking, and the quantity since duly brought into stock from the spirit receiver, if such last stocking be no further distant than seven days, or three gallons of proof spirits *per centum* as aforesaid if more than seven days, and such distiller shall prove, to the satisfaction of the supervisor, that such decrease did not result from any fraud practised or intended."

Sect. 80. "That the several licences, entries, notices, declarations, books, accounts, and returns required or directed by this act shall and may be in such respective form or forms as the commissioners of Excise may from time to time direct; and it shall not be necessary to prove, on the trial of any complaint or information, or on any other proceeding for any offence against this act, the particular order or direction of the said commissioners of the treasury, or commissioners of Excise, in that behalf."

Sect. 81. "That no spirits shall be sent out of or removed from the distillery or stock of any distiller at any other strength than twenty-five *per centum* or eleven *per centum* above or ten *per centum* below hydro-

meter proof, or in any less quantity than in a cask containing eighty gallons, nor without a lawful permit, expressing the true quantity and strength of such spirits; and if any spirits shall be sent out of or removed from the distillery or stock of any such distiller in any less quantity than in a cask containing eighty gallons, or without such permit as aforesaid, or being of any greater strength than the strength expressed in such permit, then, and in every such case, all such spirits, and every cask and vessel containing the same, shall be forfeited, and shall and may be seized by any officer of Excise, and such distiller shall, for every such offence, forfeit the sum of 200*l.*"

Sect. 82. "That it shall and may be lawful for every distiller in England to warehouse, for exportation only, or for removal to Scotland or Ireland, any spirits distilled in the distillery of such distiller, without payment of the duty of Excise thereon, according to the provisions of this act, and under and subject to such further rules and regulations as the commissioners of Excise shall from time to time direct or order, every such warehouse to be provided and duly entered by such distiller, and to be ceiled and constructed and secured in such manner as shall be approved of by the commissioners of Excise or supervisor of the district; and every such warehouse shall have only one door, which door shall open into a public street or road, and have three locks, one of which shall be provided by such distiller, and the key of it kept by such distiller, and the other two of such locks shall be provided by the commissioners of Excise, at the expense of such distiller, the key of one of such locks being kept by the supervisor of the district, or other officer directed by the commissioners of Excise, and the key of the other of such two locks being kept by the surveying officer of such warehouse. Provided always, that it shall not be lawful so to warehouse any spirits of any strength other than the respective strengths of twenty-five *per centum* above proof, or eleven *per centum* above proof, as denoted by the hydrometer called Sykes's hydrometer; and that all such spirits shall be contained in iron-bound casks of not less than eighty gallons content each; and that there shall be marked on each end of every cask, in letters or figures legibly cut, branded, or painted thereon, the mark or number of every such cask, the full content thereof in gallons, and the number of gallons and strength of the spirits contained therein, every such cask being full at the time of the sending of such spirits out of the distillery, for the removal thereof to such warehouse; and if any distiller or distillers warehousing spirits as aforesaid shall neglect or refuse to provide and keep any such warehouse well and sufficiently constructed and secured as aforesaid, or to provide and keep such locks and keys, or to pay the supervisor for such two locks and keys as aforesaid, for securing such spirits as aforesaid, or to enter such warehouse for that purpose at the proper office of Excise, or shall make use of any warehouse or other place for keeping spirits without being constructed and well and sufficiently secured as aforesaid, or before the same shall have been first duly entered and approved of, according to the directions of this act; or shall remove any spirits to be so warehoused, except in such full iron-bound casks, marked and numbered, and having cut, branded, or painted thereon such particulars as aforesaid; or shall put into or keep in such warehouse any other liquors or other spirits other than as provided by this act; or if any such distiller or distillers, or any other person or persons whatsoever by his, her, or their order, privity, connivance, or direction, after any such spirits shall have been removed to and secured in any warehouse for keeping such spirits for exportation, shall open any of the locks or doors in the absence of the proper surveyor or supervisor and officer of Excise; or shall make or obtain any way or kind of entrance,

**27. *Spirits.***

*s Geo. IV., c. 80.*  
II. *British.*  
without permit  
expressing strength  
thereof, on penalty  
of 200*l.* &c.

Distillers may,  
under directions of  
this act, warehouse  
spirits without  
payment of duty,  
for exportation, or  
for removal to  
Scotland or  
Ireland. (s)

Strength of the  
spirits warehoused  
to be either 25 or  
11 *per cent.* over  
proof.

The quantity and  
strength of the  
spirits to be marked  
on the cask.

If distiller shall  
open any of the  
locks in the absence  
of the officer;

or make any way  
into such ware-  
house;

(a) Sections 82 to 100 relate to spirits made in England for exportation, or to be shipped as stores; but it is thought best here to print the whole act continuously.

27. *Spirits.*

6 Geo. IV., c. 80.  
II. British.

or alter the condition thereof, without giving notice to the surveyor, and his consent be first had ;

or shall privately remove any of the spirits : he shall forfeit 500*l.*, &c.

Distiller shall give notice of his intention to warehouse spirits ; and none shall be removed into warehouse without a permit.

Officers shall attend removal of spirits, and take stock of distillers.

Officer at the warehouse shall take account and give receipts for spirits warehoused, and take samples,

or access, into any such warehouse, or shall remove any part whatever of the partition between any warehouse or warehouses for keeping spirits, and any other place or places whatsoever next thereunto adjoining ; or shall, after any such warehouse shall have been so approved of as aforesaid, make any addition to or in any way alter the same without notice first given to the proper supervisor of Excise, of such intended addition to or alteration in such warehouse, and his consent in writing first had and obtained for the same ; or shall remove any of the said spirits from any locked warehouse to any other warehouse, or to be put on shipboard and exported or otherwise removed, except as provided by this act ; or shall by any art, contrivance, or device whatsoever privately remove, convey away, or conceal, or cause, procure, or suffer to be privately removed, conveyed away, or concealed, any of the spirits, either before the same are put into the warehouse or warehouses, or afterwards, then and in each and in every such case such distiller and other person and persons for every such offence shall forfeit and lose the sum of 500*l.* ; and all such spirits deposited, removed, or concealed contrary to the provision of this act shall be forfeited, and shall and may be seized by any officer or officers of Excise."

Sect. 83. "That when and as often as any such distiller shall intend to warehouse spirits for exportation or removal as aforesaid, he shall give two days' notice in writing to the officer or officers of Excise surveying the distillery of such distiller, and also to the proper officer of Excise surveying such warehouse, of such his intention ; in which notice shall be set forth the mark, number, and full content in gallons of each cask, and the number of gallons and strength of spirits contained therein, which such distiller intends to warehouse, and the day and hour of the day on which such distiller intends to commence the removal of such spirits out of the stock of such distiller to such warehouse. Provided always, that no such removal of any spirits shall be allowed without a permit being first granted to accompany the same according to law ; and no such removal shall take place except upon the day mentioned in such notice as aforesaid, nor upon any Excise-office holiday ; nor shall such removal be commenced at any time of the day before the hour of nine in the forenoon, or continued after the hour of two in the afternoon."

Sect. 84. "That the officer of Excise to whom any such notice shall have been given shall attend at the spirit stock of every such distiller at the time mentioned as aforesaid in such notice, and such officer shall ascertain the quantities and strengths of all such spirits as shall be in the possession or stock of such distiller in such manner as shall be directed by the commissioners of Excise, and of the spirits proposed or intended to be sent out of such stock, and shall compare the marks and numbers, and the several particulars cut, branded, or painted, as aforesaid, on the several casks in which such spirits shall be contained, with the marks and numbers and particulars described and set forth in the notice for the warehousing of such spirits ; and every such officer shall or may continue in the place where such stock is kept until the whole of the spirits of which such notice shall be given shall be removed out of the stock of such distiller, under permit as aforesaid ; and immediately after the removal of such spirits, such officer shall take stock on such distiller, in such manner as shall be directed by the commissioners of Excise, and set forth in the stock book the alteration in such stock found after the removal of such spirits."

Sect. 85. "That immediately on the arrival of such spirits under permit as aforesaid at the warehouse, the proper officer surveying such warehouse shall take an account of the contents of every cask, by gauge, or weight and temperature, as he may think fit, or as may be ordered by the commissioners of Excise, and the strength of the spirits contained therein, and shall enter an account thereof, with the mark and number of each such cask, in a book to be by him kept for that purpose, and shall

also take a sample of half a pint of such spirits, drawn from every such cask, and keep the same labelled, with all such particulars as aforesaid, until three months after the whole of such spirits as shall be delivered from such warehouse for exportation shall be exported, and shall then deliver the same to such distiller; and such officer shall, after taking such account as aforesaid, deliver to the distiller or person requiring the same, for the use of such distiller, a certificate specifying the mark and number of each of the several casks, with the several particulars so found by him as aforesaid, with the day of the month and year when such spirits were warehoused as aforesaid."

Sect. 86. "That such certificate shall be forthwith delivered over by every such distiller to the officer surveying the distillery of such distiller, and upon the delivery of such certificate it shall be lawful for such officer to deduct from the number of gallons of proof spirits for which such distiller shall then be charged or chargeable with duty for the next ensuing payment the number of gallons computed at proof so warehoused, and to return the charge of duty so payable as aforesaid, against the distiller to the commissioners or collector of Excise, for the remaining number of gallons, which shall be a charge against such distiller accordingly; and every such officer shall annex to such return such certificate as aforesaid, as his voucher for having made such deduction as aforesaid."

Sect. 87. "That it shall be lawful for the distiller or proprietor of any such spirits so lodged in any warehouse as aforesaid, in the presence of the proper officer, who is hereby required when requested to attend at all reasonable times for that purpose (but not oftener than once in twenty-four hours), to view, examine, and show for sale such spirits, or any part thereof, and to examine the state of the casks, and to prevent leakage or drainage therefrom."

Sect. 88. "That it shall and may be lawful for any distiller or other proprietor of spirits warehoused as aforesaid, under the provisions of this act, to cause any cask or casks of spirits belonging to such distiller or proprietor, and which such distiller or proprietor shall require to be delivered out for exportation or removal, pursuant to the provisions of this act, to be filled up if necessary (in the presence of the surveying officer, or such other person as the commissioners of Excise shall appoint) from or out of any other cask or casks of spirits belonging to such distiller or proprietor, and which shall then be in such warehouse; and in case any part of the contents of any such cask shall remain after the filling up of any other cask or casks, the said cask, part of whose contents shall have been so used in filling, shall be kept apart for the like purpose, or if reduced below twenty gallons shall be delivered into the dealer's stock of any such distiller, on his or her payment of duty on such residue."

Sect. 89. "That in case the quantity of any spirits computed at proof which shall have been or shall be lodged in any warehouse as aforesaid shall at any time or by any means fall short or be deficient of the actual quantity so computed which was so warehoused, after allowing for so much and such part of such spirits so computed as shall have been duly exported or removed, the distiller or proprietor of such spirits shall be subject and liable to pay the full duties for home consumption upon such spirits for and in respect of the quantity so found deficient as aforesaid, and shall pay and satisfy the same upon demand, before any other of the spirits so warehoused then remaining shall be permitted to be taken out of such warehouse; and all such spirits so remaining shall be subject to the duties on the quantity so deficient, and shall and may be sold by the commissioners of Excise for exportation, for payment of the same and of other charges, paying over the surplus, if any, to the person who warehoused such spirits, or his assigns."

Sect. 90. "That spirits so warehoused may be removed at the desire of the distiller or proprietor thereof, and at his sole risk, as well of the value thereof as of the duties thereon, from the warehouse, at any one place in the united kingdom, to the like warehouse at any other place in

*27. Spirits.*

6 Geo. IV., c. 80.  
II. *British.*

Such receipt shall be delivered by distiller to the officer, who shall give credit for the same in the charge against distiller.

Distiller may view and show his spirits in warehouses.

Ullage casks may be filled up in warehouse.

Distiller shall be liable to pay duty on deficiency of spirits in warehouse.

Warehoused spirit may be removed from one warehouse to another for exportation to foreign parts only.

27. *Spirits.*

s Geo. IV., c. 80.  
II. British.

Spirits distilled in England may be sent to Scotland or Ireland, and spirits distilled in Scotland or Ireland may be sent to England; and upon arrival such spirits shall be dealt with as spirits of that country.

Spirits sent from England to Scotland or Ireland, or from Scotland or Ireland to England, to be taken from warehouse.

Penalty on removal of spirits, except from warehouse with a permit, &c.

the united kingdom, for the purpose of exportation only to foreign parts, under such security and regulations as the commissioners of Excise shall from time to time order in respect thereof, and upon payment of the duty on all deficiencies found before such spirits are removed."

Sect. 91. "That it shall and may be lawful to remove, subject to the provisions of this act, from England to Scotland or Ireland, spirits distilled in England, or to remove, subject as aforesaid, from Scotland or Ireland respectively to England, spirits distilled in Scotland or Ireland respectively, any thing in any other act or acts to the contrary thereof in anywise notwithstanding; and all such spirits so removed shall, on arrival in England, Scotland, or Ireland respectively, be dealt with in all respects as if the same had been distilled and made in the country into which the same are so removed; and the person or persons to whom the same shall be sent for sale shall have the same privileges and be subject to the like licence, regulations, and penalties in respect of such spirits, as dealers in spirits in the country into which such spirits shall be imported or brought, and as if such spirits had been distilled within the same."

Sect. 92. "That no spirits, whether medicated or mixed with any other ingredient or ingredients or not, which shall be made or distilled in England, Scotland, or Ireland respectively, shall be removed or sent from either Scotland or Ireland into England, or from England into Scotland or Ireland, except such spirits only as shall, for the purpose of such removal, be taken from and out of a warehouse in which the same shall be then warehoused, without payment of duty; and that before any such spirits shall be delivered out of such warehouse for that purpose, the proprietor or proprietors or person or persons who shall propose or intend to take out and ship such spirits for such removal as aforesaid shall give two days' notice in writing to the surveying officer of Excise of such warehouse in England, Scotland, or Ireland respectively, of the time when he, she, or they shall propose or intend to take out such spirits from such warehouse, and shall specify in every such notice the number of casks intended to be so removed, and also the mark and number of each cask, the full content thereof in gallons, and the strength and quantity of the spirits contained therein, and the total quantity of spirits to be so removed, the name of the vessel and of the master thereof, or of the carriage or conveyance, by which such spirits are to be so removed, the name of the port or place at which such spirits are to be shipped, and of the port or place to which such spirits are to be removed, and of the person or persons at such last-mentioned port or place to whom the same are to be sent; and every such officer shall, upon the receipt of such notice, be authorized to examine every such cask, and ascertain the truth of the several particulars aforesaid, and the temperature and strength of such spirits, and the quantity of spirits contained in each of such casks, either by gauge or by taking the weight thereof, and shall, after receipt of the certificate of payment of duty, hereinafter mentioned, when such spirits are intended to be so removed for consumption, and upon and according to the request in writing of such proprietor or proprietors, person or persons as aforesaid, specifying the several particulars aforesaid, grant a permit for the removal of such spirits as aforesaid, expressing in or by indorsement of such permit the several particulars as aforesaid, of the total number of casks, the mark, number, content, and ullage of each such cask, the temperature, quantity, and strength of the spirits contained therein, the total quantity of spirits, and the names of the ship and master, or conveyance, and of the ports or places of shipment and destination, and name or names of the person or persons to whom such spirits are intended to be sent, and shall forthwith transmit by post a duplicate of such permit to the principal officer of Excise at the port or place nearest thereto, to which such spirits are so to be sent; and if any such spirit shall be removed from England into Scotland or Ireland respectively, or from Scotland or Ireland into England, except spirits so taken from warehouse, and duty paid as aforesaid, or otherwise than as aforesaid, or not accompanied by such

permit as aforesaid, or in any greater quantity, or of greater strength, or in casks of any greater number or less content than shall be expressed in such permit, all such spirits, together with the casks containing the same, shall be forfeited, and shall and may be seized by any officer or officers of Excise; and the person and persons so offending shall for every such offence forfeit and lose the sum of treble the value of such spirits, including the duty aforesaid, or of 200%, at the election of the commissioners of Excise, or the person who shall inform or sue for the same."

Sect. 93. "That after such account shall have been taken as aforesaid, and before any such spirits shall be delivered out of any such warehouse for such removal for consumption, the distiller or proprietor intending to remove the same shall pay to the collector of Excise or other person employed by the commissioners of Excise to receive the same the full duty of Excise payable on British spirits distilled in England, for and in respect of all such spirits intended to be so removed, whether such spirits shall have been distilled and shall then be warehoused in England, Scotland, or Ireland, and shall be intended to be removed from England into Scotland or Ireland, or from Scotland or Ireland into England; and such collector of Excise or other officer shall, upon request, sign and give to such distiller or proprietor a certificate of such payment of duty."

Sect. 94. "Provided always, that on the delivery from the warehouse of any spirits distilled or made in Scotland or Ireland for the removal thereof by sea to England for consumption, it shall and may be lawful for the commissioner and commissioners and assistant commissioners and collectors of Excise respectively in Scotland or Ireland to receive and they are hereby respectively authorized to receive and accept from the person or persons to whom such spirits shall be delivered from the warehouse for such removal, in lieu of the whole of the duty by this act made payable thereon, so much thereof as shall be equal to the amount of duty payable on such spirits when delivered for consumption in Scotland or Ireland respectively, together with a bond, with such good and sufficient surety or sureties as shall be satisfactory to the said commissioner or commissioners, or assistant commissioners or collectors respectively, as the case may be, for the due shipment and removal of such spirits as aforesaid, and for payment of the residue of the said duty on the quantity of spirits so delivered from the warehouse for such removal, within two months from the date of such bond, or within twenty-one days after the arrival of such spirits, or any part thereof, in England, whichever shall first happen; and that upon the payment of the residue of such duty, according to the condition of such bond, being certified by the officer of the port in England where the said residue of duty shall be paid, which certificate such officer is hereby required to grant without fee or reward, to the commissioner or commissioners, and assistant commissioners of Excise in Ireland or Scotland, every such bond shall be cancelled; any thing in this act contained to the contrary thereof notwithstanding."

Sect. 95. "That upon the distiller or proprietor of such spirits, or some person on behalf of such distiller or proprietor, producing to the officer surveying the warehouse the certificate from the collector or other person as aforesaid of the payment of such duty as aforesaid, where such spirits are intended to be so removed for consumption, and such permit having been requested and granted as aforesaid, such officer shall deliver such spirits as shall be mentioned in such certificate and permit to be so removed; and that no such removal shall take place on any Excise-office or Custom-house holiday, or commence at any time of the day before the hour of nine in the forenoon, or continue after the hour of two in the afternoon; and all such spirits shall be shipped, removed, carried, or conveyed to the place of destination mentioned in such permit, and delivered there, in the same casks in which they were originally warehoused, with the marks, numbers, and notes of the contents as aforesaid branded, cut, or painted thereon, except in cases of damaged or leaky casks, which may be changed, with the leave of any commissioner of Excise, or of the surveyor or supervisor

27. *Spirits.*

6 Geo. IV., c. 20.  
11. British.

No such spirits shall be so removed for consumption without payment of English duty before delivery from the warehouse.

Certificate thereof by collector of Excise.

On delivery of spirits from the warehouse in Scotland or Ireland for removal to England, part only of the duty may be paid, with bond for payment of the residue in England within two months from the date of the bond, or 21 days after the arrival of the spirits in England, whichever shall first happen.

On production of collector's certificate of payment of duty, warehouse-keeper shall deliver the spirits to be removed.

27. *Spirits.*

6 Geo. IV., c. 86.  
II. British.

No British spirits to be sent from England, Scotland, or Ireland, or either of them, except as herein mentioned; or in vessels of not less than 40 tons, or in casks containing 50 gallons at the least.

Entry to be made of spirits brought from either country into the other, and the spirits landed, in ten days.

Commissioners to cause such spirits to be publicly sold.

The commissioners may reward the officers not exceeding 2s. per gallon, if spirits be destroyed. On spirits sent from England to Scotland or Ireland duty paid, the difference between the English and Scotch or Irish duty shall be repaid on the quantity landed.

The number of casks, and the particular number and mark of each, to be inserted in the entries.

Spirits made entirely from malt shall be warehoused separately, and shall not be removed to England unless on repayment of allowance.

of the district, and like marks, numbers, and notes shall be branded, cut, or painted on the head of each new cask as had been branded or cut on the leaky or damaged casks respectively, except as varied by any difference of content, ullage, temperature, or strength.

Sect. 96. "That no spirits made in England, Scotland, or Ireland shall be shipped or carried, conveyed or removed, from England to Scotland or Ireland, or from Scotland or Ireland to England, otherwise than as provided and directed by this act, or in any ship or vessel of any less burden than fifty tons, or in any cask or vessel, except a cask which shall contain eighty gallons of such spirits at the least, on pain, in addition to all other penalties and forfeitures, of the forfeiture of all such spirits as shall be so shipped or removed, carried or conveyed, contrary to any or either of the prohibitions aforesaid, together with the casks or packages containing such spirits, and the ship, vessel, or boat, horses, cattle, and carriages employed in such removal thereof, and such spirits, casks, packages, ship, vessel, boat, horses, cattle, and carriages shall and may be seized by any officer or officers of Excise."

Sect. 97. "That the proprietor or proprietors of any spirits removed by sea from England into Scotland or Ireland, or from Scotland or Ireland into England, shall, within ten days next after the arrival of the ship or vessel wherein any such spirits shall be so removed within the port into which such spirits shall be brought, make due entry with the collector of Excise of the said port of all such spirits on board such ship or vessel, and deliver to such collector such certificate of payment of duty thereon, or permit, as aforesaid, and shall then land all such spirits; and if such proprietor or proprietors shall neglect or refuse, for such ten days as aforesaid, to make such entry, and deliver such certificate of payment of duty as aforesaid, or to land such spirits as aforesaid, such spirits shall be forfeited, together with the casks and packages containing the same, and shall and may be seized by any officer or officers of Excise; and the commissioners of Excise shall cause such spirits to be publicly sold to the best bidder, at and for a price not less than the amount of such duties as aforesaid, at such places as they shall think proper; and if such spirits will not produce a price equal to the amount of the duties payable on such spirits, they shall be destroyed in such manner as the said commissioners of Excise shall think proper, and a reward shall be paid to the seizing officer or officers not exceeding two shillings per gallon, over and above all expenses, in lieu of all other allowances; and if all such spirits shall be duly landed according to the provisions of this act, the proper officer at such port shall deliver to the proprietor or proprietors thereof a certificate thereof, and the commissioners of Excise shall, upon production of such certificate of payment of duty or permit as aforesaid, and of such other certificate of the landing of such spirits as last aforesaid, thereupon cause to be repaid to the proprietor of all such spirits as shall be so removed from England into Scotland or Ireland, and on which the Excise duty payable in England has been duly paid for and in respect of every gallon of such spirits computed at proof, the difference between the amount of the duty so paid and the duty payable in the country into which such spirits shall be so brought."

Sect. 98. "That in all such entries so to be made, the number of casks and other packages containing such spirits, with the particular numbers and marks of each of them on board of each respective ship or vessel in which the same shall be so brought, shall be inserted, on pain for every neglect or refusal thereof to forfeit all such spirits, with the cask or other package wherein the same shall be contained, and the same shall and may be seized by any officer or officers of Excise."

Sect. 99. "Provided always, that no spirits which shall be or shall have been made or distilled in Scotland or Ireland respectively from unmalted corn or grain, mixed or unmixed with malt, shall be taken out of any warehouse, store, or place for removal to England, unless such spirits were made and warehoused by some distiller having, at the time when such spirits were so

made and warehoused, no spirits made from malt only, or on which any allowance shall be or shall have been made in respect of the duty on such malt in his or her stock or possession or in such warehouse, and which shall be so certified by the proper officer at the time of warehousing, and also at the delivery thereof; nor shall any spirits made or distilled in Scotland or Ireland from malt only, or in respect of which any allowance as aforesaid has been or shall be made, paid, or received, be removed to England until the allowance so made shall have been repaid by the proprietor of such spirits to the commissioners of Excise, or such person as they shall order or direct to receive the same; and if any person or persons shall take out of any warehouse, store, or place any spirits made from unmalted corn or grain mixed or unmixed with malt for such removal, which were not made and warehoused by such distiller as aforesaid, and shall not be so certified as aforesaid, or shall remove any spirits made from malt only, or on which any such allowance as aforesaid has been made or shall be made as aforesaid, to England, without first repaying such allowance thereon as aforesaid, all such spirits shall be forfeited, and shall and may be seized by any officer or officers of Excise; and every person so offending shall for every such offence forfeit and lose the sum of 20*s.* per gallon for every gallon of such spirits so taken out or removed, or 100*l.*, at the election of the commissioners of Excise or person who shall inform or sue for the same."

Sect. 100. "That it shall and may be lawful to deliver in casks of not less than eighty gallons, from any such warehouse as aforesaid, any spirits lodged and secured therein as aforesaid, for the purpose of being shipped as stores, and of being consumed upon any outward and homeward voyage to or from parts beyond the seas, without payment of the duty of Excise, subject nevertheless, except as aforesaid, to the conditions, regulations, restrictions, and securities required by any act or acts in force in Great Britain relating to the shipping of rum as stores." (*a*)

Sect. 101. "And to remove all doubts respecting the denomination of spirits, and of spirits of different distillations, be it further enacted, that all spirits distilled or made in England, or distilled or made in Scotland or Ireland and imported into England, shall be deemed and called British spirits; and that all spirits of the first extraction, drawn or produced by one distillation of wash, shall be deemed and called low wines; and that all spirits produced by the redistillation of low wines, or any further redistillation, and which shall be conveyed into or kept in any feints receiver, shall be deemed and called feints; and that all other spirits produced by redistillation, and which shall not have had any flavour communicated thereto, and all liquors whatsoever which shall be mixed or mingled with any such spirits, shall be deemed and called plain British spirits; and that all other spirits produced by redistillation, and which shall have had any flavour communicated thereto, and all liquors whatsoever which shall be mixed or mingled with any such spirits, shall be deemed a British compound called British brandy; and that all other spirits produced by redistillation, and which shall have been distilled or mixed with juniper berries, carraway seeds, anniseeds, or any other seeds, preparation, or ingredient whatsoever used in the compounding of spirits, and all liquors whatsoever which shall be mixed or mingled with any such spirits, shall be deemed and called British compounds; and that all British spirits of the strength of forty-three *per centum* above proof, as denoted by the hydrometer called Sykes's hydrometer, and all spirits of a greater or higher degree of strength, shall be deemed and called spirits of wine; and if any question shall arise, whether any spirits removed by any permit are *bonâ fide* such British spirits, plain British spirits, or British compounds of any particular sort or kind, or spirits of wine respectively, as are described and specified in the permit accompanying the same, or granted for the removal thereof, although such spirits shall appear to have been kept

27. *Spirits.*

6 Geo. IV., c. 80.  
11. British.

Penalty for removal of spirits, &c., forfeiture of spirits, 20*s.* for every gallon of spirits taken, or 100*l.*

Warehoused spirits may be shipped as stores without payment of duty, under like conditions as rum is allowed to be shipped as stores.

Denominations of spirits of different distillations.

Proof of spirits removed being such as described in the permit to lie upon the owners.

(*a*) These and the provisions commencing at section 82, more particularly relate to spirits made for exportation.



27. *Spirits.*

6 Geo. IV., c. 80.  
II. British.

Penalty on rectifiers, &c. having in their custody any wort, &c. or distilling the same into low wines or spirits, or receiving spirits without a legal permit, 500*l.* &c.

Second offence, forfeiture of licence.

No person to be deemed a rectifier, &c. who has not at least one still of 120 gallons content; and no person to carry on the business of a rectifier, &c. contrary hereto.

Rectifiers or compounders having conveyances to or from stills not hereby permitted, or not paying for locks and fastenings for securing the charge and discharge cocks, or opening or breaking locks or fastenings, shall forfeit 20*l.*

account of in the officer's books, or account of stock from which such spirits were removed, by the same name or description as is specified in such permit, the proof that such spirits are really and *bonâ fide* of the sort specified in such permit shall lie upon the owner or claimer thereof, who shall prove the same by the oaths of two credible witnesses, being skilful and experienced persons, competent to decide by examination thereof."

Sect. 102. "That if any rectifier or compounder of spirits shall have in his, her, or their custody or possession any wort, wash, or other fermented liquor, or materials prepared or fit for the purpose, or capable of being distilled into low wines or spirits, or shall distil or extract any low wines or spirits from wort, wash, or other fermented liquor or materials, not being British spirits, or colonial spirits, lawfully received into stock to be rectified or compounded; or shall have in his custody or possession any spirits whatsoever, without having received and delivered to the proper officer a legal permit with and for the same; or any foreign or colonial spirits, except colonial spirits for the purpose of being rectified or compounded, and sold by such rectifier or compounder as and for spirits of wine or compounded spirits; every such rectifier or compounder of spirits shall (over and beside all other penalties and forfeitures) forfeit and lose for every such offence the sum of 500*l.*, or the sum of 20*s.* for each and every gallon of such wort, wash, or other fermented liquor, or materials prepared or fit for the purpose, or capable of being distilled into low wines or spirits, or of the low wines or spirits so distilled as aforesaid, or of the spirits received without being accompanied with a true and legal permit, delivered to the proper officer as aforesaid, or of the foreign or colonial spirits, except as aforesaid, as the case may be, at the election of the commissioners of Excise, or of the person who shall sue or prosecute for such penalty; and the licence of every rectifier or compounder of spirits who shall be a second time convicted of any of the offences aforesaid shall upon such second conviction be deemed void to all intents and purposes; and such rectifier or compounder shall not be capable of receiving any further or renewed licence as a rectifier or compounder of spirits for the period of three years from the date of such second conviction."

Sect. 103. "That no person or persons shall be deemed a rectifier or compounder of spirits, within the meaning of this act, who shall not have at least one entered still capable of containing in the body thereof, exclusive of the head, 120 gallons at the least, nor unless such still shall have a suitable worm and worm tub affixed thereto, and shall be really and *bonâ fide* used for the rectifying or making of British compounds for sale by such person or persons; and any person who shall carry on the business of a rectifier or compounder of spirits, contrary to the directions of this act, shall be subject and liable to and shall incur all the penalties and forfeitures by this act inflicted on persons using or working any unlicensed still."

Sect. 104. "That no rectifier or compounder of spirits shall have or keep any opening, fixed pipe, or other conveyance whatever, leading to any still or stills belonging to or used by such rectifier or compounder, other than and except one charging pipe to each such still; nor shall have or keep any opening, fixed pipe, or other conveyance whatever, leading from any such still or stills, save and except the discharge cock to each still respectively belonging, and the head of such still terminating in the worm; and proper locks and fastenings shall be provided and maintained by the proper supervisor of the district, at the expense and charge of every such rectifier or compounder, for properly and sufficiently locking and securing the charge and discharge cock of each and every still respectively used by such rectifier or compounder, which locks and fastenings shall be locked and sealed by the proper officer of Excise, and shall be and remain always so locked and sealed when the still is at work; and if any such rectifier or compounder shall have or keep any such opening, fixed pipe, or other conveyance (not before excepted) leading to or leading from such still or stills, or shall refuse to pay for and maintain such locks and

fastening as aforesaid, or shall prevent or hinder the officer from affixing any lock or fastening as aforesaid, or shall wilfully open, break, or damage, or cause or suffer to be opened, broken, or damaged, any of such locks, seals, or fastenings as aforesaid, every such rectifier or compounder shall for every such fixed pipe, opening, or conveyance (not before excepted), and for every such lock, seal, or fastening, forfeit and lose the sum of 200*l.*"

Sect. 105. "That every such rectifier or compounder of spirits shall, before beginning to draw off any spirits from any still or stills, charge the same with a quantity of liquor, in the proportion of not less than seven parts in ten of the whole quantity of liquor which any such still, including the head, is capable of containing; and every such still shall remain and continue so charged until the rectifier or compounder shall begin to draw off spirits therefrom; and every such still shall be worked off within sixteen hours, to be computed from the time of the officer's taking the gauge thereof respectively; and if any such rectifier or compounder shall begin to draw off any spirits from any still or stills not so charged, or shall not work off the same respectively within such sixteen hours, such rectifier or compounder shall forfeit and lose the sum of 100*l.*"

Sect. 106. "That every such rectifier or compounder of spirits shall take off, or cause to be taken off, the head or heads of any still or stills, except any still or stills whose head is soldered or permanently fixed to the body of such still, when and so soon as any such still or stills shall have ceased to be worked; and the head or heads of such still or stills shall in no case, nor on any pretence, or on any account, be put on such still or stills, until each such still shall be again charged and ready to work, nor shall any still be again worked by any rectifier or compounder until the officer shall have examined the quality of the spirits then in each such still; and if any such rectifier or compounder shall neglect to take off each and every head from each respective still, except as aforesaid, within twelve hours after each such still shall have ceased to be worked, or shall in any case, or on any pretence or account whatsoever, put on any such head or heads on any still or stills before such still or stills shall be charged and ready to work, or shall work any still or stills before the officer shall have examined the quality of the spirits then in such still or stills, every such rectifier and compounder so offending shall for each and every such offence forfeit and lose the sum of 100*l.*"

Sect. 107. "And for the more effectually preventing the receiving or buying by any person whomsoever of spirits from persons privately distilling or unlawfully importing or landing the same, be it further enacted, that if any rectifier or compounder or any dealer in or retailer of spirits, or any other person whomsoever, in any part of England, shall receive or buy or shall procure or employ any person to receive or buy any spirits from any person or persons whomsoever, except from some licensed distiller, rectifier, or compounder of spirits, whose name shall be painted over the outward door of his stillhouse, storehouse, warehouse, shop, cellar, vault, or other place, in manner required and directed by this act, or from some licensed dealer in or retailer of spirits, or at some public sale of spirits condemned and sold under the direction of the commissioners of Excise or Customs, every such person so offending shall for every such offence forfeit and lose the sum of 500*l.* Provided always nevertheless, that nothing herein contained shall extend or be construed to extend to make any person or persons liable to the aforesaid penalty of 500*l.* for or by reason of the receipt or purchase of any foreign or colonial spirits, or British spirits, brought into England from Scotland or Ireland, under the provisions of this act, whilst the same shall be lying openly on the lawful quays on which such spirits respectively shall have been first landed upon the importation thereof or removal thereof from Scotland or Ireland, or in any warehouse or warehouses in which such foreign or colonial spirits shall be or may have been deposited by such seller according to law; every such

27. *Spirits.*

6 Geo. I v., c. 20.  
II. British.

Rectifiers or compounders who do not charge their stills as herein directed, or work them off within sixteen hours, to forfeit 100*l.*

Rectifiers or compounders shall cause the heads of their stills to be taken off so soon as the same shall cease to be worked, &c. on penalty of 100*l.*

Any rectifier or compounder, or dealer or retailer, or other person, receiving or buying spirits from any but licensed distillers or rectifiers or compounders or dealers in or retailers of spirits, or at the public sales of condemned spirits, shall forfeit 500*l.*

But this penalty not to extend to the purchase of spirits whilst on the quays, or in the warehouses in which lodged on importation.

27. *Spirits.*

6 Geo. IV., c. 80.  
11. British.

Officers may enter all places used by rectifier or compounder or dealer in or retailer of spirits, and may take account and take samples paying for them the usual price.

Officers to take an account of the stocks of rectifiers or compounders or dealers as often as they may think fit; and if any excess be found, it shall be forfeited, and distillers, &c. shall also forfeit 20s. per gallon.

Spirits produced from rectifiers' stills at work when stocks are taken to be afterwards added.

No rectifier, compounder, dealer, or retailer receiving spirits shall break bulk till the officer to whom notice shall be given take an account of the strength and quantity.

seller of British spirits imported into England from Scotland and Ireland respectively being at that time duly licensed under this act as a dealer in spirits."

Sect. 108. "That it shall and may be lawful to and for all and every the officers of Excise, from time to time and at all times by day or by night, upon his or their request, but if in the night in the presence of a constable or other officer of the peace, to enter into all and every the houses, warehouses, storehouses, rooms, shops, cellars, vaults, and other places made use of by any rectifier or compounder of, or dealer or dealers in, or retailer or retailers of spirits for the laying or keeping of any spirits; and by tasting, weighing, gauging, or otherwise, to take an account of the quantity and quality and strength respectively of all or any such spirits which shall at any time be in his, her, or their custody or possession, and to take at any time or times a sample or samples of any such commodities, paying for the same the usual price thereof, if demanded."

Sect. 109. "That every officer of Excise shall, as often and at such times as he may think fit, take an accurate and true account of the quantity and strength of all spirits in the stock, custody, or possession of all and every rectifier or compounder of or dealer in spirits, and shall compute the same at the strength of hydrometer proof; and if, after making allowance for the spirits for which permits shall have been granted since the last account taken of the stock of such rectifier or compounder or dealer, computing the same at the strength aforesaid, it shall be found that the quantity of spirits remaining in the stock, custody, or possession of such rectifier or compounder or dealer shall exceed the quantity for which such rectifier or compounder or dealer shall have credit in the books of the proper officer, whether such credit shall have arisen from what was on hand at the last preceding account taken, or from what may have been lawfully received subsequent thereto, such excess shall be deemed and taken to be spirits illegally received, and a quantity of spirits of the like kind, equal to such excess, shall and may be seized out of any part of the stock of such rectifier or compounder or dealer by any officer or officers of Excise; and the rectifier or compounder or dealer in whose stock, custody, or possession such excess shall be found shall forfeit and lose the sum of 20s. per gallon for every gallon of such excess; and if there be any decrease in such stock, not duly accounted for, by spirits sent out with permit, and exceeding five *per centum* on the balance or stock left on hand at the last preceding account, together with the quantity since lawfully received, the rectifier or compounder or dealer in whose stock such decrease is found shall forfeit and lose the sum of 20s. per gallon for every gallon of such deficiency."

Sect. 110. "Provided always, that if any still of any rectifier or compounder of spirits shall happen to be charged and at work at the time when any officer shall take account of the stock of any such rectifier or compounder, then and in every such case all the spirits produced from that charge of the still shall be kept separate and apart from the rest of such stock till the account of the rest of such stock shall have been completely taken, after which the spirits of or produced from that charge shall be added to such stock."

Sect. 111. "That no rectifier or compounder of or dealer in spirits receiving any spirits, or any retailer of spirits receiving any spirits of any less quantity than a cask containing eighty gallons, into his, her, or their custody or possession, shall break bulk, or draw off any part thereof, or add water or any thing thereto, or in any respect alter the same, or tap or open any of the casks so received, or alter or change any of the packages containing any spirits, or the spirits therein removed, until the proper officer or officers of Excise shall have taken an account of the strength and quality thereof; and every such rectifier or compounder or dealer or retailer as aforesaid, shall, on the receipt of any spirits, give notice thereof to the proper officer of Excise, and shall deliver to such officer the permit

received by them with such spirits, whereupon such officer shall attend and take an account of the strength and quantity of such spirits; and if any such rectifier or compounder, dealer or retailer, who shall receive any such spirits as aforesaid into his, her, or their custody or possession, shall fail to give such notice and deliver such permit as aforesaid, or shall break bulk, or draw off any part of such spirits, or add water or any thing thereto, or in any respect alter the same or tap or open any of the casks or alter or change any of the packages containing any such spirits, or the spirits therein removed, until the proper officer or officers of Excise shall have taken an account of the strength and quantity thereof, all such spirits, or a quantity equal thereto, shall be forfeited, and shall and may be seized out of any part of the stock of such rectifier or compounder, dealer or retailer, by any officer or officers of Excise; and every such rectifier or compounder, dealer or retailer, so offending, shall for every such offence forfeit and lose the sum of 200*l.* Provided always, that in case the proper officer of Excise shall neglect to attend, for the purpose of taking such account as aforesaid, within two hours after receiving such notice, no forfeiture or penalty shall be incurred for any such offence."

Sect. 112. "That in all cases where the strength of any part of the stock of any rectifier or compounder of spirits, or any dealer in or retailer of spirits, by being mixed or compounded with any sugar, syrup, seeds, fruit, or any other ingredients or materials, cannot be easily ascertained by the hydrometer, every such rectifier or compounder, dealer and retailer, shall immediately, or on being required by an officer or officers of Excise, cause the true quantity and degree of strength of such spirits so mixed to be legibly marked on the outside of the cask or casks or vessel or vessels containing the same respectively; and if the strength of such spirits shall be found to have been untruly marked by such rectifier or compounder, dealer or retailer, on the outside of such cask or casks or vessel or vessels, or if such rectifier or compounder, dealer or retailer, shall, upon being required by the officer or officers of Excise as aforesaid, neglect immediately to mark the quantity and degree of strength of such spirits as aforesaid, or not continue such mark until all the spirits in such cask or vessel shall be removed and taken therefrom, such spirits, syrup, seeds, fruit, and other ingredients, together with the casks and vessels containing the same, shall be forfeited, and shall and may be seized by any officer or officers of Excise, and every such rectifier or compounder, dealer or retailer, shall also for each and every such offence forfeit and lose the sum of 50*l.* Provided always, that no such penalty shall be incurred by any dealer or retailer who shall mark on any such cask of compounds, as the strength of the spirits therein contained, the strength expressed in the permit with which the same were received by such dealer or retailer into stock, no alteration having been since made therein."

Sect. 113. "That it shall and may be lawful for any rectifier or compounder of spirits to sell and send out, accompanied with a true and lawful permit, to any person or persons, any quantity not being less than two gallons of compounded spirits at any strength not exceeding 17 *per centum* under hydrometer proof; and to any person any quantity not being less than two gallons of spirits of wine; and that if any plain British or colonial spirits, not being spirits of wine, or if any other spirits, not being compounded spirits, or if any compounded spirits, except by permit, and of such strength as aforesaid, and not being less than two gallons at any one time, shall be sold or sent out by any rectifier or compounder of spirits, contrary to this act, all such spirits, with the casks or other packages containing the same, and all horses, cattle, carriages, and boats made use of in removing such spirits, shall be forfeited, and may be seized by any officer or officers of Excise."

Sect. 114. "That all spirits of wine shall be made and kept of the strength of 43 *per centum* over hydrometer proof at the least; and that the actual and true strength of all spirits of wine shall be expressed and

27. *Spirits.*

8 Geo. IV., c. 80.  
11. British.  
Penalty on default,  
forfeiture of the  
spirits and 200*l.*

Rectifiers or compounders, dealers and retailers, not marking the quantity and strength of mixed or compounded spirits on casks, or marking them untruly, to forfeit the same and 50*l.*

Rectifiers, &c. may send out compounded spirits at any strength not exceeding 17 *per centum* under proof, and also spirits of wine, and not in any less quantity than two gallons, but no other spirits.

Strength of spirits of wine 43 *per centum* over proof at the least, and to

27. *Spirits.*

6 Geo. IV., c. 80.  
II. British.  
be permitted and  
stocked accord-  
ingly, and kept  
separate.

Penalty of 200*l.*  
and forfeiture of  
spirits.

No spirits to be  
removed without a  
permit, on pain of  
forfeiture, with the  
vessels, &c. and  
20*s.* per gallon.

specified in the request note for a permit, and in the permit granted for or to accompany the removal thereof, and shall be taken account of by the officer in the respective stocks of every rectifier or compounder of and dealer in and retailer of spirits respectively, according to the actual strength thereof; and that every dealer in and retailer of spirits shall keep all spirits of wine in a separate and distinct cellar or place entered for that purpose, in which no other spirits or foreign wine or sweets is, are, or shall be kept; and if any spirits of wine shall, from and after the 5th day of January, 1826, be kept or removed, of less strength than as aforesaid, or be mixed or mingled with any foreign wine, foreign or colonial spirits, or British spirits, or by any means be by such dealer or retailer reduced lower or weakened in the strength thereof, or shall be removed without a permit, when required by law, expressing the strength thereof, or shall be found in or upon the premises or in the custody or possession of any such dealer or retailer as aforesaid, otherwise than in such separate entered cellar or place as aforesaid, all such spirits of wine, and all wine or spirits with which any spirits of wine shall be so mixed or mingled or found, shall be forfeited, and the rectifier or compounder of and dealer and retailer as aforesaid offending therein shall respectively forfeit and lose the sum of 200*l.*"

Sect. 115. "That no spirits whatever shall be sent out of the stock, custody, or possession of any distiller, rectifier, or compounder of or dealer in spirits, nor shall be removed from the distillery, stillhouse, building, or other place wherein the same were made or manufactured, or rectified or compounded, or kept, by any distiller, rectifier, or compounder of or dealer in spirits, without a permit first granted and signed by the proper officer of Excise, upon a request note subscribed by such distiller, rectifier or compounder, or dealer respectively, or by some person on his or her behalf, and delivered to such officer, specifying therein the quantity, (a) quality, sort or kind, and strength of such spirits, and also specifying the casks or other vessels containing the same, the person from whom and place from which and the person to whom and the place to which such spirits are to be sent, and by what mode of conveyance the same are intended to be sent, and whether by land or by water, which permit shall be made by the officer to correspond, in respect to all the particulars aforesaid, with such request note; and a reasonable time shall be limited and specified in every such permit, within which such permit is to be in force, and no permit shall be valid or of any effect, if the same shall be granted, or any request note not made conformably to the directions of this act; and all such spirits which shall be sent out, removed, or carried, or found removing or carrying, without such permit as aforesaid, together with the casks, vessels, and other packages containing the same, and also the boats and other vessels, and the horses and other cattle, and carriages made use of in the removal or conveyance thereof, shall and may be seized by any officer or officers of Excise; and if any distiller, rectifier or compounder, or dealer, shall send out, deliver, or carry, or knowingly permit or suffer to be sent out, delivered, or carried, any spirits whatsoever, from or out of the stock, custody, or possession of such distiller, rectifier or compounder, or dealer respectively, or from or out of any house, building, or other place wherein such spirits were made, manufactured, rectified, compounded, or kept by any such distiller, rectifier, or compounder of or dealer in spirits, without such permit as aforesaid, or with any permit not corresponding to such

(a) A dealer in spirits, having a permit to remove 420 gallons, and removing 450, forfeits the whole quantity, and the fraudulency of the transaction is not matter of inquiry by a jury. *Hall v. Dracord*, 2 *W. Black.* 1289. *Quære*: if A brings

76 gallons of spirits into an entered cellar under a permit for 64, whether the whole quantity or the excess is forfeited under 9 Geo. II., c. 23, s. 7. *Ree v. Ben*, 5 *T. R.* 251.

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spirits in quantity, quality, sort or kind, and strength, every such distiller, rectifier or compounder, or dealer, shall, over and above the forfeiture of the said spirits, if seized, forfeit and lose the sum of 20*s.* for every gallon of the spirits so sent out, carried, or conveyed, of whatever strength the same may be, and whether the said spirits shall or shall not be seized. Provided always, that no such permit shall be granted to a distiller for any smaller quantity of spirits than eighty gallons contained in one cask, or to any rectifier or compounder of or dealer in spirits for any smaller quantity than two gallons."

Sect. 116. "That if any retailer of spirits, or other person, licensed or not licensed, shall sell or send out, deliver or remove, or shall knowingly suffer to be sent out of, delivered or removed from his or her stock, custody, or possession, any spirits exceeding one gallon, without the same being accompanied by a true and lawful permit, to be requested and granted as aforesaid; or if any rectifier or compounder of or dealer in or retailer of spirits shall receive or knowingly suffer to be received into his or her stock, custody, or possession, or shall suffer any other person, for his or her use or account, to receive any spirits without the same being accompanied with a true and lawful permit so granted as aforesaid; or if any carrier, boatman, or other person shall knowingly carry, remove, or transport, or by means of his horse, cattle, cart, vessel, boat, or other conveyance, shall knowingly suffer to be carried, removed, or transported, or shall be aiding or assisting in carrying, removing, or transporting, from any part of England to another part thereof, any spirits which by law ought and is required to be accompanied with a permit, without being accompanied with such true and lawful permit, granted as aforesaid in that behalf, every such rectifier or compounder, dealer, retailer, carrier, boatman, or other person whomsoever, shall for each and every such offence forfeit and lose the sum of 200*l.* over and above every other penalty and forfeiture to which he or she is or may be liable by virtue of this act; and all such spirits, and the package and packages in which the same shall be contained, and every such horse, cart, vessel, boat, and other conveyance, and all such cattle, shall be forfeited, and shall and may be seized by any officer or officers of Excise."

Sect. 117. "That no distiller, rectifier, or compounder of, or dealer in, or retailer of spirits shall send out or remove from his, her, or their stock, custody, or possession, nor shall any rectifier or compounder of or dealer in or retailer of spirits, or other person, receive into his, her, or their stock, custody, or possession, any spirits, unless the permit or permits accompanying such spirits shall truly express the sort or kind thereof, and the strength of all such spirits at the time of the removal thereof; and all such spirits so removed, sent out, or received, not being accompanied with a true and lawful permit or permits, where a permit is by law required, expressing the sort or kind, and the strength thereof, shall be forfeited, and may be seized by any officer or officers of Excise; and every such distiller, rectifier, or compounder, dealer or retailer, so sending out, and every such rectifier or compounder, dealer, retailer, or other person so receiving such spirits, shall for each and every such offence forfeit and lose the sum of 100*l.*; and no rectifier or compounder of or dealer in spirits shall have (except as after mentioned) credit in stock for any greater quantity of spirits received or found in his or her stock than for the quantity computed at proof brought in by such permit or permits as aforesaid delivered to the officer; nor shall any retailer of spirits have credit in stock for any greater quantity of spirits received into his or her stock, except as after mentioned, than for the bulk or quantity of spirits in gallons brought in and expressed by such permit or permits as aforesaid, accompanying such spirits, and delivered to the officer."

Sect. 118. "That it shall and may be lawful for any officer or officers of Excise to stop and detain any person or persons who shall be found removing or carrying any spirits of any kind from the stock of any distiller, rectifier, or compounder or dealer in or retailer of spirits, or from

### 27. *Spirits.*

6 Geo. 1. v., c. 20.  
II. *British.*

No retailer or other person shall send out or receive any spirits exceeding one gallon, without permit, nor shall any person carry the same, on pain of forfeiting 200*l.*

No spirits to be sent out or received into stock, unless the permit shall truly express the strength, on pain of forfeiture, and penalty of 100*l.*

Rectifiers, &c. to have credit for the quantity expressed in permits, computed at proof.

Retailers to have credit in stock, according to the gallons or bulk.

Officers of Excise authorized to stop any person found removing or carrying spirits, and examine the permits.

27. *Spirits.*

6 Geo. IV., c. 80.  
11. British.

Penalty 100*l.* on  
persons refusing to  
produce the per-  
mit.

Restriction as to  
mitigation of pe-  
nalty.

If permit for  
spirits not de-  
livered with the  
goods, they shall be  
forfeited to the  
buyer, and double  
the price, &c.

Permits for the re-  
moval of spirits  
shall be granted  
under the regula-  
tions of the permit  
laws, except as al-  
tered and otherwise  
directed by this  
act.

the stock of any person or persons whomsoever, and to demand the production of the permit or permits accompanying such spirits; and on being satisfied that the spirits are the same in quantity, quality, sort or kind, and strength as expressed in such permit or permits, and that the duty payable by law in respect thereof has been paid or secured to be paid for the same, such officer or officers shall endorse on such permit or permits the time, hour, and place of such examination, and shall sign his or their name or names thereto; and if any person or persons so found removing or carrying any such spirits, which are by law required to be accompanied with a permit, shall refuse to produce such permit or permits as aforesaid immediately on being required so to do by any officer or officers of Excise for the purposes aforesaid, or shall be found removing or carrying any such spirits without a lawful permit, every such person shall for every such offence forfeit and lose the sum of 100*l.*; and it shall be lawful for such officer or officers, and he and they is and are hereby authorized, empowered, and required to stop, arrest, and detain every such person or persons, and to convey the said person or persons, together with the spirits so found removing or carrying by or with him or them, before one or more of His Majesty's justices of the peace residing near to the place where any such person shall be so stopped or arrested; and it shall be lawful for such justice or justices of the peace, and he and they is and are hereby required, and shall have full power and authority to hear and determine forthwith any information against any such person or persons so stopped or arrested under the provisions of this act, and on the confessions of any such person or persons, or upon proof on oath by one or more credible witness or witnesses, to convict such person or persons in such penalty respectively as aforesaid; and no such penalty shall be mitigated by any justice or justices below one-fourth part thereof; and every such person so convicted as aforesaid shall immediately on such conviction pay down into the hands of such officer the said penalty in which he or they shall be so convicted; and if any such person or persons so convicted shall not forthwith pay down the said penalty, the said justice or justices shall, and he and they is and are hereby respectively authorized and required, by warrant under his or their hand and seal, to commit the person so convicted as aforesaid to any gaol or prison of the county, there to be kept to hard labour for the space of not exceeding six nor less than three calendar months, unless such penalty be sooner paid."

Sect. 119. "That if any permit granted for spirits shall not be sent and delivered with such spirits unto the buyer thereof, such spirits shall, if the same be not seized in the transit for want of a lawful permit accompanying the same, be forfeited to the buyer thereof, and the seller shall be rendered incapable of recovering the same, or the value or price thereof, in any court of law or equity; and also that the seller in such case shall, over and besides the loss of the said spirits, forfeit and lose double the value of or price agreed to be paid for the same, including the duties; and that the evidence of the buyer or person receiving the said spirits shall, on any trial as to such spirits, be admitted to prove that the same were delivered without a lawful permit."

Sect. 120. "That every permit which shall be granted for the removal of any spirits under any of the provisions of this act shall be granted and issued, obtained and used, under the rules, regulations, and provisions of any act or acts of parliament in force in England for regulating the granting and issuing of permits for the removal or conveyance of exciseable goods, or in any act or acts in any manner relating to such permits (except so far as the same may be expressly altered and otherwise directed by this act); and that all and every the clauses, provisions, fines, penalties, and forfeitures inflicted or imposed by the said acts or any of them shall extend and shall be construed to extend to and shall be applied in the execution of this act, and to all and every permit and permits which shall be granted for the removal of any spirits under this act, and to the persons issuing,

obtaining, or using the same, as fully and effectually to all intents and purposes as if the said clauses, provisions, fines, penalties, and forfeitures were repeated and re-enacted in this act."

Sect. 121. "That if any distiller or other person shall deliver, remove, or receive any spirits, for the removal of which a permit is by law required, without such permit, or any greater quantity of spirits, or of a different kind or quality, or of a greater or higher strength than shall be expressed in such permit, or having obtained such permit, shall not send out therewith the spirits therein described, or return the said permit to the proper officer of excise within the time by law required; or if any distiller or other person shall request, obtain, sell, lend, deliver, employ, or make use of any such permit, or shall cause or suffer any such permit to be requested, obtained, sold, lent, delivered, employed, or made use of, to or for any other use or purpose whatsoever, than to accompany the actual removal and delivery of the spirits as therein expressed; or shall produce, or cause or suffer any such permit to be produced to any officer or other person, as having been received with any spirits other than as aforesaid, or shall in any manner use or employ, or cause or suffer to be used or employed, any permit, so as that any account of spirits kept or checked, or to be kept or checked, by the officer or officers (a) of excise by such permit, shall or may be frustrated or evaded, then and in every such case, every such distiller or other person shall for every such offence severally forfeit the sum of 500*l.*, over and above all other penalty and penalties, forfeiture and forfeitures whatever; and every permit used for any purpose whatever other than to accompany the removal and delivery of the spirits for which such permit was obtained and granted, and as therein expressed or described, shall be deemed and taken to be a false permit, and such unlawful use thereof shall, over and above all other penalties and forfeitures, subject the person or persons so using the same, to all and every the penalties and forfeitures imposed by law upon any person or persons for using, giving, or receiving any false permit; and every person having any license to make, deal in, retail, or sell spirits, shall, upon being convicted of any such offence as aforesaid, forfeit every such license, and no new excise license shall be granted to such person so convicted, for the remainder of the current year of any license so forfeited."

Sect. 122. "That all and every person or persons whomsoever, who shall have in his, her, or their custody any spirits exceeding the quantity of eighty gallons, and not being an entered and licensed distiller, rectifier, or compounder, or retailer of spirits, shall be deemed and taken to be a dealer in spirits, and subject to the survey of the officers of excise, and to all regulations, penalties, and forfeitures to which such dealers are subject and liable."

Sect. 123. "And, for enabling the officers of excise the more readily to take account of dealers' and retailers' stocks of spirits, be it further enacted, that all standing or fixed casks, used by any dealer in, or retailer of spirits, for the keeping in stock of any spirits, shall, before the same shall be made use of, be duly entered by such dealers and retailers respectively, upon pain of forfeiture by the person or persons in whose stock the same should be found, of the sum of 100*l.* for every such cask which shall be so used without having been duly entered as aforesaid, and also of every such cask, with the liquor contained therein; and that upon every such cask used by any dealer in, or retailer, for holding or keeping any spirits in stock, its full measure in gallons, or the quantity of liquor it is capable of containing, and also the name of the quality, strength, sort, or kind of spirits kept or contained therein, shall be legibly painted, cut, or branded on some conspicuous part thereof, upon pain that the dealer or retailer in whose custody or possession any cask so used shall be found, not having such full measure thereof, and such particulars as aforesaid, painted, cut, or branded thereon as aforesaid, or which shall contain a different quantity, quality, strength, sort, or kind of spirits from what shall be painted, cut, or

27. *Spirits.*  
II. *British.*

6 Geo. 4, c. 80.  
Penalty for frustrating the purpose of a permit obtained for the removal of spirits, 500*l.* and forfeiture of license.

Persons having in custody more than 80 gallons of spirits, to be deemed dealers.

Casks used by dealers or retailers for spirits in stock, to be entered, on forfeiture of 100*l.* and the cask and liquor in it, and to have the contents painted, cut, or branded thereon, under the penalty of 50*l.*

(a) Upon the 57 Geo. 3, c. 123, s. 13, it was held, that the words "officer or officers," used therein, are general, and apply to any officer of excise whose accounts may be frustrated or evaded by the fraudulent use of permits. *The Attorney-General v. Slee, McClelland's Rep.* 567.



27. *Spirits.*  
II. *British.*

6 Geo. 4, c. 80.

No dealer to send out or keep any plain British spirits, or any compounded spirits, but of a certain strength, &c.

Dealer may send out spirits of wine received by permit, and kept separate from other spirits, not exceeding 100 gallons to one person in the same day.

Dealers in foreign spirits to keep British spirits in separate places, on forfeiture of 100*l.* or 20*s.* for every gallon found.

British not to be mixed with foreign or colonial spirits, or sold or sent out, on forfeiture of 100*l.* and seizure.

No seller or dealer in spirits to take out more than one permit in one day for the same person, and that only for one cask, except as after excepted, and if more be removed with or without permit, they are forfeited.

branded thereon as aforesaid, shall forfeit and lose the sum of 50*l.* for every such default, omission, or offence as aforesaid."

Sect. 124. "That no dealer in British spirits shall sell, or send out, or receive, or have or keep in his or her stock, custody, or possession, any plain British spirits, except spirits of wine, of any strength exceeding the strength of twenty-five *per centum* above hydrometer proof, or of any strength below seventeen *per centum* under hydrometer proof, or any compounded spirits, except scrub, of any greater strength than seventeen *per centum* under hydrometer proof, on pain of forfeiting all such spirits as shall be sold, sent out, had, or kept by any such dealers contrary hereto, with the casks or other packages containing the same, which shall and may be seized by an officer or officers of excise."

Sect. 125. Provided always, "that it shall and may be lawful to and for any dealer in spirits to have in his custody or possession, any spirits of wine legally received by permit, upon condition of his, her, or their keeping his, her, or their whole stock of such spirits of wine separate and apart from his, her, or their stock of all other liquors, and in a vault or room specially entered for that purpose as aforesaid, but not otherwise, and to demand and receive permits for sending out spirits of wine of the strength of forty-three *per centum* above hydrometer proof, or any higher degree of strength, so that the whole quantity of such spirits of wine to be sent to any one person in the same day, shall not exceed 100 gallons; and the officer granting such permit shall therein express the same to be spirits of wine, and shall debit the stock of such dealer accordingly."

Sect. 126. "That every dealer in spirits who shall have or receive into his custody or possession any foreign or colonial spirits (not being compounded colonial spirits), and also any British spirits, shall keep the same separate and apart, and in separate cellars, vaults, or other places, specially entered for that purpose respectively, upon pain of forfeiting the sum of 100*l.*, or 20*s.* for every gallon of British spirits, or compounded spirits, which shall be discovered or found in his custody or possession, in any vault, cellar, or other place, not specially entered for that purpose, or where any foreign or colonial spirits (not being compounded colonial spirits) shall be found or kept; and for every gallon of foreign or colonial spirits (not being compounded colonial spirits) which shall be discovered or found in his custody or possession, in any vault, cellar, or place, not specially entered for that purpose, or where any British spirits, or compounded spirits shall be found or kept, together with all such spirits so discovered and found, and the casks and packages containing the same, which shall and may be seized by any officer or officers of excise; and that no person or persons whomsoever shall mix or keep, sell or send out, any British spirits mixed with foreign or colonial spirits, upon pain of forfeiting for every such offence, the sum of 100*l.*; and all such spirits so mixed or sold, or sent out, contrary to the true intent and meaning hereof, together with the casks and packages containing the same, shall also be forfeited and lost, and shall and may be seized by any officer or officers of excise: provided always, that every dealer in and retailer of spirits shall be allowed on all foreign or colonial spirits (not being compounded colonial spirits) lawfully brought into his or her stock, additional credit, over and above credit for the number of gallons expressed in the permit accompanying such spirits, and delivered to the officer, for such further number of gallons as shall be equal to the number of gallons of water added to and mixed with such spirits in the presence of the officer, in order to reduce the strength thereof to the strength of seventeen *per centum* under proof."

Sect. 127. "And the better to prevent the removal of spirits that have been illegally imported, or privately distilled, into the stocks of entered dealers in and retailers of spirits, and of others, be it enacted, that no distiller, rectifier, or compounder of, or dealer in or retailer of spirits, shall be allowed to request or take out more than one permit in one and the same day to any one person whomsoever, except as hereinafter is excepted, and such permit shall be granted for the removal of no more than one cask or other package (not being bottles) containing any spirits of one sort or kind, and if any more than one cask or other package (not being bottles) of spirits of one sort or kind, at any one time directed to one and the same person or persons, where there are two or more in joint trade or partnership, except as hereinafter is excepted, shall be found, removed, or carried, or removing or carrying from one place in England to any other place

## II. PARTICULAR LAWS, &c. (27.) *Spirits.* II. *British.*

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therein, whether with or without permit, the same shall be forfeited and lost, and the person selling or sending out such spirits, shall forfeit and lose the sum of 100*l.*, or 20*s.* per gallon, at the election of the commissioners of excise, or person who shall inform or sue for the same: provided always, that nothing herein contained shall be construed to prevent any distiller, rectifier, or compounder of or dealer in or retailer of spirits from taking out two or more permits, and by virtue thereof sending two or more casks, or other packages, containing spirits of a different sort or kind, to the same person in the same day, so as each and every such cask or package, respectively, shall be separately and distinctly described in such permit or permits: and also provided, that nothing hereinbefore contained shall be construed to prevent the sending with one and the same permit any number of casks, with any kind of spirits therein, each such cask then containing eighty gallons or upwards of spirits."

Sect. 128. "That no retailer of spirits shall be a distiller, rectifier, or compounder of spirits, or have any part or share in any distillery or rectifying-house, or be in any manner interested or concerned in the trade or business of a distiller, rectifier, or compounder of spirits; and if any such retailer shall be a distiller, rectifier, or compounder of spirits, or shall have any part or share in any distillery or rectifying-house, or be in any manner interested or concerned in the trade or business of a distiller, rectifier, or compounder of spirits, such retailer shall, for every such offence, forfeit and lose the sum of 200*l.*"

Sect. 129. "That no retailer of spirits, not taking out, or having a license as a dealer in spirits, shall be entitled to request, or shall have any permit granted for the removal of spirits, except to a private person not being a rectifier or compounder, or dealer in or retailer of spirits; and that every retailer, not taking out or having such dealer's license, who shall sell, send out, or deliver, any spirits to any distiller, rectifier, or compounder of, or dealer in, or retailer of spirits, shall forfeit the sum of 50*l.*; and all such spirits so sold, sent out, or delivered by such retailer, shall, together with the package containing the same, be forfeited, and shall and may be seized by any officer or officers of excise, and every permit drawn or granted for that purpose shall be wholly null and void."

Sect. 130. "That no retailer of British spirits shall sell, or send out or receive, or have or keep in his or their stock, custody, or possession, any spirits of wine, exceeding at one time ten gallons, or any plain British spirits, of any strength exceeding the strength of twenty-five *per centum* above hydrometer proof, or lower than seventeen *per centum* under hydrometer proof, or any compounded spirits, not being shrub, of greater strength than seventeen *per centum* under hydrometer proof, or any foreign or colonial spirits (not being compounded colonial spirits) of less strength than seventeen *per centum* under hydrometer proof, on pain of forfeiting all such spirits as shall be sold, sent out, had, or kept, contrary hereto, with the casks or other packages containing the same, which shall and may be seized by any officer or officers of excise; and no allowance whatever shall be granted to any such retailer for any increase in stock of spirits of wine, or plain British spirits or compounds, by water, sugar, syrup, or fruit; anything contained in any act or acts of Parliament to the contrary in anywise notwithstanding."

### 27. *Spirits.* II. *British.*

6 Geo. 4, c. 86.

Penalty 100*l.*, &c.

Exception for spirits of different kinds separately described;

also for any number of casks at one time, each containing 80 gallons or upwards.

Retailer not to be concerned in any distillery or rectifying-house, &c. on penalty of 200*l.* (a)

Retailers not having a dealer's license, not to draw any permit to any seller of spirits.

No retailer to keep or send out any spirits of wine, or any spirits of any other strength than herein specified.

(a) In *Brown and others v. Duncan*, 10 B. & C. 93, was the following important decision, establishing that a breach of revenue regulations of this nature will not preclude a vendor from recovering the price of goods. A., B., C., D., and E., carried on trade in partnership as distillers, and C. alone carried on the business of a retail dealer in spirits, within two miles of the distillery, contrary to the 4 Geo. IV. c. 94, ss. 132, 133, and his name was not inserted as one of the partners in the distillery in

the excise-book, or license, as required by the 6 Geo. IV. c. 81, s. 7: held, these being mere revenue regulations, the breach of them by one of the partners, with the knowledge of the others, did not render the trade carried on by the five so illegal as to deprive them of the right to recover the price of spirits sold by them, or for the breach of a guaranty for the due accounting of an agent, to whom they had consigned the spirits for sale.

27. *Spirits.*  
II. *British.*

6 Geo. 4, c. 80.

Increase on taking stock to be forfeited, and the retailer shall forfeit 20s. for every gallon of excess.

Persons, &c. selling, &c. liquors to be unlawfully retailed or consumed, to forfeit 100l.

Persons having in possession spirits, &c., for which the duties have not been paid, forfeit the same, and treble the value.

No license to be granted for retailing spirits within gaols, houses of correction, or workhouses for parish poor, &c., nor shall spirits be used there, &c. except as shall be maliciously prescribed.

Justices, upon information that spirituous liquors are kept, &c. in such gaol, &c. may enter, and empower any constable to seize the same.

Sect. 131. "That every officer of excise shall, as often and at such times as he may think fit, take an accurate and true account of the quantity of all spirits in the stock, custody, or possession of every retailer of spirits; and if, after making allowance for the spirits for which permits shall have been granted since the last account taken of the stock of such retailer, it shall be found that the quantity of spirits remaining in the stock, custody, or possession of such retailer, shall exceed the quantity for which such retailer shall have credit in the books of the proper officer, whether such credit shall have arisen from what was on hand at the last preceding account taken, or from what may have been lawfully received subsequent thereto, such excess shall be deemed and taken to be spirits illegally received, and a quantity of spirits of the like kind, equal to such excess, shall and may be seized out of any part of the stock of such retailer, by any officer or officers of excise; and the retailer, in whose stock, custody, or possession such excess shall be found, shall forfeit and lose the sum of 20s. per gallon for every gallon of such excess."

Sect. 132. "That if any person shall knowingly sell or deliver, or cause to be sold or delivered, directly or indirectly, any quantity of spirits to any other person, to the end that the same may be unlawfully retailed or consumed, or carried into consumption in any part of England, such person so offending shall, for every such offence, forfeit and lose, over and above all other penalties, the sum of 100l."

Sect. 133. "That if any person or persons shall knowingly receive, buy, or have, in his, her, or their custody or possession, any spirits, after the same shall be removed from the place where the same ought to have been charged with the duty payable in respect thereof, or before the duty to which the same shall be liable has been charged and paid, or secured to be paid, or before such spirits have been lawfully condemned as forfeited, the person or persons offending therein, whether he, she, or they had or have, or had or have not, or do or do not claim or pretend to have, any property or interest therein, shall, for every such offence, forfeit and lose all such spirits so received, bought, or had, in his, her, or their custody or possession, and treble the value thereof, according to and at the rate and price which the best spirits of the like kind and strength do or shall bear and sell for in London, at the time when such penalty shall be incurred."

Sect. 134. "That no license shall be granted for the retailing of spirits within any gaol, prison, house of correction, or workhouse for any parish poor, and that all licenses granted or to be granted contrary to this provision, shall be void, and of no effect; and if any gaoler, keeper, or officer of any gaol, prison, or house of correction, or any governor, master, or officer of any workhouse for any parish poor, shall sell, use, lend, or give away, or knowingly permit or suffer any spirits to be sold, used, lent, or given away in any such gaols, prisons, or houses of correction, or workhouses, or brought into the same, other than and except such spirits as shall be prescribed or given by the prescription and direction of a regular physician, surgeon, or apothecary, and to be applied in pursuance of such prescription from the shop of some regular apothecary, every such gaoler, keeper, governor, master, or other officer, shall for every such offence forfeit and lose the sum of 100l.; and in case any such gaoler or other officer, being convicted thereof as aforesaid, shall again offend in like manner, and be thereof a second time lawfully convicted, such second offence shall be deemed a forfeiture of his office."

Sect. 135. "That it shall and may be lawful for his majesty's justices of the peace, or any one of them, upon information upon oath that any spirits are kept and disposed of in any such gaol, prison, house of correction, or workhouse for parish poor, to enter and search, or to authorize and empower any constable, headborough, or other peace-officer of the parish where any such places are situated, by warrant under his hand and seal, to enter and search any such gaol, prison, house of correction, or workhouse; and in case any spirits shall be found therein (except such as are directed to be used medicinally as aforesaid), it shall and may be lawful for such constable, headborough, or overseer of the poor, to seize such spirits, and to cause the same to be forthwith staved and destroyed."

Sect. 136. "That no person shall carry or bring, or attempt to endeavour to carry or bring any spirits (except to be used in the way of medicine, as hereinbefore mentioned) into any workhouse for parish poor; and if any person or persons shall offend therein, it shall be lawful for the master or chief officer of such workhouse, or his or their servants, to arrest such person or persons, and to carry him, her, or them before a justice of the peace of the county, division, city, town-corporate, or liberty where such workhouse is situate, who is hereby empowered to hear and determine such offence in a summary way, and to administer an oath to the witnesses; and if by the oath of one credible witness or otherwise he shall convict such person or persons of such offence, he shall forthwith commit such offender or offenders to prison, or to the house of correction, there to be kept at hard labour for any time not exceeding three months."

Sect. 137. "That every master and chief officer of every workhouse for any parish poor, shall procure one or more copy or copies of the three preceding clauses to be printed, or fairly written and hung up in one of the most public places of his workhouse for parish poor, and renew the same from time to time, so that it may be always kept fair and legible, on pain of forfeiting the sum of 10*l.* for every wilful default, to be levied by warrant of any justice of the peace of the county, division, city, town-corporate, or liberty, where such gaol, prison, house of correction, or workhouse shall be situate, to be granted on conviction of such default in a summary way before such justice, by the oath of one or more credible witness or witnesses, which oath such justice is hereby empowered to administer; and it shall and may be lawful for every justice of the peace to enter into any gaol, prison, house of correction, or workhouse for parish poor, within the limits of his jurisdiction, and demand a sight of such copy so hung up as aforesaid; and if the same shall not be forthwith shown to him so hung up in some public place, fair and legible as aforesaid, such justice shall and may immediately convict such gaoler, keeper, master, or officer of such default, and so from time to time, as often as he shall think fit."

Sect. 138. "That no person or persons shall hawk, or shall sell or expose to sale, any spirits, by whatever name or names they are or may be called or distinguished, in or about the streets, highways, or other places, or in or from any boat or other vessel upon the water, or in any other manner or place whatsoever, except in such place as hereinbefore in this act mentioned or allowed, upon pain of forfeiting all such spirits, and the sum of 100*l.* for every such offence; and it shall and may be lawful to and for any one or more justice or justices of the peace for the county, riding, division, city, or liberty respectively wherein such offence shall be committed, on his or their own view, or on the confession of the party, or by the proof on the oath of one or more credible witness or witnesses made of such offence, to convict any person or persons so offending as aforesaid, and such person or persons so offending and convicted shall immediately on such conviction pay the said sum of 100*l.*, or some mitigated amount, not being less than one-fourth part thereof; and on such offender or offenders refusing or neglecting to pay the said sum, the justice or justices so convicting as aforesaid shall and may, by warrant or warrants under his or their hand and seal, or hands and seals, commit the offender or offenders to hard labour in the house of correction for the said county, riding, division, city, or liberty respectively, for the space of three months, to be reckoned from the day of the said commitment; and the person or persons so committed shall not be discharged until he, she, or they shall have paid the said sum of money, or until the full expiration of the said three months."

Sect. 139. "That it is and shall be lawful for one or more such justice or justices of the peace as aforesaid, on any information upon oath made before him or them against any person or persons, for hawking, or selling, or exposing to sale any spirits contrary to this act, to issue his or their warrant or warrants under his or their respective hands and seals, to be directed to any constable or other ministerial officer of the peace, for the apprehending and bringing such offender or offenders before such justice or justices of the peace, in order to such offender or offenders being by such justice or justices dealt with according to law."

27. *Spirits.*  
II. *British.*

6 Geo. 4, c. 80.

Punishing persons conveying, &c. spirituous liquors into workhouses.

A fair copy of the three preceding clauses to be always kept hung up in the most public place of such house, &c.

Justices may enter and demand a sight thereof and if the same be not fair and legible, may convict the offender.

Persons hawking spirits to forfeit them and 100*l.*, and may be convicted by one justice; and if the penalty be not paid immediately, committed to the house of correction for three months or until paid.

One or more justice, upon information on oath, may issue warrant to apprehend such offenders.

27. *Spirits.*  
II. *British.*

6 Geo. 4, c. 80.

Any person may detain a hawk or spirit, and give notice to a peace officer, who is to carry the offender before some justice.

Either of the offending parties informing against the other, shall be acquitted of his own penalty.

Informers may be rewarded by commissioners, not exceeding 50%, if the penalty is not paid and cannot be levied, or if the offender shall be sent to prison.

Armed persons opposing the law, or violently rescuing such offenders, or assaulting officers, informers, or witnesses, guilty of felony, and to be transported for seven years.

Constable not executing this act, on conviction before any justice, to forfeit 20%.

Sect. 140. "And whereas, for want of a constable or other ministerial officer of the peace being at hand to apprehend such offender or offenders, he, she, or they has or have often escaped unpunished; be it further enacted, that it shall and may be lawful for any person or persons whomsoever, to seize and detain any person or persons who shall hawk or sell, or expose to sale, in manner aforesaid, any spirits, by whatsoever name or names they are or may be called or distinguished, for such reasonable time as he, she, or they may give notice to the constable, headborough, tithingman, churchwarden, overseer of the poor, or some other peace or parish officer or officers, who are hereby required to carry such person so seized and detained before some one of his majesty's justices of the peace for the county or place where such offence or offences shall be committed; which said justice of the peace is hereby required to proceed to the examination of such person so seized and brought before him for such offence, in the same manner as if such person so seized had been apprehended and brought before him by a constable or any other ministerial officer of the peace under such warrant as aforesaid."

Sect. 141. "And for the more effectual discovery of offenders, be it further enacted, that on the commission of any offence under this act, either of the offending parties who shall first discover and inform against the other or others of such offending parties, before any information has been lodged against such informing party for such offence, shall, upon conviction of the person or persons against whom such information shall be given, be discharged and acquitted from all penalties to which at the time of such information given such informing party may be liable, for or by reason of any such offence committed by such informing party; and that the evidence of such informing party shall, on any trial at law touching such offence, be admitted to prove the facts thereof or relating thereto."

Sect. 142. "And for the encouragement of those who shall discover offences committed against this act, be it enacted, that where any person or persons shall be lawfully convicted of any offence against any of the provisions of this act, and the pecuniary penalty imposed for such offence shall not be paid, and cannot be levied, or the person incurring any such penalty is not able to pay the same, but in lieu thereof is sent to prison, it shall and may be lawful for the commissioners of excise to cause such reward as they shall think fit, not exceeding 50%, in each case, to be paid to the several and respective persons who shall appear to them to be entitled thereto as informers, out of any monies in their hands arising by any penalties or forfeitures under the excise laws."

Sect. 143. "That if any person or persons shall, armed with a gun, pistol, sword, or pike, or in a violent manner with staves or stones, rescue any offender arrested, or any goods or chattels seized under this act, or shall prevent such arrest or seizure, or shall assault, beat, or wound any officer or officers, or other person or persons acting in his or their aid or assistance, or any person or persons who shall have given or be about to give any information against, or shall have discovered or given evidence against, or be about to discover or give evidence against, or shall seize or bring to justice any person or persons offending against this act, or who shall have seized or be about to seize or examine any goods or chattels forfeited under this act, or shall forcibly oppose the execution of any of the powers given by this act, or who, being so armed, or with such violence as aforesaid, shall offer or threaten so to do, then all and every person or persons so offending, and their aiders and abettors, thereof lawfully convicted, shall be and be adjudged to be guilty of felony; and every such felon shall be subject and liable to the like pains and penalties as in cases of felony, and the courts by and before whom he, she, or they shall be convicted, shall have full power and authority of transporting such felon and felons for the space of seven years, in like manner as other felons are directed to be transported by the laws and statutes of this realm."

Sect. 144. "That if any constable or other ministerial officer of the peace whatsoever shall refuse or neglect, upon due notice or request, or on his own view, to be aiding and assisting, or to proceed as aforesaid in the execution of this act, such constable or other ministerial officer of the peace, being thereof convicted by the oath of one or more credible witness or witnesses, before any

justice of the peace for the county or place where such offence shall be committed, shall forfeit for every such offence the sum of 20*l*."

Sect. 145. "That if any officer of excise, or person employed in the collection or management of, or accounting for or securing the revenue of excise on spirits, shall directly or indirectly ask or demand, or take or receive any sum of money or other recompense or reward whatsoever, or any security for any sum of money or other recompense or reward, or acquiesce in or make or enter into any collusive agreement with any person or persons to do, conceal, or connive at any act or thing whereby any of the provisions of this or any other act of Parliament relating to his majesty's revenue of excise on spirits shall or may be evaded or broken, or his said revenue defrauded, or to do or perform, or permit or suffer to be done or performed, any act or thing whatsoever contrary to the duty of such officer or person so employed as aforesaid, or to neglect or omit to do or perform any act or thing whatsoever belonging or appertaining to the business or duty of such officer or person so employed as aforesaid, every such officer or person so employed, offending as aforesaid, shall, for each and every such offence, forfeit the sum of 500*l*.; and being thereof duly convicted, shall be incapable of thereafter serving his majesty in any office or employment whatsoever; and every person who shall directly or indirectly give or offer, or promise to give, to any officer or person so employed as aforesaid, any sum of money or other recompense or reward whatsoever, or any security for any sum of money, recompense, or reward whatsoever, or shall propose, make, or enter into any collusive agreement with any officer or person so employed as aforesaid, in order to corrupt and prevail upon such officer or person as last aforesaid, to do, conceal, or connive at any act or thing, whereby any of the provisions of this or any other act of Parliament relating to his majesty's revenue of excise on spirits shall or may be evaded or broken, or his said revenue defrauded, or to do or perform, or permit or suffer to be done or performed, any act or thing whatsoever, contrary to the duty of such officer or person so employed as aforesaid, or to neglect or omit to do or perform any act or thing whatsoever, belonging or appertaining to the business or duty of such officer or person so employed as aforesaid, shall, for each and every such offence, whether such sum of money or other reward or promise of, or security for the same, or such agreement, be received, accepted, entered into, or performed or not, forfeit and lose the sum of 500*l*.: provided always, that in case any such officer or person so employed as aforesaid, who shall have directly or indirectly asked or demanded, or taken or received, any such sum of money, or other recompense or reward, or any promise of, or security for the same, or acquiesced in, made, or entered into any such collusive agreement, shall, before any complaint shall have been made, or any proceedings had against him for having committed any such offence or offences as aforesaid, give information of the gift, offer, or promise, to give such sum of money or other recompense or reward or security for the same, or of such collusive agreement proposed, or made, or entered into, and proceedings shall thereon be thought fit to be instituted, so that such penalty as aforesaid shall be recovered against the person who shall have directly or indirectly given or offered, or promised to give, any such sum of money or other recompense or reward or security for the same, or shall have proposed, made, or entered into any such collusive agreement; or in case the person who shall have directly or indirectly given or offered, or proposed to give, any such sum of money or other recompense or reward or security for the same, or shall have proposed, or made or entered into, any such collusive agreement, shall, before any complaint shall have been made, or any proceedings had against him or her for having committed any such offence or offences, give information of the asking or demanding, or of the taking or receiving of any such sum of money or other recompense or reward, or promise of security for the same, or of such collusive agreement acquiesced in, made, or entered into by any officer or person so employed as aforesaid, and proceedings shall thereon be thought fit to be instituted, so that such penalty as aforesaid shall be recovered against such officer or person so employed and offending as aforesaid; then and in either of the said cases either of the said parties so first giving such information shall be exempted from and indemnified against the penalties and disabilities imposed on such party for such offence or offences by this act."

27. *Spirits.*  
II. *British.*

6 Geo. 4, c. 80.

Officer employed in the excise, taking any reward from, or entering into any collusive agreement with any person to act contrary to his duty, to forfeit 500*l*. and be incapacitated; and the person offering such reward, or proposing such agreement, to forfeit 500*l*.

27. *Spirits.*  
11. *British.*

6 Geo. 4, c. 80.  
Penalty for obstructing officers in cases not otherwise provided for, 200*l*.

The imperial gallon shall be applied to this act.

All spirits, and the materials, utensils, and vessels of the distiller, subject to arrears of duty, penalties, and forfeitures.

Recovery and application of penalties.

Powers of 12 Car. 2, c. 24, or any law now in force relating to the excise, extended to this act.

Sect. 146. That if any distiller, rectifier, or compounder of spirits, or any dealer in or retailer of spirits, or any workman or servant belonging to, or employed or authorized by such distiller, rectifier, or compounder, dealer, or retailer, or if any other person or persons shall molest, hinder, oppose, or obstruct any officer or officers of excise, or any person or persons acting in his or their aid or assistance, in the due execution of the powers and authorities by this act granted, or any of them, every such distiller, rectifier, or compounder, dealer or retailer, or other person or persons so offending, shall, for every such offence, forfeit and lose the sum of 200*l*."

Sect. 147. "That the gallon in this act mentioned shall, for all the purposes of this act, be deemed and taken to be a gallon, imperial standard gallon measure."

Sect. 148. "And in order to secure the duties of excise granted and imposed by this act, from time to time due and owing and in arrear, from any distiller or distillers, and for the enforcement of any penalty or penalties incurred by any distiller or distillers, for any offence or offences by him or them committed against this or any other law or laws of excise relating to spirits; be it further enacted, that all worts, wash, low wines, feints, and spirits, and all materials, preparations, utensils, and vessels for the making thereof, in the custody or possession of such distiller and distillers, or in the custody or possession of any person or persons, to the use of, or in trust for him, her, or them, or into whose hands soever the same shall come, and by what conveyance or title soever the same shall be claimed, shall be subject and liable to, and the same are hereby made chargeable with, all the duties of excise in arrear and owing from time to time, from or by such distiller or distillers; and shall also be subject and liable to all penalties and forfeitures incurred by such distiller or distillers, for any offence or offences by him, her, or them committed, against this or any other law or laws of excise relating to spirits; and it shall and may be lawful, in all such cases, to levy thereupon such duties, penalties, and forfeitures, and use such proceedings for the recovery or enforcement thereof, as might lawfully be done, in case the debtors or offenders were the true and lawful owners of such worts, wash, low wines, feints, and spirits, materials, preparations, utensils, and vessels: provided always, that when the same shall come into the hands and possession of any third person or persons, by any *bonâ fide* sale and delivery made before any such duties have been charged or become chargeable upon, or any such penalties or forfeitures have been incurred by the distiller or distillers by whom the same respectively shall have been so sold and delivered as aforesaid, no such worts, wash, low wines, feints, or spirits, materials, preparations, vessels, or utensils, shall be subject or liable to, or be made chargeable with, such duties, penalties, or forfeitures, as hereinbefore mentioned."

Sect. 149. "That all fines, penalties, and forfeitures imposed by this act, shall be sued for, recovered, levied, or mitigated, by such ways, means, or methods, as any fine, penalty, or forfeiture may be sued for, recovered, levied, or mitigated, by any law or laws of excise; and that one moiety of every such fine, penalty, or forfeiture, shall be to his majesty, his heirs, and successors, and the other moiety to him or them who shall discover, inform, or sue for the same: provided, that no such mitigation shall in any case reduce any penalty imposed by this act, for any offence of which any person or persons shall be convicted, to less than one-fourth part of such penalty, over and above reasonable costs, charges, and expenses, incurred by the prosecution."

Sect. 150. "That all and every the powers, directions, rules, penalties, forfeitures, clauses, matters, and things, which in and by an act made in the Parliament of England, in the twelfth year of the reign of King Charles the Second, intituled, 'An Act for taking away the Court of Wards and Liveries, and Tenures in *Capite*, and by Knight's Service and Purveyance, and for settling a Revenue upon his Majesty, in lieu thereof,' or by any other law in force in England, relating to his majesty's revenue of excise, are provided and established, shall be (except so far as any of them may be altered by this act) practised, used, and put in execution, in and for the purposes of this act, as fully and effectually, to all intents and purposes, as if all and every the said powers, rules, directions, penalties, forfeitures, clauses, matters, and things, were particularly repeated and re-enacted in this act."

Sect. 151. "That this act shall, except where otherwise mentioned, extend to England only, and so far as relates to licenses, and to the making and distilling, and warehousing and removal, of spirits under the provisions contained in and chargeable with the duties imposed by this act, shall commence and take effect from the 10th day of October, 1825; and so far as relates to the sale, delivery, and removal of spirits, and the payment of the duties upon spirits hereby imposed, and other parts of this act (except as aforesaid), shall commence and take effect from the 5th day of January, 1826; and that all spirits made and distilled in England, or brought into England from Scotland or Ireland, under the provisions of this act, after the 10th day of October, 1825, and before the 6th day of January, 1826, and which shall during such period be found removing or removed from any part of England to any other part thereof, except only for the purpose of being warehoused under the provisions of this act, shall be forfeited, and shall and may be seized by any officer or officers of excise; and the distiller or other person removing or concerned in the removal or receipt of any such spirits, shall, upon conviction of such offence, forfeit his or her license, and no new excise license shall be granted to such distiller or other person so convicted for the remainder of the current year of the license so forfeited; provided always, that all and singular the law and laws of excise in force in England at the time of passing this act, shall remain and continue in force until the 6th day of January, 1826, for rectifying, compounding, selling, delivering, and removing spirits made and distilled in England, or brought into England from Scotland or Ireland for consumption in England, and in respect whereof the duties respectively hereby repealed, are paid; anything herein contained to the contrary thereof notwithstanding."

Sect. 152. "That, from and after the said 10th day of October, 1825, it shall and may be lawful to and for any distiller in England, and for any proprietor of any British spirits distilled in Scotland or Ireland, and brought into England, according to the provisions of this act, to warehouse, and every such distiller and proprietor respectively is hereby required forthwith to warehouse, under the provisions of this act, the whole of the British spirits which any such distiller shall, between the said 10th day of October, 1825, and 6th day of January, 1826, distil or make, or any such proprietor shall bring into or receive in England from Scotland or Ireland as aforesaid, and to continue all such spirits so warehoused until the said 6th day of January, 1826; and that on the said 6th day of January, 1826, every such distiller and proprietor respectively shall pay to the commissioners of excise, or such person or persons as they shall employ to receive the same, all the duties respectively by this act imposed, charged or chargeable upon such distiller or proprietor for or in respect of such spirits so warehoused, and of all deficiencies thereof, or of so much of such spirits as shall not, by notice on that day to be delivered by such distiller or proprietor to the proper officer, be desired by him or her respectively to be continued in warehouse for exportation only to foreign parts, and all such spirits then in any such warehouse for which such duty shall be so paid shall thereupon be delivered from such warehouse: provided always, that no spirits so warehoused for which such duty respectively shall not be so paid on the said 6th day of January, 1826, and which shall be so desired to be continued in warehouse, shall be on any pretence whatever afterwards delivered from such warehouse, except for such exportation only; and that all spirits for which the duty respectively shall not be so paid as aforesaid, and which shall not be desired by such notice as aforesaid to be continued in the warehouse for such exportation only as aforesaid, shall be forfeited, and shall and may be seized by any officer or officers of excise."

Sect. 153. This act may be amended, altered, or repealed in this session.

The 9 Geo. IV. c. 44, s. 4, extends all acts in force in England relating to foreign and colonial spirits, &c., to the United Kingdom.

By the 1 Wil. IV. c. 49, intituled, "An Act to impose Additional Duties of Excise on Spirits," after reciting, "whereas it is expedient to impose certain additional duties of excise on spirits," it is enacted, "that there shall be raised, levied, collected, and paid, to and to the use of his majesty, his heirs and successors, over and above all duties already imposed for or in respect thereof by any act or acts, the several additional duties of excise hereinafter mentioned (that is to say):

27. *Spirits.*  
II. *British.*

6 Geo. 4, c. 86.

Extent and commencement of this act.

Spirits made or brought from Scotland or Ireland, into England, between the 10th October, 1825, and the 6th January, 1826, to be warehoused, and duty to be paid on the latter day, except for so much as shall by notice be continued in warehouse for exportation only.

1 Wil 4, c. 40.  
Additional duties of excise on spirits.



27. *Spirits.*  
II. *British.*

1 Wil. 4, c. 40.

"From and after the 15th day of March, 1830, for and upon every gallon of spirits of the strength of hydrometer proof, ascertained by the hydrometer called *Sikes'* Hydrometer, which shall be made or distilled in England by any person or persons whomsoever, an additional duty of sixpence, and so in proportion for any greater or less degree of strength, or for any greater or less quantity, to be paid by the first maker or distiller thereof.

"For and upon every gallon of spirits of such strength as aforesaid, which shall have been or shall be made and extracted in Scotland or Ireland respectively, and warehoused there without payment of duty, and which shall have been or shall be taken out of warehouse there for the purpose of being removed or imported into England for consumption, an additional duty of sixpence, and so in proportion for any greater or less degree of strength, or any greater or less quantity, to be paid by the distiller or proprietor thereof at the time of the delivery of such spirits from the warehouse in Scotland or Ireland respectively, for the purpose of being brought or imported into England.

"For and upon every gallon of spirits of such strength as aforesaid, which shall be in the stock, custody, or possession of any distiller in England on the 16th day of March, 1830, an additional duty of sixpence, and so in proportion for any greater or less degree of strength, or any greater or less quantity, to be paid by such distiller.

"For and upon every gallon of spirits of such strength as aforesaid, which shall be made or distilled in Scotland or Ireland respectively, or which shall have been made or distilled in Scotland or Ireland respectively, and shall be or shall have been on the 16th day of March, 1830, in the stock, custody, or possession of any distiller in Scotland or Ireland, or shall have been warehoused there without payment of duty, and which shall be taken out of such warehouse for consumption in Scotland or Ireland respectively, an additional duty of twopence, and so in proportion for any greater or less degree of strength, or any greater or less quantity.

"From and after the 14th day of June, 1830, for and upon every gallon of spirits of such strength as aforesaid which shall be made or distilled in Scotland or Ireland respectively, or which shall have been made or distilled in Scotland or Ireland respectively, and shall be or shall have been, on the 15th day of June, 1830, in the stock, custody, or possession of any distiller in Scotland or Ireland, or shall have been warehoused there without payment of duty, and which shall be taken out of such warehouse for consumption in Scotland or Ireland respectively, a further additional duty of fourpence, over and above the said additional duty of twopence, and so in proportion for any greater or less degree of strength, or any greater or less quantity."

Spirits made in Scotland or Ireland, and removed to England, but not sold on 16th March, 1830, to be liable to the duty hereby imposed.

Sect. 2. "That all spirits which shall have been made or distilled in Scotland or Ireland respectively, and removed from thence into England, and which shall not, on the 16th day of March, 1830, have been sold or disposed of, or, if sold and disposed of, shall not have been delivered to the purchaser thereof, and removed from the legal quays or sufferance wharfs, or other place of landing, and the duties whereon shall not have been fully paid and satisfied, shall be liable to the said additional duty of sixpence hereby imposed; and the same shall be paid by the proprietor of such spirits, or the person in whose custody or possession the same shall, on the 16th day of March, 1830, or at any time afterwards, be found."

As to spirits made in Scotland or Ireland, and sold, but not delivered at the periods herein mentioned.

Sect. 3. "That all spirits which shall have been made and distilled and warehoused in Scotland and Ireland respectively, and which shall, before the 16th day of March, or 15th day of June, 1830, respectively, have been sold and disposed of by the distiller thereof, but shall not have been delivered to the purchaser, but have remained and been taken an account of in any warehouse, shall be, and the same are hereby declared to be, liable to the said additional duties of twopence and fourpence for every gallon thereof respectively hereby imposed; and the commissioners, collectors, and officers of excise are hereby authorized and required to demand and receive the said additional duties before the delivery of any such spirits from the warehouse in which the same shall have been or shall be warehoused; and, in case any such spirits

which shall have been so warehoused shall, after the said 15th day of March, or 15th day of June, 1830, respectively, have been delivered from the warehouse, it shall and may be lawful for the commissioners of excise, and they are hereby authorized and empowered, to collect, recover, and receive the said additional duties hereby imposed from the distiller or proprietor of such spirits, by the same ways, means, powers, and authorities, as any other duties of excise may by any act or acts be collected, recovered, and received; and, if any distiller or proprietor of any such spirits shall have been or shall be charged with, and shall have paid or shall pay, the said additional duties, or any part thereof, it shall and may be lawful for such distiller or proprietor to recover the amount so paid from the purchaser of the spirits, in respect of which such distiller or proprietor shall have been or shall be charged, and shall have paid or shall pay the said additional duties."

Sect. 4. "That the said additional duties hereby imposed shall be under the management of the commissioners of excise for the time being, and the same shall and may be respectively raised, levied, collected, recovered, paid, and applied, in such and the like manner, and in and by the same means, ways, or methods, by which the former duties of excise for or in respect of spirits were or might be raised, levied, collected, recovered, paid, and applied, in England, Scotland, and Ireland respectively; and all and every act or acts relating to the duties of excise, and all and every fine, penalty, or forfeiture, of any nature or kind whatsoever, for any offence against or in breach of any act or acts for securing the duties of excise, or any of them, or for the regulation or improvement thereof, in force immediately before the passing of this act, and the several clauses, powers, and directions therein contained, shall and the same respectively are hereby directed and declared to extend to, and shall be respectively applied, practised, and put in execution, for and in respect of the several additional duties of excise by this act imposed, in as full and ample manner, to all intents and purposes whatsoever, as if all and every the said acts, clauses, provisions, powers, directions, fines, penalties, or forfeitures, were particularly repeated and re-enacted in the body of this act."

Sect. 5. "And whereas contracts may have been made before the 16th day of March, 1830, or before the said 15th day of June, 1830, respectively, by licensed distillers and makers of spirits, and other persons, for spirits to be delivered after those days on which the additional duties hereby imposed will attach;" it is enacted, "that all and every such licensed distillers and makers of spirits, and other persons, who shall have sold any such spirits before the 16th day of March, or 15th day of June, 1830, on which the additional duties hereby imposed shall be charged, shall be allowed to add such money as will be equivalent to the additional duties by this act imposed for or in respect of such spirits to the price thereof, and shall be entitled by virtue of this act to demand, recover, and be paid the same accordingly; or it shall be at the option of any such distiller or maker of spirits, or other person, having entered into any such contract for the delivery of spirits, or of the purchaser thereof, before the delivery and receipt of such spirits, to declare the contract null and void, and the same shall be and is hereby made null and void accordingly."

Sect. 6. "That all spirits on which the said additional duties are hereby imposed, and all spirits which, on the 16th day of March and 15th day of June, 1830, respectively, or at any time afterwards, shall be or be found in the stock, custody, or possession of any distiller or other person liable to the payment of any of the said additional duties hereby imposed, or in the custody or possession of any other person or persons in trust for or to the use of any such distiller or other person or persons so liable, shall and the same are hereby made subject and liable to the payment of so much of the said additional duties, or any arrear thereof, as they may be respectively liable to under the provisions of this act, and shall and may be seized, taken, and sold for payment thereof, under the powers or authorities given by any act or acts for the recovery and enforcing the payment of any duties of excise."

Sect. 7. "That this act may be amended, altered, or repealed, by any act or acts to be passed in this present session of Parliament."

27. *Spirits.*  
II. *British.*

1 Wil. 4, c. 49.

Additional duties to be under the management of the commissioners of excise.

Remedy for contracts.

All spirits on which the additional duties are hereby imposed made liable, and may be seized and sold, for default.

Act may be altered this session.

27. Spirits.  
111. Made for  
exportation, &c.

3. *Relating to Spirits made in England for Exportation, or to be shipped as Stores, or for Removal to Scotland or Ireland, or made in Scotland or Ireland for Removal to England. (a)*

The 6 Geo. IV. c. 80, ss. 82 to 106, contains several regulations applicable to this division, and are printed, *ante*, 611 to 619, and need not therefore be here repeated.

Excise duties,  
&c.

By the 6 Geo. IV. c. 58, s. 1 & 2, the several duties, allowances, and drawbacks of excise in respect of spirits distilled or made in Scotland or Ireland, are repealed, and new duties and allowances enacted.

And by the 7 & 8 Geo. IV. c. 52, s. 66 to 75, further allowances and regulations respecting the same are enacted.

Spirits shipped  
for stores to be  
openly stowed.

The 9 Geo. IV. c. 44, s. 4, extends all acts in force in England relating to foreign and colonial spirits, &c. to the United Kingdom.

By the 2 Geo. III. c. 5, s. 29, 42 Geo. III. c. 93, s. 12, all spirits made or drawn in Great Britain for exportation, shipped for stores, shall, during the time the ship is within the limits of any port in this kingdom, be openly stowed and kept, so that the officers of excise may at any time examine the same, on pain of forfeiting the double duties which the wort or wash from whence such spirits were made or extracted would have been chargeable with, had such spirits been made or extracted from fermented wort or wash made in England for extracting spirits for home consumption from malt, corn, grain, or tilts, after the rate of one hundred gallons of wort or wash for every twenty-four gallons of such spirits; and which charge shall be paid by the master of the ship.

Rum, &c. shipped  
for stores being,  
if relanded, for-  
feited, &c.

By the 28 Geo. III. c. 87, s. 18, if any rum or spirits *shipped for stores* shall be unshipped, in order to be relanded, all such rum or spirits, together with the casks or other package, and also the boats and vessels, horses, cattle, and carriages made use of in such relanding or the removal thereof, shall be forfeited, and may be seized by any officer of customs or excise; and every person who shall so unship, or cause to be so unshipped, any such rum or spirits, or shall be assisting or concerned in such unshipping, or to whose hands the same shall knowingly come, after such unshipping, shall forfeit treble the value thereof; and if any master or other person on board such vessel shall assist in, or connive at such unshipping or relanding, he shall (over and above all other penalties) forfeit 100*l*.

Rum may be  
taken out of ware-  
house and allowed  
to be shipped  
in casks of not  
less than 60 gal-  
lons, as stores to  
be consumed on  
board free from  
duty.

By the 57 Geo. III. c. 123, s. 16, any cask not containing less than sixty gallons of rum, of the growth or produce of the British sugar plantations, may be shipped as stores to be spent and consumed on board any ship in any voyage to parts beyond the seas, freed from all the duties of excise, subject, nevertheless, to the rules, restrictions, penalties, and forfeitures, by the laws now in force, in respect of any rum to be shipped as stores.

No rum shall be shipped for stores on board any ship (except by permission of the commissioners of excise) but at the port at which the ship is fitted out for the voyage; and the oath required by law to be made, that the same is to be shipped as stores to be spent and consumed in the voyage, shall be made by affidavit in writing by the master or purser of such ship.

Conditions.

And if the contents of any such cask shall be drawn off, or the rum or any part thereof used or altered, either in quantity or quality, before such ship shall have sailed upon her intended voyage, such cask, and the rum therein contained or drawn off, shall be forfeited, over and above the penalty of the bond given on the shipment thereof, and may be seized by any officer of excise.

Penalty.

No rum of the  
British colonies  
shall be imported  
from Great Bri-  
tain to Jersey,  
&c. on pain of  
forfeiture, unless  
permission be  
given by the com-  
missioners of cus-

By the 1 & 2 Geo. IV. c. 94, it is enacted, "that it shall not be lawful to export, or to enter for exportation, from any part of Great Britain to the said islands of Jersey, Guernsey, Alderney, or Sark, or to any or either of them, under the penalty of the forfeiture thereof, to be seized by any officer or officers of the customs or excise, any rum of the production and manufacture of the British colonies or plantations, unless permission be first given for that purpose by the commissioners of his majesty's customs in England, or any four or more

(a) See division of the subject, *ante*, 579.

## II. PARTICULAR LAWS, &c. (27.) *Spirits*, III. *Exportation, &c.*

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of them, by license under their hands; and the said commissioners, or any four or more of them, are hereby authorized and required, on application to them in writing for that purpose, to grant their license from time to time, under their hands (such license to continue in force thirty days from the date thereof and no longer), to any of his majesty's subjects, to export from any port in England, in British-built ships, owned, registered, and navigated according to law, and not of less burthen than seventy tons (according to the rules for admeasurement prescribed by law), to the said islands of Jersey, Guernsey, Alderney, and Sark, any rum of the production or manufacture of the British colonies or plantations, in such quantities, to the said islands, or any of them, respectively, as shall be approved of and directed from time to time by the commissioners of his majesty's treasury, or any three or more of them for the time being."

27. *Spirits*,  
III. *Made for*  
*exportation, &c.*

tons, who may  
grant license to  
export rum under  
the conditions  
herein mentioned.

### 4. *Relating to (a) Importers and Dealers in Spirits by Wholesale and Retail, and the Recovering and Application of Penalties.*

4. Importers and  
dealers, &c.

The 6 Geo. IV. c. 80, s. 3, imposes new duties upon excise licenses required to be taken out annually by every dealer in and retailer of spirits in England, viz.:

	£	s.	d.
For every license taken out by any dealer in spirits (not being a retailer thereof)	10	0	0
For every license taken out by any retailer of spirits, if the dwelling-house in which he resides or retails such spirits shall not, together with the offices, yards, and gardens, therewith occupied, be of the value or rated at a rent of 10 <i>l.</i> per annum	2	0	0
If at 10 <i>l.</i> and under 20 <i>l.</i> per annum	4	4	0
If at 20 <i>l.</i> and under 25 <i>l.</i>	6	6	0
If at 25 <i>l.</i> and under 30 <i>l.</i>	7	7	0
If at 30 <i>l.</i> and under 40 <i>l.</i>	8	8	0
If at 40 <i>l.</i> and under 50 <i>l.</i>	9	9	0
If at 50 <i>l.</i> and upwards	10	0	0

The 6 Geo. IV. c. 80, ss. 122 to 151, contains several regulations relative to this division, and must be referred to, *ante*, p. 623 to 636.

But the 9 Geo. IV. c. 44, s. 4, extends all acts in force in England relating to foreign and colonial spirits, &c., to the United Kingdom.

Extended to  
United Kingdom  
by 9 Geo. 4, c. 44.

And by sect. 2, all prosecutions for penalties and forfeitures by order of the commissioners of excise, shall be prosecuted, sued for, and recovered, levied, mitigated, and applied, by such ways and methods as directed by the 7 & 8 Geo. IV. c. 53.

Recovery of penalties.

By sect. 1, all acts relating to the revenue of excise with respect to dealers in, and sellers of, foreign and colonial spirits, and in force at and immediately before the year 1825, are continued, and shall continue and remain in force, except where subsequently altered, &c.

Former acts continued.

By the 24 Geo. II. c. 40, s. 17, the justices within the limits of the head office of excise in London shall, once in every month, transmit to the clerk of the peace for the county where they act, a certificate of all persons convicted before them for any offences against this or any former act relating to spirituous liquors, or for licensing the retailers thereof, who is hereby required to keep and enter the same among the public records of the court of quarter session; which certificate shall be evidence upon any information directed by this or any other act relating to spirituous liquors.

Conviction to be kept amongst the records of the quarter sessions.

See title *Allegations*, Vol. I.; and also title *Alc and Beer*, *ante*, 311.

(a) See division, *ante*, 579.

## 28. Starch.

## (28.) Starch, Hair-Powder, and Stone Blus.

[10 Anne, c. 26; 12 Anne, st. 2, c. 9; 1 Geo. I. st. 1, c. 2; 4 Geo. II. c. 14; 23 Geo. II. c. 21; 24 Geo. II. c. 40; 26 Geo. II. c. 32; 5 Geo. III. c. 43; 10 Geo. III. c. 44; 19 Geo. III. c. 40; 24 Geo. III. c. 40, sess. 2, cc. 41, 48; 28 Geo. III. c. 51; 27 Geo. III. cc. 13, 51; 28 Geo. III. cc. 37, 73; 42 Geo. III. c. 93; 43 Geo. III. c. 69; 52 Geo. III. c. 139; 1 & 2 Geo. IV. cc. 25, 29; 3 Geo. IV. cc. 25, 27; 6 Geo. IV. cc. 81, 111; 9 Geo. IV. c. 44.]

## Duties.

By the 43 Geo. III. c. 69, Schedule (A.), for every pound weight (avoirdupois) of starch, of what kind soever, which shall be made in Great Britain, to be paid by the maker thereof, 3*d*.

The 6 Geo. IV. c. 111, imposes a duty upon every cwt. of starch, imported into Great Britain, of 9*l*. 10*s*.

## Allowances.

By the 23 Geo. III. c. 77, 43 Geo. III. c. 69, and 3 Geo. IV. c. 25, for every pound weight of starch made in Great Britain, which shall be consumed in Great Britain, on or before 15th July, 1826, in preparing and finishing any manufactures from flax or cotton, for sale (except such starch as shall be consumed in finishing new linen in the piece, for sale), there shall be allowed a drawback of 1*½d*., to be paid to the manufacturer.

And for every pound weight avoirdupois of starch made in Great Britain, which shall be used and consumed in finishing new linen in the piece, for sale, 3*d*., to be paid to the manufacturer.

By the 1 & 2 Geo. IV. c. 29, s. 1, the like allowances of duty on starch made in Great Britain, used in the manufacturing of flax or cotton, or in finishing new linen in the piece, for sale, shall be allowed for starch made in Ireland, and imported into Great Britain, and used and consumed in Great Britain as aforesaid.

## British gum to be deemed starch.

Sect. 4. Every article and commodity called British gum, or by any other name or description, being a preparation of or from starch, or of or from any of the materials from which starch is made in Great Britain; or made in Ireland, and imported from thence into Great Britain, shall be deemed starch, and subject and liable to all the duties, allowances, and drawbacks, imposed, granted, and allowed upon starch, and to the several laws and regulations relating thereto.

## No entry to be allowed (in certain places), except to persons assessed to the duties granted by the 6 Geo. 3, c. 28, and by the 19 Geo. 3, c. 50.

By the 19 Geo. III. c. 40, s. 1, and 26 Geo. III. c. 51, s. 20, "No person or persons whatever residing in any part of the kingdom out of the limits of the head office of excise in London, and in any places where there are not rates to church and poor, shall be permitted to make entry of any workhouse, or place for the making of starch, unless such person or persons shall be assessed in his, her, or their own name, and pay, in the several parishes and places in which such workhouse or place for the making of starch shall be situated, to the rates and duties on houses, windows, and lights, granted by an act made in the sixth year of his present majesty's reign, intituled, 'An Act for Repealing the several Duties upon Houses, Windows, and Lights; and for granting to his Majesty other Duties upon Houses, Windows, and Lights;' and unless such person or persons shall also be assessed in his, her, or their own name, and pay in the several parishes and places in which such workhouse or place for the making of starch shall be situated, to the rates and duties upon inhabited houses, granted by an act made in the nineteenth year of his present majesty's reign, intituled, 'An Act for Repealing the Duties on all Inhabited Houses, imposed by an Act made in the last Session of Parliament, and for granting to his Majesty other Duties upon all Inhabited Houses in Great Britain, and for amending the said Act; and also for amending so much of an Act, made in the Seventeenth Year of the Reign of his present Majesty, as imposes a Duty upon all Servants retained or employed in the several capacities therein mentioned,' or by any other act or acts of Parliament now in force; and that no entry of any workhouse or place for making of starch, already made, or to be made, as required by the statutes in that case made and provided, in any place out of the limits of the head office of excise in London, and where there are not rates to church and poor, shall be of any avail to any person or persons not so qualified, or for any longer time

## Persons making entries, and not qualified, liable to the penalties of making starch without entry.

than the person or persons so making entry shall be qualified as aforesaid; and every person making starch, not qualified as aforesaid, shall, notwithstanding any entry by him, her, or them made, be deemed and taken to be persons making starch without entry, and shall be subject to the like penalties and forfeitures as persons making starch without entry are by the statutes in such case made and provided now subject unto."

28. *Starch, &c.*

By the 24 Geo. III. sess. 2, c. 41, ss. 1, 6, 7, every maker of starch for sale shall take out a license annually, paying for the same 5*l.*, under the penalty of 30*l.*

Starch-makers to be licensed.

But the 6 Geo. IV. c. 81, repeals all former duties on excise licenses, and imposes new duties, viz. (*inf. al.*):—Upon every license to be taken out by every maker of starch for sale, the annual sum or duty of 5*l.*, under the penalty of 100*l.*

See the several enactments of this statute relating to licenses, penalties, &c., title *Wine and Beer*, Vol. I.

By the 24 Geo. III. sess. 2, c. 48, s. 1, no maker of starch within Great Britain shall erect, set up, alter, change, enlarge, or make use of any workhouse, storehouse, room, or other place, for the making, drying, or keeping of starch, or for the keeping any flour or meal, or other materials proper to be made into starch, or use any vat, trough, kiln, stove, box, utensil, or other vessel for the making of starch, without first giving notice in writing thereof, and of his name or place of abode, unless such notice shall have been before given in writing at the next office for the said duties on starch. Every offender therein, for each offence, to forfeit 200*l.*

Places of making and name and place of abode to be entered.

By the 5 Geo. III. c. 43, s. 19, leaving a summons at the place where discovery shall be made of such offence for using any workhouse, &c., or keeping any flour, &c., without giving notice, &c., directed to the person prosecuted by his right or assumed name, shall be deemed as effectual as if delivered personally, and directed to him by his proper name.

Summoning offenders.

By the 19 Geo. III. c. 40, s. 12, all rooms and places, vessels and utensils, used for the purpose of drying or making of starch, shall be marked and numbered by the direction of the surveyor or supervisor, at the expense of the starch-maker, on forfeiture of 50*l.* for each offence.

Rooms and vessels to be numbered.

By the 10 Anne, c. 26, s. 22, "all flour and meal, and other materials for making starch, which shall be found in any private workhouse, warehouse, or other place, and all private utensils and vessels for making or keeping starch, for which no entry shall be made, or notice given as aforesaid, shall be forfeited and lost, and the same, or the value thereof, shall and may be seized and recovered by the said officer or officers for the said duties on starch, for her majesty's use."

Materials found in private workhouse.

Penalty.

By the 24 Geo. III. sess. 2, c. 48, s. 3, "every person who shall make starch within Great Britain, shall cause to be painted in large legible letters of at least three inches in length, over the outward door, or in some conspicuous part of the front of his or her starch-house, the christian and surname of such starch-maker, with the addition of the word starch-maker; and if any person shall make starch within Great Britain, without having his or her christian and surname, with the addition of the word starch-maker, so as aforesaid painted over the outward door, or in some conspicuous part of the front of his or her starch-house, he or she so offending shall forfeit the sum of 100*l.*"

Name of every starch-maker to be painted over the door, &c.,

on penalty of 100*l.*

By the 10 Anne, c. 26, s. 14, "all and every the officers for the said duties on starch, shall at all times, by day or by night (and if in the night, then in the presence of a constable, or other lawful officer of the peace), be permitted, upon his or their request, to enter the house, workhouse, warehouse, or other place whatsoever, belonging to, or used by any person or persons, who, within or during the last-mentioned term of thirty-two years, shall be a maker or makers of any starch whatsoever, and by gauging or weighing of the starch, or gauging the boxes and other utensils, or otherwise, as to such officer shall seem most proper and convenient, to take an account of the just quantity of the starch which shall have been made by such maker or makers of starch, from time to time; and shall thereof make return or report in writing to the respective commissioners for the said duties on starch, or such as they respectively shall appoint

Officer may enter houses, &c., and take account of starch,

and shall make a return in writing to the commissioners, and leave copy with maker.

**28. Starch, &c.****Penalty.**

Starch-makers to give proper notice to excise officers before they begin to empty vats ;

on forfeiture of 100*l*.

Vats to be emptied in 48 hours, and sour waters shifted in 12 hours after beginning those operations, on penalty of 100*l*.

After vats emptied, waters shall remain in the frames, &c. 48 hours.

Starch-maker to give the officer a notice in writing, &c.

When put into a tub, &c. they shall remain 24 hours, &c.

to receive the same, leaving a true copy (if demanded) of such report in writing under his hand, with or for such maker or makers of starch respectively ; and such report or return of the said officer or officers shall be a charge upon such maker or makers of starch ; and if the said officer shall refuse or neglect to give or leave a true copy of his report in writing with or for such maker or makers of starch, at the time of taking such account, upon demand as aforesaid, every such officer, for every such offence, shall forfeit and pay the sum of 40*s*. to every such maker and makers of starch respectively."

By the 19 Geo. III. c. 40, s. 6, "every maker of starch, before he, she, or they do begin to empty or wash out any of the vat or vats, made use of by him, her, or them, in preparing or making of starch, he, she, or they shall give to the officer of excise of the division or district where his, her, or their starch-house is situate, twelve hours' notice, if such starch-house shall be within the limits of the chief office of excise in London ; or, if such starch-house shall be in any other part of Great Britain, twenty-four hours' notice of the particular time and hour when and at which he, she, or they intend to begin to empty or wash out such vat or vats ; and in case such maker or makers of starch shall not begin to empty or wash out the said vat or vats, at the hour and times mentioned in such notice, or within two hours next after, then every such notice shall be, and is hereby declared to be, void, and every such maker and makers of starch shall, and is hereby obliged to give a fresh and like notice in manner aforesaid : and in case any such maker or makers of starch shall neglect or refuse to give such first notice before he begins to empty or wash out his, her, or their vat or vats, or to insert in such notice the particulars hereinbefore required, or to give a fresh notice in manner aforesaid, before he begins to empty or wash out the vat or vats, in case he, she, or they shall not begin and proceed to empty or wash out the said vat or vats at the hour and time mentioned in the said first notice, or within two hours next afterward, such maker or makers of starch shall, in every such case, for every such offence, forfeit and lose the sum of 100*l*."

By the 26 Geo. III. c. 51, s. 15, it is enacted, that "every maker of starch, after he shall have begun to empty or wash out his vat or vats, agreeably to the notice by the said act required, shall proceed and continue to empty or wash out such vat or vats, until the whole of such vat or vats shall be emptied or washed out, without leaving off, except for the space of one night ; and every such starch-maker shall finish emptying or washing out such vat or vats, within the space of forty-eight hours, from the time of beginning to empty or wash out the same."

By the 19 Geo. III. c. 40, s. 7, it is enacted, "that when and so soon as the said vat or vats shall be so emptied or washed out as aforesaid, and the water shall be put into the frames, tubs, or other utensils, used for preparing and making the same into starch, the said waters shall remain unmoved and undisturbed in the same frames, tubs, or utensils, for the space of forty-eight hours, at least, from the time of emptying and washing out the said vat or vats, agreeable to the said notice, and that the slimes and wash shall not, during the said space of forty-eight hours, be taken off the same : and that the officers for the duties upon starch may be able to ascertain when the said waters were so put into the said frames, tubs, or utensils, after the said vat or vats have been emptied or washed out, as aforesaid, every maker of starch shall give, or cause to be given, to the officer of excise under whose survey such maker of starch shall then be, a notice in writing, specifying therein the particular hour or time of the day when such maker of starch did finish the emptying or washing out of each and every vat and vats ; and if any maker or makers of starch shall, after the said fifth day of July, 1779, neglect to deliver such notice as last aforesaid, he, she, or they shall, for every such neglect, forfeit and lose the sum of 100*l*."

Sect. 9. "That when the slimes shall be taken off, as aforesaid, and the same shall be put into any tub or tubs, or other utensil, the same shall remain in the same tub or tubs, or other utensils, into which the same shall have been first put, for the space of twenty-four hours after the same shall have been so taken off ; and if any maker or makers of starch shall move or disturb the waters after the same shall have been so emptied or washed out of the vat or vats into any frame, tub, or utensil, or shall take off the slimes or wash during the space

*of forty-eight hours, as aforesaid, or shall move or disturb the slimes after the same shall have been put into such tub or tubs, or other utensil, during the space of twenty-four hours, as aforesaid, then, and in every such case, such maker and makers of starch shall, for every such offence, forfeit and lose the sum of 100l.*"

By the 26 Geo. III. c. 51, s. 18, it is enacted, that "if any maker of starch shall, whilst his starch is in operation and under water, mix, or cause to be mixed, any of the starch waters of one making with those of another making, every such starch-maker shall forfeit and lose the sum of 100l.: provided, nevertheless, that slimes which shall have been entered on the officer's books as slimes, for the space of twenty-four hours, may be mixed in the presence of the officer for the duties on starch, and not otherwise."

By the 19 Geo. III. c. 40, s. 8, it is enacted, "that whenever any maker or makers of starch shall be desirous to take off from the sour waters the slimes or wash so put into the frames, tubs, or utensils, after the same shall have been and have remained unmoved and undisturbed for the space of forty-eight hours, as aforesaid, he, she, or they shall give to the officer of excise of the division or district where his, her, or their starch-house is situate, twelve hours' notice, if such starch-house shall be within the limits of the chief office of excise in London, or if such starch-house shall be in any other part of Great Britain, twenty-four hours' notice, of the particular time and hour when and at which he intends to take off such slimes and wash; and in case such maker or makers of starch shall not begin and proceed to take off the slimes and wash, as aforesaid, at the time and hour mentioned in such notice, or within two hours next after, then every such notice shall be, and is hereby declared to be, void, and every such maker and makers of starch shall be, and is hereby, obliged to give a fresh and like notice, in manner aforesaid; and in case any such maker or makers of starch shall neglect to give such first notice before he begins to take off such slimes or wash, or to insert in such notice the particulars hereinbefore required, or to give a fresh notice, in manner aforesaid, before he begins to take off such slimes or wash, in case he, she, or they shall not begin and proceed to take off such slimes and wash at the hour and time mentioned in the said first notice, or within two hours next afterwards, such maker or makers of starch shall, in every such case, for every such offence, forfeit and lose the sum of 100l."

By the 26 Geo. III. c. 51, s. 15, "every starch-maker, after he shall have begun to take off the slimes or wash from the sour waters, agreeably to the notice by the said act required, shall proceed and continue to shift the said sour waters until the whole is finished, and shall finish the shifting the said sour waters within the space of twelve hours from the time of beginning to take off the said slimes or wash; and every starch-maker who shall not finish the emptying or washing out his, her, or their vat or vats, within the space of forty-eight hours from the time of beginning the same, or shall not finish the shifting the said sour waters within the space of twelve hours, from the time of beginning to take off the said slimes or wash, shall, for every such offence, forfeit the sum of 100l."

Sect. 16. "That when any starch-maker shall have finished the taking off the slimes and wash from the sour waters, and the green waters shall be put into the frames, tubs, or other utensils, used for preparing and making the same into starch, the said green waters shall remain unmoved and undisturbed in the same frames, tubs, or other utensils, for the space of twenty-four hours at the least from the time the shifting of the sour waters shall have been finished; and the said green waters shall not, during the space of twenty-four hours, be moved or disturbed in the said frames, tubs, or utensils: and that the officers for the duties upon starch may be able to ascertain when the said green waters were so put into the said frames, tubs, or other utensils, after the shifting of the sour waters had been finished, as aforesaid, every maker of starch shall give, or cause to be given, to the officer for the said duties under whose survey such maker of starch shall then be, a declaration in writing, specifying therein the particular hour or time of the day when such maker of starch did finish shifting the sour waters; and if any maker of starch shall, after the said twenty-fourth day of June, 1786, neglect to deliver such declaration last aforesaid, or shall

28. *Starch, &c.*

The starch waters of different makings not to be mixed, on penalty of 100l.; but slimes may be mixed in presence of an officer.

Starch-makers to give proper notice before they take off the slimes and wash from sour waters,

on forfeiture of 100l.

Sour waters to be shifted within 12 hours, on penalty of 100l.

Green waters to remain undisturbed 24 hours, after shifting the sour waters; of which shifting a declaration is to be made, on penalty of 100l. for offence in either particular.



**28. Starch, &c.** move or disturb the green waters during the space of twenty-four hours after the shifting the sour waters shall have been finished, agreeably to such declaration last aforesaid, then every such maker of starch shall, for every such offence, forfeit and lose the sum of 100*l*."

**Boxes.**

By the 4 Geo. II. c. 14, s. 1, all makers of starch shall use regular square or oblong boxes only, for boxing and draining green starch, before it is dried in the stove, on pain of forfeiting 10*l*. for every offence.

By the 4 Geo. II. c. 14, s. 1, and 19 Geo. III. c. 40, s. 11, every maker of starch shall, if within the bills, give twelve hours' (elsewhere twenty-four hours') notice in writing to the officer, of his intention to put any green starch into such boxes; and he shall, in such notice, express the particular frame or tub from which he intends to box any starch; and when he shall begin to box, he shall continue to proceed to box the same, till the whole quantity in such frame or tub shall be boxed; and if he shall neglect to give such notice, or shall not proceed or continue after such notice given, he shall forfeit 200*l*.

By the 1 Geo. I. st. 1, c. 2, s. 6, if the charge be made by gauging it before it be dried in the stove, then every box of green starch, or starch before it be dried, containing fifty-seven inches in length and ten inches in breadth, and eight inches in depth, or, in the whole, four thousand, five hundred, and sixty solid inches, shall be esteemed one hundred and thirty-one pounds avoirdupois of starch dried and perfectly made.

By the 19 Geo. III. c. 40, s. 10, if the officer shall miss any quantity of starch, of which an account had been taken by gauge, whilst the same was in the sour waters or slimes, and before it hath been put into the boxes, he may charge the maker according to such gauge taken.

**Drying in the stove.**

By the 19 Geo. III. c. 40, s. 13, 14, 15, when the maker shall have broken the starch from his boxes, he shall deliver to the officer an account in writing of the true number of pieces broken from such box, distinguishing the size of the different pieces, under the denominations of large, middling, and small; and how many pieces of each denomination are contained in each breaking from the boxes. And whenever any maker shall put his starch, when scraped, or when put into papers, into the stove for drying the same, he shall place the several pieces so put into the stove, in such manner as that the officers may have access to and be able to count the same. And he shall provide ladders, and assist the officer in taking an account of the said several pieces in the stove; and he shall not, for two hours after the officer hath entered the stove, stir the fire under the stove, nor throw upon the pan of such stove any dirt, meal, or other ingredient, whereby a smoke may be raised, or the officer hindered in counting the pieces. Any maker offending in any of the premises, he shall forfeit 200*l*.

**Breaking down into scrapings.**

Sec. 16. When any maker of starch intends to break down any piece, into scrapings or otherwise, he shall give to the officer twelve hours' notice, if within the limits of the chief office of excise; if in any other part of Great Britain, twenty-four hours, of the particular time and hour when he intends to break down such pieces; and if he shall not begin at the time, or within two hours after, the notice shall be void, and a fresh notice in like manner be given. And if he shall begin without giving such notice, he shall forfeit 100*l*.

**Removing from the stove.**

By the 26 Geo. III. c. 51, s. 19, if he be desirous to remove such starch from the stove, he shall give the like notice; and if he shall begin to remove any starch from the stove after the same is dried, without giving such notice, he shall forfeit 200*l*.

By the 19 Geo. III. c. 40, s. 17, if the officer shall find any piece of starch drying, of which no account had been taken in the box, the same shall be deemed starch whereof no account had been taken, and the maker shall forfeit 100*l*.

**To be papered and stamped.**

By the 26 Geo. III. c. 51, s. 1, 2, all starch, before it be put into any stove or place to dry (except for crusting), shall be put or wrapped in papers, and the maker shall, before he begins papering such starch for drying, give to the officer of the district twelve hours' notice in writing, if within the limits of the chief office, elsewhere twenty-four hours, of the particular time and hour when he intends to begin, and shall, in such notice, express the number of pieces in-

tended to be papered, and where intended to be dried; and if such starch-maker shall not begin to paper such starch at the time, or within one hour, such notice shall be void. And every piece of starch, when papered, shall be tied up with strings, crossing each other on that side of the piece where the ends shall be folded, and there shall be pasted thereon a label or piece of thin paper three inches long, and three inches broad at least, of a different colour, upon which the officer shall put a stamp or seal, in such manner as to prevent opening such paper of starch without tearing the said piece of stamped paper: and every maker offending herein shall forfeit 100*l*.

28. *Starch, &c.*

Sect. 14. If any person shall forge or counterfeit any such stamp or seal, or the impression of the same on the papers, he shall be guilty of felony without benefit of clergy (a); or shall knowingly sell any starch with such forged or counterfeit stamp, or seal, or impression, or affix any paper duly stamped to any piece of starch other than that which was originally inclosed therein, he shall forfeit 500*l*.

Forging or using  
forged stamps.

Sect. 11. When the paper wherein such starch is contained shall be broken or damaged, and the maker shall be desirous of having the same re-papered and re-stamped, he shall give, if within the bills, twelve hours', elsewhere twenty-four hours', notice to the officer, who, on being satisfied that it was damaged by accident, may re-stamp the same as before.

Damaged stamps  
may be replaced.

Sect. 3. If any piece of starch papered and not stamped, or any piece not papered in manner as aforesaid, or any scrapings or loose starch, shall be found in any stove or place for drying, the same shall be forfeited; and the maker in whose possession the same is found shall forfeit 200*l*. But this shall not extend to pieces of starch put into the stove for crusting only, before the same be scraped.

Starch unstamped  
and scrapings.

Sects. 9, 10. Within one hour after such starch shall have been papered and stamped, all scrapings belonging thereto shall be weighed and taken account of and put into water, and shall not be mixed with other starch, or preparation for making starch then in operation, and when dissolved shall be strained through a sieve, and the officer shall take an account thereof as a green water; and the same shall not be again meddled with, until notice shall be given for boxing the same, as required by the 4 Geo. II. c. 14, and 19 Geo. III. c. 40. And if any maker shall neglect to put such scrapings under water, and stir the same until dissolved, and strain the same within one hour after having been weighed and taken account of, or shall wilfully disturb or cause the same to be taken away without notice, he shall be deemed to have boxed starch without notice: or if he shall, in order to increase the quantity of scrapings before the same be weighed, mix starch of the same or any other making, or any flour, meal, or other thing with such scrapings, or wilfully cause any water or other liquid to be put to such scrapings, or by any means cause the same to be increased in weight, he shall forfeit 200*l*.

By the 10 Anne, c. 26, s. 16, every maker shall keep sufficient and just scales and weights at the place where he makes his starch, and permit and assist the officer to make use thereof, on pain of 10*l*.

Maker to keep  
scales and  
weights.

By the 10 Geo. III. c. 44, s. 1, if any maker shall use insufficient scales or weights, he shall forfeit 100*l*.; but not to be prosecuted both on this and the former act. And by the 28 Geo. III. c. 37, s. 15, the same shall be forfeited, and may be seized by any officer.

By the 10 Anne, c. 26, s. 19, no maker of starch shall remove any starch of which no account hath been taken by the officer, from the place where it was made, without giving to the officer, within the limits of the chief office of excise in London, twenty-four hours' notice, and elsewhere two days' notice.

Removing be-  
fore surveyed.

(a) But, by the 52 Geo. III. c. 143, s. 1, in all cases where any act committed in breach of, or in resistance to any of the laws for collecting the revenue, would, by the laws in force, subject the offender to suffer death, as guilty of felony without benefit of clergy, such act shall be deemed to be felony with benefit of clergy, and punishable only as such, unless the same shall also be declared felony without benefit of clergy by this act.

**Excise and Customs. II. Of Excise.**

**28. Starch, &c.** By the 19 Geo. III. c. 40, s. 19, if he shall remove any starch after it is dried out of the stove or drying-place, before it has been weighed and taken account of by the officers, he shall forfeit 200*l*.

**Removing upwards of 28lbs.** By the 24 Geo. III. sess. 2, c. 48, s. 4, no starch exceeding twenty-eight pounds shall be removed or carried by land or water, unless the word "starch" be painted or marked on the package in legible letters three inches long, on pain of forfeiture thereof, together with the chests, casks, sacks, or other package containing the same; and the boat or vessel, horses, or other cattle, carts, or other carriages, made use of in removing the same.

**Dealers receiving above 28lbs.** Sect. 5. If any dealer in starch shall knowingly receive any quantity of starch exceeding twenty-eight pounds' weight, not having the word "starch" marked thereon as aforesaid, he shall forfeit 200*l*.

**Loose starch above 28lbs. and scrapings may be seized.** By the 26 Geo. III. c. 51, s. 13, all starch not being papered and stamped as before directed, and all loose starch exceeding twenty-eight pounds, and scrapings of starch, which shall be found in the possession of any maker of (or dealer in, 27 Geo. III. c. 31, s. 23) starch, or any person for his use, or shall be found removing by land or water, shall be forfeited, and may be seized by any officer of the said duties; together with the package containing the same, and the boat or vessel, horses, or other cattle, carts, or other carriages, made use of in removing thereof; and such person shall forfeit moreover 10*s*. for every pound. But not to extend to starch made into hair-powder, or to any quantity taken out of the papers in the possession of any hair-powder maker, or blue-maker, or to any quantity not exceeding twenty-eight pounds, in the possession of any dealer in starch; nor to the returns from the sieves that may be in the possession of any maker of hair-powder.

**Concealing or privately making.**

By the 4 Geo. II. c. 14, s. 4, and 23 Geo. II. c. 21, s. 34, if any officer of the duties upon starch or of the customs, shall have any cause to suspect that starch is privately making in any place, or hid or concealed with intent to defraud the duties, then, upon oath made before any commissioner or justice residing near, setting forth the ground of his suspicion, such commissioner or justice may issue his warrant to authorize such officer by day or night (but if in the night in presence of a constable or other peace-officer) to enter such suspected place, and seize and carry away the same, with the materials, as forfeited, together with the boxes and other things containing it; and unless the party make it appear that the duty has been paid, he shall forfeit 50*l*.; and if any person obstruct the officer, he shall forfeit 100*l*.

By the 19 Geo. III. c. 40, s. 20, if any maker of starch shall fraudulently conceal any starch, with intent to defraud his majesty of the duties, he shall forfeit 100*l*.

**Assisting in private or unentered places.**

By the 24 Geo. III. sess. 2, c. 48, s. 2, when any officer of excise shall discover that the making of starch is carried on in any private workhouse, and without notice having been given, and shall at the same time discover any person knowingly assisting in making starch in any private or unentered place, or shall be any ways concerned in carrying on such private making of starch, every person so offending shall forfeit 30*l*. over and above all penalties that the proprietor may be liable to. And any officer of excise and all other persons acting in his aid may arrest and convey him before a justice, who, on confession or proof on oath of one witness, may convict such offender, who shall immediately pay the said penalty, and on his refusing or neglecting to pay the same he shall be committed to the house of correction for six months, to be reckoned from the day of conviction, unless the penalty shall be sooner paid. And on conviction for a second offence, he shall forfeit 60*l*., and on non-payment shall be committed in like manner for one year, unless the same be sooner paid.

**Officer to charge for materials missing.**

By the 10 Anne, c. 26, s. 17, the officer shall be permitted to take an account of the quantities of flour, meal, and other materials proper to be made into starch, that shall be in the possession of the maker; and if he shall miss any such materials, which he had taken an account of the last time he was there, and shall not on reasonable demand receive satisfaction what has become thereof, he may charge the maker with such quantity of starch as such materials so missing in his judgment would reasonably have made, not exceeding

twenty-five pounds' weight of starch for every bushel of such ingredients, *28. Starch, &c.*  
mixed or unmixed.

By the 26 Geo. III. c. 51, s. 17, if any officer shall miss any starch, or materials for making thereof, of which a gauge had been taken while in the green water or slimes, and before put into the boxes, and shall not receive satisfaction what is become of the same, he shall charge the maker according to the gauge so taken, and such maker shall pay the duty so charged.

By the 10 Anne, c. 26, s. 20, every maker shall keep all such starch made by him, that hath not been surveyed or taken account of by the officer for the duties on starch, separate from all such as may have been surveyed by the said officer, for twenty-four hours after making, within the limits of the weekly bills of mortality, and for two days if in any other part of Great Britain, unless sooner taken account of, on pain of forfeiting 5*l*. *Starch unsurveyed to be kept separate.*

By the 19 Geo. III. c. 40, s. 3, (a) every person who shall make starch, shall weekly make a true entry in writing at the next office for the duties of starch, of all the starch by him made within each week, setting forth the weight, and how much was made at each time, on pain of 50*l*.; which entry shall be on oath of the maker, or his chief workman or servant, according to the best of his knowledge and belief, before such officer as shall be appointed by the commissioners within the limits of the chief office of excise in London, and, if elsewhere, with and by the collector and supervisor of the district. *Entry of starch made.*

By the 10 Anne, c. 26, s. 12, and 19 Geo. III. c. 40, s. 5, no maker of starch shall be obliged to go or send further, either to make entry or payment, than to the next market-town. See also the 7 & 8 Geo. IV. c. 53, s. 26, *ante*.

By the 19 Geo. III. c. 40, s. 4, (a) every maker of starch shall, within one week after he shall or ought to have made entry, pay off the duties, on pain of double duty. And no maker, after default in payment, shall sell or deliver out any starch until he hath paid off the duty, on pain of double the value of such starch. *Payment of the duties.*

By the 23 Geo. II. c. 21, s. 29, cockets granted for shipping starch, to be landed in any other part of the kingdom, shall express the quality, quantity, and weight, the mark of the package, and by whom made and sold, and where consigned; and if shipped without such cocket, it shall be forfeited and seized, together with the package. *Carrying coast-wise.*

By sect. 27, and the 42 Geo. III. c. 93, s. 19, no starch shall be imported otherwise than in some package, containing at least two hundred and twenty-four pounds of neat starch, and stowed openly in the hold; on pain of being seized and forfeited, together with the package, and the master of the vessel to forfeit 50*l*. *Importation and exportation.*

By the 26 Geo. II. c. 32, s. 8, on information brought against such master (referring to the 23 Geo. II. c. 21, s. 29), he may detain the wages of the mariners till it be determined; and, if it shall appear that the starch was put on board by any mariner without the master's knowledge, the master may apply the wages of such mariner in payment of the forfeiture.

By the 23 Geo. II. c. 21, s. 28, the officers of excise (in like manner as the officers of the customs) may go on board any vessel, within the limits of any port, and search for and seize all starch forfeited, together with the package; and they may likewise seize such as, before entry and payment of duties, shall be found unshipping or unshipped. *Officers of excise, like officers of the customs, may go on board vessels.*

By the 26 Geo. III. c. 51, s. 5, 7, 8, when any starch-maker or dealer in starch shall intend to export any starch upon which all the duties have been paid, and shall have given notice of packing up the same as directed by the 25 Geo. III. c. 74, the officer who shall attend to see the said starch packed up shall mark every paper of starch on the label or piece of paper to be affixed thereto, with the word "Exportation;" but the same shall not be permitted to be packed up or exported, unless it shall have the piece of paper stamped, as by this act directed, entire and unbroken. And if any piece of starch so *No starch to be exported without a perfect label on each parcel.*

(a) By the 19 Geo. III. c. 40, s. 2, starch made by them, and sect. 13, the 11th sect. of 10 Anne, c. 26, respectively limiting the time for the payment of the duties, are repealed.  
ing makers of starch making entry of the duties, are repealed.

**28. Starch, &c.**

Officers may  
seize suspected  
starch.

Where goods are  
forfeited by any  
excise act, &c.,  
the vessel also  
forfeited.

Unshipping fo-  
reign starch be-  
fore entry, or re-  
landing the same.

Concealing starch  
unlawfully im-  
ported.

No person ap-  
pearing to claim  
starch seized  
within 20 days.

Notice of inten-  
tion to export  
starch from Ire-  
land, specifying  
number of pack-  
ages and weight,  
&c.

Regulation for  
packages, and  
tying up starch in  
parcels.

marked for exportation shall be found upon land (except where packed up before shipped, or in removing from thence to be put on board), the same shall be forfeited, and may be seized by any officer of excise or customs.

By the 4 Geo. II. c. 14, s. 3, any officer of excise or customs may seize any starch or hair-powder, with the horses and package, that shall be found in any ship or vessel, or shall be carrying in any cart or waggon or other carriage, where he has good reason to suspect that it hath been privately made, or imported without payment of duty, or reloaded after drawback allowed; and shall in ten days exhibit an information before three commissioners of excise, or two justices residing near the place where the seizure is made; and if the party doth not make it appear that the duty hath been paid, it shall be forfeited, together with the horses and package; and the offender shall likewise forfeit 5*l.* for every hundred weight.

And by the 23 Geo. II. c. 21, s. 30, the said officers may seize any starch, with the package, that shall be found in any vessel, cart, or other carriage, where they shall have good reason to believe that the same was made in some private workhouse, or clandestinely imported, or reloaded after drawback; and if the party at the hearing of the information shall not make it appear that the duty hath been paid or secured, he shall forfeit 5*l.* for every hundred pounds' weight, and so in proportion, and also the goods and packages shall be forfeited.

By the 42 Geo. III. c. 93, s. 18, where goods shall be forfeited under any act relating to the excise, the packages containing the same, and the vessel, boat, cart, carriage, and cattle used in the removal thereof, shall be forfeited, and may be seized by any officer of excise.

By the 23 Geo. II. c. 21, s. 31, if any foreign starch shall be unshipped with intention to be laid on land before entry and payment of the duties, or shall be landed again after shipping for exportation on debenture, the same, together with the package, vessels, boats, horses, and other cattle and carriages used in landing or conveying the same, shall be forfeited, and may be seized by any officers of the customs or excise; and the persons from whom the same shall be seized shall forfeit 5*l.* for every hundred pounds' weight; and so in proportion.

Sect. 32. If any person shall knowingly harbour, keep, or conceal, or knowingly permit to be kept, harboured, &c., any starch unlawfully imported, or reloaded after shipping for exportation upon debenture, he shall, whether he claim any property therein or not, forfeit 50*l.* for every hundred pounds' weight, and so in proportion, together with the goods and package.

Sect. 33. Where any such starch shall be seized as forfeited, and no person shall claim the same in twenty days, if it be within the limits of the chief office of excise in London, the officer who made the seizure may cause notice, signed by the solicitor of excise, to be affixed at the Royal Exchange, of the time of proceeding to trial and condemnation of the same by the commissioners of excise; and if it be out of the said limits, then public notice shall be given by proclamation at the next market-town, on the market-day next after the said twenty days, of the day and place where the justices will proceed to trial and condemnation thereof; and the judgment thereon shall not be liable to appeal, nor be removed by *certiorari*.

By the 1 & 2 Geo. IV. c. 29, s. 2, "all person and persons intending to export any starch made in Ireland to Great Britain, shall, six hours at the least before he or they shall ship the same, give to the proper officer of the customs of the port or place in Ireland, where the same shall be intended to be shipped, a notice thereof in writing, specifying in such notice the number of boxes or other external packages, and also the number of pieces or parcels, and net weight of the starch contained in each such boxes or other external package respectively, intended to be so shipped, with the respective marks and numbers of every such box or other external package, and the tare thereof (every such external package having the word 'Starch' permanently marked on the outside thereof in distinct letters of two inches in length at the least, and containing at the least two hundred and twenty-four pounds net avoirdupois of such starch, and the starch therein being in pieces or parcels, and each piece or parcel enclosed in a sepa-

rate paper, tied up with a string, the ends of which shall cross each other on that side of the piece or parcel where the ends of the paper are folded), and also specifying in such notice the quay or place where such goods are lying, and from which they are intended to be shipped, and the time when such shipment is intended to take place, and the name of the ship or vessel in which the same are intended to be shipped and exported, and of the master or commander thereof, and of the particular port or place in Great Britain to which such goods are intended to be exported; and such officer shall, upon the receipt of such notice and the production of such goods, take an account of such starch, and of the marks and numbers of each of such boxes or other external packages, and shall ascertain the gross weight of each of such boxes or other external packages of starch, and compare the same with the particulars expressed in such notice as aforesaid; and the shipper or exporter of such goods shall thereupon nail, screw, or fasten down each of such boxes or other external packages; and, before shipping the same, give and enter into bond with sufficient sureties, to be approved of by the proper collector of the customs in Ireland, in a penalty calculated at the rate of 7*d.* British currency for every pound weight avoirdupois of the starch mentioned in such bond, with a condition thereunder written, that such starch (being therein described according to the several particulars specified and contained in such notice as aforesaid, if upon such examination as aforesaid the goods and packages are found to agree with such notice), and that every part thereof shall be shipped and exported as aforesaid, and shall not be unshipped, unladed, or laid on land, or put on board any other ship or vessel in Great Britain (except in case of shipwreck or other unavoidable accident); which bond the collector of the customs of the port or place in Ireland from which such starch is intended to be exported, is hereby directed to take in his majesty's name, and to his majesty's use; and shall without fee or reward, after the boxes or other external packages containing such starch have been seen and inspected on board of such ship or vessel as aforesaid, for the exportation thereof, deliver a certificate of such shipment, describing therein the number of boxes, or other external packages, with the respective marks and numbers thereof, and the number of pieces or parcels of starch papered and tied up as aforesaid contained therein respectively, together with the tare of each such box or other external package, and the net weight of the starch therein contained, and also the date of such shipment and bond as aforesaid, with the name of the ship or vessel, and of the master or commander thereof, and the port or place in Ireland at which shipped and from which exported, and the port or place in Great Britain to which the same is intended to be exported, according to the particulars contained in such bond as aforesaid, and shall thereupon deliver such certificate to such master or commander, to accompany the goods on the said voyage, and shall transmit a duplicate of such certificate by the post, at the expense of the shipper of such goods, to the inspector or port-surveyor of excise of the port or place in Great Britain mentioned in such certificate; and that, upon the arrival of such ship or vessel at such port or place as aforesaid, or from necessity at any other port or place in Great Britain, such master or commander shall show the same to every officer of excise who shall board the said ship or vessel and demand the inspection of such certificate, and shall deliver such certificate to the proper inspector or port-surveyor of excise, at the port or place in Great Britain of such importation; and upon entry of such goods being made at such port or place in Great Britain as last aforesaid, for the payment of the duties payable thereon, the inspector, surveyor, or officer of excise duly appointed for that purpose, shall and may open every such box or other external package, and weigh and compare the contents thereof with such certificate thereof as aforesaid, and if he deem it necessary, open the ends of the paper in which each piece or parcel of such starch is enclosed and tied up, so as to satisfy himself that the same contains only starch made in Ireland; and if, upon such weighing and examination thereof, he shall find the same to agree with the particulars specified in such certificate as aforesaid, and to be a fair and legal importation, he shall forthwith, after the duties payable on the importation of such starch shall be fully paid, make out and deliver to the master or commander of such ship or vessel, a certificate of

*28. Starch, &c.*

1 & 2 Geo. 4, c. 20.

Officers to take an account of such starch, and of marks, &c. of packages.

Bond to be given for the due exportation.

Certificate of shipping, without fee, to be given by the proper officer to the master of the vessel.

Duplicate sent to the surveyor of port of importation.

On arrival certificate produced, and on entry of goods, and officer satisfied and duties paid.

Certificate to be transmitted to Ireland, and bond cancelled.

**28. Starch, &c.**

1 &amp; 2 Geo. 4, c. 29.

Starch so imported to be labelled and stamped as hereinafter directed.

Notice void if packages do not agree in particulars, and penalty 20*l*.

† *Sic* in act.

If starch be not landed in Great Britain (exception), and duty paid, &c. within three months, bond forfeited.

If regulations not complied with, starch forfeited.

Packages imported as starch made in Ireland, containing foreign starch or other goods, forfeited, and penalty.

**Hair-Powder.**  
Dealers in hair-powder.

the due importation, landing, and examination of, and payment of duty on such starch, specifying the several particulars aforesaid, and shall, at the expense of the importer of such starch, transmit by post a duplicate of such last-mentioned certificate to the collector of the customs of the port or place in Ireland from which such starch was shipped or exported as aforesaid, who upon the receipt of such certificate is hereby required, after comparing the same with such bond as aforesaid, to cancel such bond, if such certificate and bond are found to correspond and agree; and such importer is, after the delivery of such certificate as aforesaid, hereby required thereupon, at his own expense, but in the presence of the proper officer of excise, strongly to affix with warm paste made with glue on every piece or parcel of starch so papered and tied up, a label of thin paper, three inches long and three inches broad at the least, of a different colour to that in which the starch is wrapped; *videlicet*, if the starch is wrapped in blue or brown paper, the label shall be white, and if wrapped in white paper, the label shall be blue; and such label shall be affixed on that side of the piece of starch where the ends of the paper shall be folded, and in such manner as to prevent the opening thereof without tearing the label; and the proper officer of excise shall thereupon stamp every label on every piece or parcel of such starch, with such stamp as shall be directed by the commissioners of excise for the duties upon starch."

Sect. 3. "That if, upon the proper officer of the customs in Ireland taking an account of and weighing any packages of starch produced to him as the goods specified and described in any such notice as aforesaid,† shall find and discover the same not to agree with the particulars specified in such notice, or not according to the provisions of this act, every such notice shall be void, and the person and persons giving such notice shall forfeit and lose the sum of 20*l*. British currency, to be recovered, paid, and applied as any other penalty or penalties by any law relating to his majesty's customs in Ireland; and that, if any starch for which any such bond shall be given as aforesaid, for the due shipment and exportation thereof to Great Britain, shall not be landed in Great Britain (shipwreck and other unavoidable accident excepted), and the duty payable thereon paid, and for which such a certificate thereof as is hereinbefore mentioned shall not be delivered to the proper collector of the customs in Ireland within three calendar months after the date of such bond, the penalty of such bond shall be forfeited; and if any starch made in Ireland shall, after the expiration of one month after the passing of this act, be shipped in Ireland and imported into Great Britain otherwise than as aforesaid, or without such Irish certificate as is hereinbefore provided for that purpose, or not agreeing therein with the weight, quality, and description of the goods or packages therein specified, or for which such certificate is not received or delivered at the time of importation, or which is not duly entered, and the duties paid thereon, or on any piece or parcel of which the importer thereof refuses or neglects to affix such label as aforesaid, or of which any piece or parcel shall be removed or concealed from the proper officer before the same has been marked or stamped thereon by such officer to denote the charge of duty, all such starch, with the packages containing the same, shall be forfeited, and shall and may be seized by any officer or officers of excise; and if any package or packages shall be imported as aforesaid as starch made in Ireland, which shall be or contain any foreign starch, or any other goods or commodity than starch made in Ireland, all such goods and packages shall be forfeited, and shall and may be seized by any officer or officers of excise; and the importer and importers thereof, and every person concerned herein, shall, over and above such forfeiture, forfeit and lose the sum of 100*l*., or treble the value of such goods and packages, at the election of his majesty's attorney-general, to be recovered, paid, and applied as any other penalty or penalties by any law or laws relating to his majesty's revenue of excise in Great Britain."

By the 12 Anne, st. 2, c. 9, s. 20, no perfumer, peruke-maker, barber, or dealer in hair-powder, shall make, use, or offer to sale, any powder made of or mixed with alabaster, talc, plaster of Paris, whiting, lime, or other thing of the like nature (sweet scents only excepted), on pain of forfeiting the same, and 50*l*.

By the 4 Geo. II. c. 14, s. 5, if any maker of hair-powder, perfumer, peruke-maker, barber, or dealer in hair-powder, shall mix any powder or alabaster,

## II. PARTICULAR LAWS, &c. (28.) *Starch, Hair-Powder, &c.*

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plaster of Paris, talc, chalk, whiting, lime, or any other material of any kind (rice first made into starch, and sweet scents only excepted), with any starch or powder of starch to be made use of for making of hair-powder, and shall make any hair-powder with any of the said materials, or any other materials (except starch or powder of starch, or of rice first made into starch), and shall use, sell, or offer to sell any hair-powder so mixed or made, he shall forfeit the hair-powder so mixed and 20*l*.

28. *Starch, Hair-Powder, &c.*

Sect. 6. Every maker of hair-powder shall, at the office of excise next adjoining to the place where he resides, make entry in writing of his place of abode, and of his workhouse or other place made use of for making hair-powder, on pain of 20*l*.

Places of making hair-powder to be entered,

Sect. 7. The officer for the duties upon starch, at all times in the day, on his request, may enter all and every place used for making hair-powder, and the shops of perfumers, peruke-makers, barbers, and other sellers or dealers in hair-powder, and examine every parcel of hair-powder, and carry away samples, paying a reasonable price for the same; and if it appear the same is mixed with plaster of Paris, or any other material than starch or powder of starch (rice first made into starch, and sweet scents only excepted), the person in whose custody the same may have been found, shall forfeit 20*l*.

Officer to enter the same and survey.

Sect. 9. And if such starch-maker or dealer shall not, on request, suffer him to enter and examine, and take samples (on offering to pay the common price), he shall forfeit 20*l*.

Sect. 8. If any starch-maker, powder-maker, or dealer in hair-powder, shall have in his possession any alabaster, plaster of Paris, talc, chalk, whiting, lime, or other material besides starch, or powder of starch, or of rice first made into starch, for the making, mixing, or counterfeiting of hair-powder, he shall forfeit the same, and 10*l*.

Persons having in their possession materials for adulterating hair-powder.

By the 26 Geo. III. c. 51, s. 21, every maker of stone-blue for sale shall make an entry in writing at the excise office in London, if the same be within the limits of the said office; or if in any other part of Great Britain, then at the office of excise next the place where the business shall be carried on, of his name and place of abode, together with the workshop or place that shall be made use of in making or keeping stone-blue, or materials for making thereof; on the penalty of 50*l*.

Stone-blue. Makers of stone-blue.

Sect. 22, 25, 26. Any officer of excise, by day, at his request may enter such workshop or place, and examine every parcel of stone-blue, and take samples thereof, paying for the same according to the price stone-blue shall then bear; and if any person shall refuse to permit him to enter such place, or hinder him in taking such samples, or shall assault, molest, or hinder any officer in the execution of this act, he shall forfeit 50*l*.

Sect. 23. No maker shall begin to make any stone-blue for sale, from any flour, meal, or other ingredients (other than for colouring the same), except starch for which the duties have been paid, on pain of forfeiting thereof (except such colouring), together with the boxes, tubs, &c., containing the same, and also 100*l*.

Sect. 24. If any maker of stone-blue or hair-powder for sale shall receive into his possession any starch in papers not stamped, or any loose starch or scrapings, he shall forfeit 10*s*. a pound; and all such starch in papers unstamped, or loose starch and scrapings in the possession of such stone-blue maker, or maker of hair-powder, shall be forfeited, and may be seized by any officer of excise. And if any maker of stone-blue or hair-powder shall keep above twenty-eight pounds of starch or hair-powder in any unentered place, the same shall be forfeited, and also 50*l*.

No starch to be received by stone-blue makers but in stamped papers.

All the said forfeitures shall be sued for, levied, and mitigated, as by the laws of excise, (a) or in the courts at Westminster; and be distributed half to the king, and half (and by the 10 Anne, c. 26, half with full costs) to the prose-

Power of the justices.

(a) There was a particular method same as under title *Candles*, Vol. I.; directed for levying the penalties imposed by the 23 Geo. III. c. 21, the but see the 7 & 8 Geo. IV. c. 53, *ante*.



28. *Starch, Hair-Powder, &c.* cutor. *Vide* 10 Anne, c. 26, s. 29; 23 Geo. II. c. 21, s. 27; 24 Geo. II. c. 40, s. 29; 19 Geo. III. c. 40, s. 22; 24 Geo. III. c. 48, s. 16; 26 Geo. III. c. 51, s. 26; 43 Geo. III. c. 69, s. 4. [See 7 & 8 Geo. IV. c. 53, *ante*.]
- Obstructing officer. By the 24 Geo. III. c. 48, s. 6, if any maker of starch shall obstruct any officer for the duties upon starch in the execution of his duty, he shall forfeit 100*l*.
- Proof to lie on the claimer. By the 23 Geo. II. c. 21, s. 35, where any starch shall be seized for non-payment of duties, or non-entry, and it shall be disputed whether such payment or entry were made or not, the proof shall lie on the owner or claimer, and not on the officer who seized.
- Appeal. Sect. 37. If the party find himself aggrieved by the judgment given by the justices, in case of condemnation of goods seized under this act, he may appeal to the next quarter sessions, whose judgment shall be final (except in the case mentioned *ante*, sect. 33, where no person shall appear to claim the goods seized within twenty days).
- Mitigation. Sect. 38. The commissioners or justices may mitigate the penalties and forfeitures in such manner as they shall think fit, the reasonable costs and charges of the officers, as well in making the discovery as in the prosecution of the same, being allowed over and above such mitigation, and so as such mitigation do not reduce the penalty less than one-fourth part thereof, over and above the said costs and charges.
- Utensils liable. Sect. 40. No writ of *certiorari* shall supersede execution or other proceedings made in pursuance of this act.
- Penalties, &c. to be recovered according to 7 & 8 Geo. 4, c. 53. By the 10 Anne, c. 26, s. 23, and 28 Geo. III. c. 37, s. 21, all starch, materials, and utensils for making starch, in custody of the maker, or of any person to the use of such maker, shall be liable to all the debts and duties of starch and all penalties incurred; and such proceedings may be had thereupon as if the debtor or offender were the lawful owner.
- The 9 Geo. IV. c. 44, s. 2, directs all penalties and forfeitures imposed by any act or acts relating to the revenue of customs or excise, which by law the officers of excise are authorized to prosecute, and which the commissioners of excise shall order to be prosecuted, to be so prosecuted, sued for, recovered, levied, mitigated, and applied, in and by such ways, means, and methods, &c., as by the 7 & 8 Geo. IV. c. 53. See *ante*, p. 229 to 310.

### Stone Ware. See Starch.

(29.) *Stone-bottles.*

### (29.) Stone-Bottles.

[52 Geo. III. c. 139; 57 Geo. III. cc. 32, 119; 6 Geo. IV. c. 111; 9 Geo. IV. c. 44.]

- Duties. The duties of *customs* on stone or slate carried *coastwise*, and imposed by the 4 Geo. IV. c. 69, have ceased.
- Customs. The 57 Geo. III. c. 32, grants certain duties upon stone-bottles, and drawbacks, to be allowed on exportation.
- What deemed to be a stone-bottle. The 6 Geo. IV. c. 111, repeals all former duties of customs, and imposes new duties. See *ante*, 123.
- Bottles not to be made of less size than three ounces in measure of distilled water. By the 57 Geo. III. c. 32, s. 3, every bottle or other vessel which may be used as or for a bottle, made of earthen or stone ware, or of earth or clay alone, or mixed with any other material or materials, which shall not exceed two quarts in measure, or the mouth or neck of which shall not exceed in diameter, in the narrowest part of the inside thereof, three inches, and no other, shall be deemed and taken to be a stone-bottle within the meaning of this act.
- Sect. 7. No maker of earthen or stone ware, or of bottles or other vessels made of earthen or stone ware, or of earth or clay alone, or mixed with any other material or materials, shall make of earthen or stone ware, or of earth or clay alone, or mixed with any other material or materials, any bottle or other vessel which may be used as or for a bottle, smaller or of less size or content than three ounces in measure of distilled water, on pain of forfeiting, for every such offence, 50*l*.

By the 57 Geo. III. c. 119, s. 1, all stone-bottles made in Great Britain, or made in Ireland and imported from thence into Great Britain, and used for the sole purpose of containing liquid blacking, and which shall be of the description after specified, shall be wholly exempted from the duties imposed, and not be entitled to the drawback.

29. *Stone-Bottles.*

Stone-bottles used for liquid blacking exempted from duty.

Description of the stone-bottles so exempted from duty.

Sect. 2. Every bottle made in Great Britain, or made in Ireland and imported into Great Britain, of earthen or stone ware, or of earth or clay alone, or mixed with any other material, which shall not exceed one pint in measure, and the mouth and neck of which shall be not less than one inch and a half in diameter in the narrowest part of the inside thereof, and which shall be permanently stamped in the making thereof, in fair and legible characters, with the words "Blacking Bottle," and no other, shall be deemed and taken to be a stone-bottle made for the sole purpose of containing liquid blacking, and be exempted from the duties.

Sect. 3. If any person shall sell any such stone-bottle as aforesaid for any purpose or use other than for containing liquid blacking, or shall attempt to export the same upon drawback, such person shall, for every such offence, forfeit 50*l*.

Penalty.

By the 52 Geo. III. c. 139, s. 3, within twenty days next after the master or purser of the ship wherein any such stone-bottles shall be imported into Great Britain shall have or ought to have made an entry or report at the custom-house, of the contents of such ship, the proprietor, importer, or consignee of such stone-bottles shall make due entry with the collector of excise in the port or place where such stone-bottles shall be so imported, of all such on board of such ship belonging to him, &c., and shall then, and before the landing of any such stone-bottle, pay the duty imposed by this act, and shall also, within such twenty days, land all such stone-bottles, on pain to forfeit such stone-bottles, and which may be seized by any officer of excise.

Importation.

Sect. 4. Every maker of stone-bottles, before he shall make or manufacture any stone-bottles, shall make a true and particular entry in writing of every house, workhouse, millhouse, warehouse, shed, shop, room, and place by him used, or intended to be used, for the wetting, softening, grinding, preparing, mixing, or keeping of any clay, earth, or other materials commonly used or fit or proper to be used in making or manufacturing stone-bottles, or in the making, hardening, drying, baking, burning, or keeping of such bottles, at the office of excise within the limits of such house, shop, &c.; and every such maker shall also make like entry of every cone, kiln, stove, vat, cistern, mill, lathe, trundle, or other machine, implement, vessel, or utensil by him kept or made use of, or intended to be made use of, in the making, manufacturing, turning, hardening, drying, baking, or burning of any such bottles, at the office of excise within the limits whereof such cone, utensil, &c. &c. shall be situate, kept, or used; on pain of forfeiting 100*l*. for such place or utensil not so entered, together with all the stone-bottles and other materials found therein, which may be seized by any officer of excise.

Entry of premises, &c.

Sect. 6. The officers of excise, at all times between the hours of five in the morning and eleven at night without the presence of a constable, and between eleven at night and five in the morning, in the presence of a constable, may enter into the houses, workhouses, millhouses, warehouses, sheds, shops, rooms, and other places entered or made use of by any maker of stone-bottles, and by weighing, tale, or otherwise take an account of the weights, kinds, and quantities of the stone-bottles made, &c., or found in the possession of such maker of stone-bottles.

Officers to enter premises of makers, and take an account.

Sect. 7. Every maker being desirous to put stone-bottles in any kiln, stove, or oven for baking or burning the same, shall give to the officer under whose survey he shall be, six hours' previous notice in writing of such his intention, specifying the particular kiln, &c., in which such stone-bottles are to be deposited, and the hour at which it is intended to deposit the same; and if any such maker shall neglect to begin so to deposit such stone-bottles in the kiln, &c., within one hour after the time mentioned in the notice, such notice shall be void, and such maker shall give a fresh one; and if any maker shall put stone-bottles into any kiln, &c., without having given such notice, he shall forfeit 50*l*.

**29. Stone-Bottles.**

Number, size, &c. of stone-bottles to be delivered to officer before stopping up kiln, &c.

Makers to give notice for lighting fires to heat kilns, &c.

Makers to keep scales and weights, &c.

Penalty.

Makers to give notice to officer before drawing any stone bottles from kiln, &c.

Stone-bottles, when drawn, to be conveyed to the weighing-room, and inspected and weighed.

Penalty.

Sect. 8. Every maker of stone-bottles shall, before he begin to close or stop up any kiln, stove, or oven, containing stone-bottles, before he shall deliver to the officer of excise a declaration in writing of the number and names by which the bottles of each particular kind are commonly known, with the reputed measure of such stone-bottles of each size, and the number thereof contained in each and every such kiln, &c., on pain of forfeiting 50*l.*: provided, that no maker of stone-bottles shall incur the said penalty if the number of stone-bottles of any particular kind specified in any declaration shall not vary more than at and after the rate of 5 *per centum* from the true numbers.

Sect. 9. When any maker of stone-bottles shall be desirous to kindle any fire to heat his kiln, stove, or oven, into which stone-bottles are intended to be put for baking or burning the same, he shall give to the officer of excise six hours' notice in writing of his intention so to do: provided that no maker of stone-bottles shall kindle any fire for the purpose aforesaid, until after the expiration of one hour from the time when the depositing the stone-bottles shall be finished; and if any such maker shall so light any fire for that or any other purpose till after one hour, to be reckoned and computed as aforesaid, he shall forfeit 50*l.*; and if any maker shall neglect to light such fire within one hour after the time mentioned, such notice shall be void, and such maker shall give a fresh notice in writing; and if any such maker shall light a fire without giving such previous notice, he shall forfeit 50*l.*

Sect. 10. Every maker of stone-bottles shall at his own expense provide a convenient weighing-room in or adjoining to each kiln, stove, or oven.

Sect. 11. Every maker of stone-bottles shall keep sufficient and just scales and weights at the place where he shall manufacture stone-bottles, and also permit any officers of excise to use the same for weighing and taking an account of and re-weighing the stone-bottles made by or being in the possession of such maker; upon pain of forfeiting for every neglect or refusal 100*l.*; and if any maker shall, in the weighing or re-weighing, use or suffer to be used any false, unjust, or insufficient scales or weights, or practise any contrivance by which any such officers may be prevented or delayed in taking the true weight of any such stone-bottles, such maker shall forfeit 100*l.*, with all such insufficient scales and weights, which may be seized by any officer of excise.

Sect. 12. Every maker of stone-bottles desirous to draw stone-bottles out of any kiln, stove, or oven, shall, twelve hours before the beginning to draw, give to the officer of excise a notice in writing of his intention so to do, specifying the particular kiln, stove, or oven, and the time and hour at which it is intended to draw the same; and if any officer of excise shall attend at the time mentioned in such notice, such maker shall, so soon as such officer shall so attend, immediately, and with a sufficient number of his workmen or others, begin to draw the bottles out of such kiln, stove, or oven, and without unnecessary delay, and with a proper number of his workmen or servants, proceed until the whole shall be drawn out. And every maker of stone-bottles, so soon as any stone-bottles not exceeding two quarts' measure shall be drawn out of his kiln, stove, or oven, convey or cause the same to be conveyed directly into the weighing-room, and forthwith place the same therein, in such manner that all may, so far as the nature of the case will admit, be the most easily inspected and examined, and the numbers of the several sizes and denominations be ascertained by the officer of excise; and such maker shall immediately, if the proper officer then be in attendance, and if not, then on being required by such officer, proceed to weigh and shall weigh the whole and every part of such bottles in the presence of the officer; and such maker shall be charged with and pay the duty for all such as are unbroken, according to such weight. And if any such maker, having given such notice and begun to draw such stone-bottles, shall not, if any officer shall attend at the time specified in such notice, without any unnecessary delay, and with a proper number of workmen or servants, continue to draw such bottles from the kiln, stove, or oven, or if any maker shall not remove and deposit them in the weighing-room, and in such manner as aforesaid, or shall not proceed to weigh the whole of such stone-bottles as aforesaid, he shall forfeit 100*l.*; and if any maker shall neglect to begin to draw at the time mentioned in his notice, or within one hour after, such

notice shall be void, and he shall give a fresh notice in writing: provided, that no maker of stone-bottles shall be at liberty to give any such notice for drawing except between six in the morning and six in the afternoon; and every notice given for drawing stone-bottles at other times shall be void.

Sect. 13. In weighing aforesaid of any stone-bottles, the turn of the scale shall be given in favour of the crown, and in lieu thereof there shall be allowed to such maker one pound weight upon each one hundred pounds so weighed.

Sect. 14. All stone-bottles chargeable with said duties shall be weighed, taken account of, and charged with the said duties as soon as the same shall be baked or burned; and if any maker of stone-bottles, or his workmen, or other person, shall molest or obstruct any officer in weighing or taking an account of such stone-bottles, he or they shall forfeit 100*l*.

Sect. 15. Every maker of stone-bottles, whose stone-bottles, not exceeding two quarts' measure, have been weighed by any officer of excise, shall, for six hours after the same shall have been weighed, keep such stone-bottles in the weighing-room, in the same state and position in which they were left by the surveying officer, unless sooner re-weighed by the surveyor or supervisor, to the end that he may have an opportunity to re-weigh the same, on pain of forfeiting 100*l*.; and, if upon the re-weighing any additional weight shall be found, such additional weight of stone-bottles shall be charged with the duties by this act imposed.

Sect. 16. Every maker of stone-bottles shall, when required by the officer of excise, surveyor, or supervisor, with a sufficient number of his workmen or servants, assist such officer of excise, or surveyor, or supervisor, in weighing and taking account, or in re-weighing and taking account, of all his stone-bottles, on pain of forfeiting for every neglect or refusal 100*l*.

Sect. 17. If any maker of stone-bottles shall convey away stone-bottles not exceeding two quarts' measure from any kiln, stove, or oven, before the proper officer of excise shall have weighed the same, or shall neglect or refuse to produce such bottles to such officer that he may weigh them; or if any person shall hide or conceal any such stone-bottle, to defraud his majesty of the duties, every maker or other person so offending shall forfeit 100*l*.

Sect. 18. Every maker of stone-bottles shall keep all stone-bottles which shall not have been weighed by the officer of excise, separate from all stone-bottles that have been weighed, upon pain of forfeiting 100*l*.

Sect. 19. Every maker of stone-bottles shall once in every six weeks make a true entry in writing at the office of excise, within the limits whereof such stone-bottles shall be made, of all the stone-bottles not exceeding two quarts' measure by him made within such six weeks; and such entry shall contain the true numbers and sorts by such maker made within such six weeks, with the reputed measures of each particular sort, with the aggregate weight of the total number so made within such six weeks, on pain of forfeiting 100*l*.; which entry shall be verified upon oath by the maker, or by his chief workman employed in making the same, which oath shall be administered by the proper collector, surveyor, or supervisor of excise, without fee: provided, that no such maker shall be obliged to go further than the market-town next to the place where such stone-bottles shall be made for the making of any such entry.

Sect. 20. Every maker of stone-bottles shall, within six weeks after he shall make or ought to have made such entry, pay off all duties of excise for such stone-bottles, upon pain of forfeiting double the amount of such duties.

Sect. 21. Any officer of excise may take a sample of any stone-bottles or other earthenware, either baked or unbaked, or burned or unburned, in the possession of any maker of stone-bottles, paying for the same (if demanded) the wholesale price thereof; and if any maker shall refuse to permit the officer to take such sample, upon his tendering such price for the same, he shall forfeit for every such offence 100*l*.

Sect. 22. If any stone-bottles shall be concealed in any place whatsoever, with intent to defraud his majesty of the duties, the same shall be forfeited, together with the packages containing the same, and they may be seized by any officer of excise, and the person in whose custody the same shall be found shall forfeit 50*l*.; and if any officer shall have cause to suspect that any such

99. *Stone-Bottles.*

Allowance for turn of scale.

Stone-bottles charged with duty as soon as baked.

Obstructing officers.

Stone-bottles re-weighed, and makers shall not remove them from weighing-room for six hours.

Makers, &c. to assist officers in weighing, &c.

Makers removing bottles from kilns, &c. before weighed.

Stone-bottles not weighed kept separate.

Makers to make entry every six weeks of stone-bottles manufactured.

Penalty.

Proviso.

Makers to pay off duties.

Officers may take samples of stone-bottles.

Penalty.

Stone-bottles concealed forfeited, with package, &c.

Penalty.

29. <i>Stone-Bottles.</i>	stone-bottles shall be so hid or concealed in any place whatsoever, then, if such place be within the limits of the chief office of excise in London, upon oath made by such officer before two of the commissioners of excise, or before one justice of the county, &c., where such place shall be in any part of Great Britain, upon oath made by such officer before such justice, where such officer shall suspect the same to be hid or concealed, setting forth the ground of his suspicion, it shall be lawful for the said commissioners, or the justice, as the case may require, if he or they shall judge it reasonable, by special warrant, to authorize such officer, by day or by night (but if in the night, then in the presence of a constable), to enter every such suspected place, and to seize and carry away all such stone-bottles as he shall then find so forfeited, together with the packages containing the same.
Suspected places searched.	
Makers making use of concealed place.	Sect. 23. If any maker of stone-bottles shall, for the making, hardening, &c. of any stone-bottles, make use of any private or concealed cone, kiln, stove, or oven, or any private or concealed vat, cistern, mill, lathe, trundle, or other machine, implement, utensil, or place whatsoever, other than such as are known and entered, he shall forfeit 100 <i>l</i> .
Penalty.	Sect. 26. All stone-bottles and all the materials and implements and utensils for the making thereof in the possession of any maker of stone-bottles, or of any person, to the use of or in trust for such maker, shall be chargeable with all the debts and duties for stone-bottles in arrear and owing by such maker, for stone-bottles made by him; and shall also be liable to satisfy all penalties and forfeitures incurred by such maker, or the person using any such work-house or place, for any offence against this act; and such duties and penalties may be levied, as if the debtor or offender were the owner.
Stone-bottles and materials answerable for duties.	Sect. 27. No person being a maker of stone-bottles, or interested or concerned in the trade of making or dealing in stone-bottles, shall act as a justice of the peace in any matter concerning the execution of this act.
Makers not to act as justices in execution of act.	Sect. 28. If any person whatsoever shall assault, resist, molest, obstruct, or hinder any officer of excise in the due execution of this act, or shall, by force or violence, after any officer shall have seized any stone-bottles, or any clay, earth, or other material, or any vat, mill, vessel, or utensil, as forfeited by this act, rescue, or cause to be rescued, any such stone-bottles, or any clay, &c., or shall attempt so to do, every such person shall forfeit 200 <i>l</i> .
Obstructing officers.	Sect. 29. If any person whatsoever shall give, or offer to give, any bribe, recompense, or reward, to any officer of excise, in order to corrupt or prevail upon such officer to perform any act contrary to his duty, or to neglect or omit any act or thing belonging to the business or duty of such officer in the execution of this act, or to connive at or conceal any fraud relating to any of the duties by this act imposed, or not to discover the same, such person shall, for each such offence (whether such offer or proposal be accepted or not), forfeit 500 <i>l</i> .
Penalty.	Sect. 30. Any person convicted of wilfully taking a false oath, in any case in which an oath is required to be taken by virtue of this act, shall be liable to the pains and penalties for wilful and corrupt perjury.
Offering bribes to officers.	Sect. 34. The powers of 12 Car. II. c. 24, and other excise acts, extended to this.
Penalty.	By the 52 Geo. III. c. 139, s. 31, 57 Geo. III. c. 32, s. 7, c. 119, s. 3, all fines, penalties, and forfeitures imposed by those acts shall be sued for, recovered, or mitigated, by any law of excise, or by action, &c. in any of the courts of record at Westminster, one moiety of which shall be to the king, and the other moiety to him who shall inform, discover, or sue for the same.
Perjury.	By the 9 Geo. IV. c. 44, s. 2, all penalties and forfeitures imposed by any act or acts relating to the revenue of the customs or excise, are to be levied, mitigated, and applied, according to the provisions of the 7 & 8 Geo. IV. c. 53. See <i>ante</i> , p. 229, 310.
Penalties, how to be recovered.	By the 57 Geo. III. c. 32, s. 5, the duties and drawback hereby imposed and granted shall be raised, levied, recovered, and paid, in the like manner as the former duties hereby repealed, were or might be raised, levied, or paid; and every fine and forfeiture for any offence against the acts for securing the revenue of excise shall be applied to the duties and drawbacks in this act.
Duties, how to be levied.	

**Sugar.** 10 Geo. IV. c. 49. See *Customs, ante*, 145, 160.

30. *Sweets, &c.*

(30.) *Sweets or made Wines.* See *tit. Wines.*

[7 & 8 Wil. III. cc. 21, 30; 10 & 11 Wil. III. c. 21; 6 Geo. I. c. 21; 10 Geo. II. c. 17; 42 Geo. III. c. 93; 55 Geo. III. c. 177; 6 Geo. IV. cc. 37, 81, 111; 9 Geo. IV. c. 44.

The 6 Geo. IV. c. 37, repeals all former excise duties and drawbacks upon sweets or made wines, and imposes new duties; the whole being placed under the management of the commissioners of excise, and the duties assimilated throughout Great Britain and Ireland. Duties of excise.

The 6 Geo. IV. c. 111, repeals all former duties and customs, and imposes new duties (see, *ante*, p. 148). Customs.

The 6 Geo. IV. c. 81, repeals all former duties on excise licenses, and imposes new duties upon all licenses required to be taken out annually by the several persons therein mentioned, viz. (*inter alios*) Licenses.

Every maker of any kind of sweets, or made wines, or of mead or metheglin, for sale, 2*l.* 2*s.*

Every retailer of sweets, or made wines, or of mead or metheglin, 1*l.* 1*s.*

Sect. 11, provides for sales at fairs and races; and that alehouse-keepers shall not be licensed as makers or retailers of sweets, or made wines, without first producing their alehouse licenses.

Sect. 14. No license for the sale of sweets, or made wines, mead or metheglin, to be drank or consumed in or upon the house or premises where sold, shall be granted to any person who shall not have and produce a license for the sale of beer, &c., by retail; and if granted, the same shall be void, and the party liable to all penalties imposed upon persons for selling spirits, &c., without a license.

*Note.*—See the several other provisions of this statute as to the licenses, penalties, &c., at length. (*Ante*, p. 245, &c.)

By the 10 & 11 Wil. III. c. 21, s. 5, every person who shall sell or make use of any materials used in the making of wines, and in whose custody any quantity of sweets exceeding two gallons shall be found, shall be deemed and taken to be a maker of sweets for sale. Who deemed a maker.

By the 55 Geo. III. c. 177, s. 4, every person whatsoever who shall have in his custody any liquor made by infusion, fermentation, or otherwise, from fruit or sugar, or from fruit or sugar mixed with any other ingredients or materials, commonly called *sweets or made wines*, exceeding 100 gallons, shall be deemed a maker of sweets or made wines, other than mead, for sale, and subject to the survey of the officers of excise. Having in possession sweets exceeding 100 gallons, deemed makers.

By the 10 Geo. II. c. 17, s. 4, every maker of *sweets* for sale shall first give notice to the excise officers of his name and place of abode, and of the rooms and places he intends to use for making or keeping of sweets or made wines, on pain of 20*l.* Notice to be given.

By the 55 Geo. III. c. 177, s. 1, every maker of sweets or made wines for sale shall, before he begin to draw off any sweets or made wine from any steep or from any vessel or utensil in which the same shall have been made, give to the officer of excise, under whose survey such maker shall then be, six hours' notice in writing within the limits of the chief office of excise in London, and twelve hours' notice in writing in other places in Great Britain, of his intention so to draw off any sweets or made wine; and of the time when, and the particular steep, vessel, or utensil from which the same are to drawn off, and the quantity thereof; and such officer shall, if he shall deem it expedient, attend to see such sweets or made wines so drawn off; and if such officer shall attend, all such sweets or made wine shall, at the time specified in such notice, be, with all diligence and despatch, drawn off in his presence; and if any such maker shall draw off any sweets or made wine without giving such notice, or shall neglect to draw off with all due diligence and despatch such sweets or made wines, on the officer's attendance, such maker shall forfeit 50*l.*, together with all such sweets or made wine drawn off without such notice Makers to give notice to officer of excise before sweets drawn off, and to state quantity. Penalty.

30. *Sweets, &c.*

Makers not subject to penalty for not specifying quantity in notice, if the whole contained in the vessel be drawn off.

Sect. 2. Nothing hereinbefore contained shall extend to subject any maker of sweets or made wines for sale to the said forfeiture, for not specifying in his notice the quantity to be drawn off, in case the whole of the sweets or made wines at that time contained in the steep or utensil mentioned in such notice shall, under such notice, be intended to be drawn off; and such maker shall have specified in the notice that the whole of such sweets or made wines are so to be drawn off; and if the whole shall be drawn off with due diligence and despatch, and the pressing out of the remains from the fruit finished within seventy-two hours from the commencement of such drawing off.

Makers not to send out sweets in less quantity than casks of 15 gallons.

Sect. 3. No maker of any kind of sweets or made wines, other than mead, for sale, shall sell or send out any liquor, made by infusion, fermentation, or otherwise, from fruit or sugar, or from fruit or sugar mixed with other ingredients or materials, commonly called *sweets* or *made wines*, in any less quantity than in a whole cask containing fifteen gallons, on pain of forfeiting, for each offence, 50*l*.

Concealing sweets.

By the 7 & 8 Wil. III. c. 30, s. 16, if any maker of *sweets* for sale shall conceal any sweets from the view of the gauger, he shall for every barrel forfeit 40*s*.

Permit for removal after duty paid.

By the 6 Geo. I. c. 21, s. 22, if any *sweets*, having paid the duty, shall be intended to be removed, the excise officer shall, on request, give a certificate under his hand, expressing the quantity and quality, and from whom and to whom they are to be sent; and if any maker shall otherwise remove them, or vintner receive them, he shall forfeit 10*s*. a gallon, and also the liquor and casks.

Packages, vessels, &c. forfeited.

By the 42 Geo. III. c. 93, s. 18, where goods are forfeited under any act relating to the excise, the packages containing the same, and the vessel, boat, cart, carriage, and cattle used in the removal thereof, shall be forfeited, and may be seized by any officer of excise.

How penalties, &c. to be recovered.

By the 9 Geo. IV. c. 44, s. 2, all penalties and forfeitures, relating to the excise or customs, are to be recovered, applied, &c., according to the provisions of the 7 & 8 Geo. IV. c. 53. (See, *ante*, p. 229 to 310.)

### See tit. Coffee.

### (31.) Tobacco and Snuff.

(31.) *Tobacco and Snuff.*

[1 Geo. I. st. 2, c. 46; 5 Geo. I. c. 11; 8 Geo. I. c. 18; 12 Geo. I. c. 28; 5 Geo. III. c. 43; 29 Geo. III. c. 68; 30 Geo. III. c. 40; 43 Geo. III. cc. 69, 134; 47 Geo. III. st. 1, c. 25; 48 Geo. III. c. 84; 52 Geo. III. c. 159; 53 Geo. III. cc. 88, 103; 55 Geo. III. c. 30; 59 Geo. III. cc. 53, 70; 1 Geo. IV. c. 75; 1 & 2 Geo. IV. c. 109; 3 Geo. IV. cc. 27, 42; 4 Geo. IV. c. 69; 6 Geo. IV. cc. 81, 111; 7 Geo. IV. c. 48; 9 Geo. IV. c. 44.]

Importation.

By the 29 Geo. III. c. 68, ss. 5, 6, (a) no tobacco shall be imported but from America, on forfeiture thereof, with the vessel and her contents; except from Spain, Portugal, and Ireland, from which places it may be imported under certain regulations. But, by the 59 Geo. III. c. 74, s. 1, tobacco may be imported from any port or place within the limits of the charter granted to the united company of merchants of England, trading to the East Indies, in any British ship or vessel, owned, registered, and navigated according to law: provided, that such tobacco shall not be imported in any cask, chest, case, or other package which shall not contain at the least one hundred pounds' weight net of tobacco, not packed in bags or packages within any such cask, &c., nor separated or divided within any such cask, &c., or in any manner whatever, on pain of forfeiting all such tobacco, with the casks, chests, cases, and other packages containing the same, and also the ship, vessel, or boat in which the same shall be so

Tobacco imported from the East Indies in British vessels, to be in casks containing not less than 100*lbs*. and not in bags or packages within such casks, on pain of forfeiture.

(a) *Note in the prior editions.*—The 29 Geo. III. c. 68, regulating the importation, exportation, and manufacture of tobacco and snuff, being of great length, it is thought sufficient in this place to give a short account thereof only; and

also of the 30 Geo. III. c. 40, made to explain and amend the same; and for further information to those whom it may materially concern, to refer them to the acts themselves.

## II. PARTICULAR LAWS, &c. (31.) *Tobacco and Snuff.*

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imported or brought, with her guns, furniture, ammunition, tackle, and apparel, which may be seized by any officer of the customs or excise: provided, that such tobacco shall be liable to all the provisions of the acts now in force regulating the trade to and from the places within the limits of the charter granted to the united company of merchants trading to the East Indies.

By the 29 Geo. III. c. 68, s. 47, no tobacco, either manufactured or unmanufactured, shall be entered or shipped for exportation to any parts beyond the seas, Ireland excepted, in any ship or vessel whatever, unless such ship or vessel shall be of the burden of seventy tons or upwards; and if any officer of customs or excise shall apprehend that any such vessel is of a less burden, he may detain her, with the cargo, until he cause her to be admeasured according to the rules for admeasurement prescribed by the 26 Geo. III. c. 60: and if it shall appear that such vessel is of the burden of seventy tons or upwards, the officer so stopping her shall not be liable to any damages for such detention; and if the master shall clear out his vessel as of a proper burden, and she shall not be of the burden of seventy tons, according to the rule for admeasurement, he shall forfeit 100*l*.

By the 4 Geo. IV. c. 69, s. 21, it shall be lawful to carry and export from Great Britain to Ireland, and from Ireland to Great Britain, and to import into Ireland from Great Britain, and into Great Britain from Ireland, any tobacco, either manufactured or unmanufactured, in any ship or vessel of the burden of seventy tons or upwards, subject to all such rules, regulations, restrictions, penalties, and forfeitures, as are imposed upon such importation and exportation respectively, in vessels of the tonnage in which such tobacco may be exported or imported, under any act or acts in force before the passing of this act: provided, that if any such tobacco shall be so exported or imported in a vessel of less burden than seventy tons, all such tobacco, and also the ship, vessel, and boat, with their materials and furniture, shall be forfeited, and may be seized by any officer of the customs or excise.

By the 29 Geo. III. c. 68, ss. 7, 8, 9, 10, 11, no tobacco or snuff shall be imported in any vessel of less burden than one hundred and twenty tons; nor any tobacco-stalks, tobacco-stalk flour, or snuff-work, in any vessel whatever; nor any tobacco or snuff in any hogshead, cask, or other package less than four hundred and fifty pounds, on the like penalty; except loose tobacco for the crew or passengers, not exceeding five pounds for each person; nor shall the vessel be forfeited if proof be made from the smallness of the quantity that such tobacco or snuff was on board without the knowledge of the owner or master, and without any want of reasonable care on their part. And in each of the above cases, the tobacco and snuff, together with the packages, and also the ship or vessel, with her guns, tackle, &c., in which imported, may be seized by the officers of customs or excise. See also the 30 Geo. III. c. 40, s. 3.

By the 47 Geo. III. st. 1, c. 25, s. 1, the preceding restriction is repealed as to the packing and dividing tobacco within the outer hogshead, cask, chest, or case.

By sect. 2, the outer hogsheads, &c. must contain four hundred and fifty pounds, net, at the least, of tobacco.

By the 22 Geo. III. c. 68, s. 14, no tobacco or snuff shall be imported or brought into any part of Great Britain, London, Bristol, Liverpool, Lancaster, Cowes, Falmouth, Whitehaven, and Hull, and by 31 Geo. III. c. 47, s. 3, Newcastle-upon-Tyne; on the like forfeiture.

The 6 Geo. IV. c. 111, and 7 Geo. IV. c. 48, repeals all former duties of customs, and in lieu thereof new duties are granted upon tobacco and snuff imported: and a drawback is allowed upon tobacco manufactured within two miles of any port into which tobacco may be imported, made into shag, roll, or carrot tobacco.

The 43 Geo. III. c. 69, repeals the former excise duties, and grants other duties in lieu thereof.

*Note.*—Tobacco and snuff are also subject to annual duties by the act for continuing the duties on pensions, offices, &c.

The 6 Geo. IV. c. 81, s. 1, repeals all former duties on *excise licenses*.

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31. *Snuff and Tobacco.*

Tobacco not to be exported in vessels of less than 70 tons.

Penalty.

Tobacco may be exported and imported between Great Britain and Ireland in ships not less than 70 tons.

If exported or imported in vessels of less burden, vessels and tobacco forfeited.

Importation of tobacco or snuff, in what vessels, packages, quantities, &c.

At what port.

Duties.

Customs.

Drawback.

Excise.

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**31. Tobacco and Snuff.**

May be seized.

Certain words to be painted up.

Where only manufactories may be set up.

May be manufactured at entered mills by unlicensed persons.

Manufacturer of tobacco and snuff to be at liberty to strip leaf which has not been wetted, without notice.

The notice shall specify whether the tobacco-leaf is leaf stripped, and how much leaf is unstripped.

Operation of tobacco, what means.

Notice to be given of beginning to work.

Tobacco not fit for the purpose intended.

or deliver, or send out by retail, any tobacco or snuff, without making such entry as aforesaid, or any tobacco or snuff which shall not be first removed to and received by him or her into some shop or place so entered, and into his or her retail stock of tobacco or snuff, with and under such permit or permits, certificate or certificates, as aforesaid, so delivered to the proper officer, as aforesaid, all such tobacco and snuff, respectively, shall be forfeited, and shall and may be seized by any officer or officers of excise, and every such manufacturer shall, for every such offence, forfeit and lose the sum of 100*l*."

By the 29 Geo. 3, c. 68, s. 62, every such manufacturer and dealer shall cause to be painted or written, in large legible characters, over the outer door, or in the front, or on some conspicuous part of each such house or place, the words, "*Manufacturer of and Dealer in Tobacco and Snuff*," or "*Tobacco*" or "*Snuff*," or "*Manufacturer of*" or "*Dealer in Tobacco and Snuff*," or "*Tobacco or Snuff*" (as the case may be), on the penalty of 50*l*.

Sect. 63. If any person, who has not made such entry as aforesaid, shall paint or write up the said words in such manner and place, he shall forfeit 100*l*.

By the 30 Geo. 3, c. 40, s. 8, no person shall set up or begin any manufactory of tobacco, &c. &c. within five miles of the sea-coast (except in the ports and places aforesaid where tobacco may be imported, or places within three miles thereof; and also except in cities, or the suburbs thereof, and market-towns); and no entry thereof shall be of any avail.

By the 29 Geo. 3, c. 68, s. 76, tobacco and snuff may be manufactured by any unlicensed Spanish cutter or snuff-miller at any entered mill, on account of any other licensed manufacturer, provided the same be legally permitted from such other manufacturer, and for the sole purpose of manufacturing or grinding.

By the 1 & 2 Geo. IV. c. 109, s. 3, it shall be lawful for any manufacturer of tobacco and snuff at any time to strip and separate from the stalks thereof any tobacco-leaf which has not been wetted, or put into or sprinkled with water, without giving to the officer of excise previous notice, and without such stripping being deemed to be a commencement of the manufacture of tobacco or snuff: provided that every such manufacturer shall, in the notice for commencing the manufacture of any tobacco or snuff, mention whether the tobacco-leaf specified in such notice and intended to be part of the operation, or how much thereof, is leaf stripped from the stalks thereof by such manufacturer, and how much thereof is leaf unstripped; and if such leaf be leaf stripped from the stalks, such stalks shall not be deemed part of the tobacco-leaf to be weighed for the operation specified in such notice, but such manufacturer shall have credit in his unmanufactured stock for all such tobacco-stalks.

Sect. 4. The word "operation" is used in this act, and shall be construed to mean and express only the quantity of tobacco and other materials by law allowed for the manufacture of tobacco and snuff weighed by the officer of excise, and declared by the manufacturer at one time for the manufacture of the tobacco or snuff specified in such declaration.

By the 29 Geo. III. c. 68, ss. 77, 95, and 30 Geo. III. c. 40, s. 30, every manufacturer shall give notice in writing to the officer of excise under whose survey he shall be, if in London six, in cities and market-towns twelve, and in any other part of Great Britain twenty-four hours, before he shall begin to strip, spin, or press any tobacco for cutting, or make any tobacco into carrots, or flatten any tobacco-stalks for Spanish; and in every such notice shall specify the weight of each article, and the time he intends to begin to strip, spin, press, or make into carrots any such tobacco; and the officer shall attend accordingly, and such manufacturer shall begin within one hour of the time so mentioned, and shall proceed without delay; and shall afterwards deliver a declaration in writing to such officer of the quantity intended to be used for each sort of tobacco, on the penalty of 20*l*., and such notice being void.

By the 29 Geo. III. c. 68, ss. 78, 79, no manufacturer shall be liable to the said penalty of 20*l*. for not making into carrots any tobacco, if such tobacco shall afterwards appear to be unfit to be so made into carrots according to such declaration; and notice thereof in writing, specifying the weight of such tobacco, shall be given in forty-eight hours after delivery of the declaration; and

## II. PARTICULAR LAWS, &c. (31.) Tobacco and Snuff.

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in case the manufacturer within that time in like manner deliver to such officer a like declaration, specifying into what sort of tobacco or snuff it is to be manufactured, and shall, in like manner, proceed to press for cutting, to spin, to make into carrots, and the like, if it be to be made into snuff.

Sects. 80, 81, 82. Such manufacturer, as soon as the manufacturing is finished, shall deliver to the officer a declaration of the weight of the different sorts of tobacco so manufactured, and the number of the rolls or carrots made, and the weight thereof, and of the tobacco-stalks and returns arising from the operation; and shall keep each sort separate for twenty-four hours, or until an account be taken, on the penalty of 50*l*.

Sect. 102. Every manufacturer of tobacco shall keep all unmanufactured tobacco, tobacco in the state of operation, and manufactured tobacco, in his possession, separate from each other, on pain of forfeiting 50*l*.

By the 1 & 2 Geo. IV. c. 109, s. 6, "no manufacturer of tobacco shall have depending, at one and the same time, more than three operations for the manufacture of cut tobacco, under which denomination all such tobacco shall be kept in stock, permitted, and sent out, whether the same be generally called or known by the name of short cut or shag tobacco; and that every such operation, where the weight of tobacco, or tobacco and returns, declared for such operation, shall not exceed five hundred pounds' weight avoirdupois, shall be finished, and declared by such manufacturer to be finished, before the expiration of seven working days from the date of such declaration; and that where the weight of tobacco, or tobacco and returns, so declared, shall exceed five hundred pounds, such operation shall be finished, and declared by such manufacturer to be finished, before the expiration of ten working days from the date of such declaration; and that every such manufacturer who shall have depending, at one and the same time, more than three operations for the manufacture of cut tobacco, or who shall refuse or neglect to finish, and declare to be finished, any operation for the manufacture of cut tobacco, within the period of time hereinbefore mentioned, according to the size of such operation, shall, for every such offence, forfeit and lose the sum of 100*l*."

Sect. 7. "That during the process of any operation for the manufacture of cut tobacco, every such manufacturer shall cause all the tobacco-stalks stripped from the tobacco, or tobacco and returns weighed and declared for such operation, to be from time to time removed, when stripped, and kept and deposited in bin, cask, chest, box, or parcel, separate and apart from all other tobacco-stalks, and ticketed or labelled as the stalks belonging to such operation, and shall not add to or mix anything therewith, or conceal or make away with any part thereof, until the same have been weighed and taken account of by the proper officer of excise, when the operation to which they belong is finished; and when and so soon as any operation for the manufacture of cut tobacco is finished, and within the respective period hereinbefore for that purpose prescribed, according to the weight of such operation, the manufacturer thereof shall give notice and a declaration in writing to the proper officer of excise, that such operation is finished, specifying the number, date, and original weight thereof, and the weight respectively of such manufactured cut tobacco, and of the tobacco-stalks and returns of such operation; and such officer shall, within twenty-four hours, or if in a market-town within six hours, next after the receipt of and at the time specified in such notice, attend for that purpose, and such manufacturer shall thereupon produce to such officer all the manufactured tobacco (except such part thereof as shall have been taken therefrom and sent out pending such operation, under the laws in that case made and provided), and the tobacco-stalks and returns of such operation; and such officer shall thereupon weigh all such manufactured cut tobacco, tobacco-stalks (if any), and returns, respectively, of such operation, and so soon as the same are weighed to the satisfaction of such officer, such manufacturer shall cause all such manufactured cut tobacco to be removed, and put or placed with his or her stock of manufactured tobacco, and shall also remove the tobacco-stalks (if any), and the returns of such operation, and put or place the same with his or her stock of unmanufactured tobacco, tobacco-stalks, and returns, not in operation; and if any such manufacturer, as aforesaid, shall

*81. Tobacco and Snuff.*

Weight, &c. of each sort to be declared after manufacturing.

Only three operations of cut tobacco at one and the same time to be allowed, and such operations to be finished within a limited time, according to the size of the operation.

Penalty, 100*l*.

During process of operation for cut tobacco-stalks stripped to be weighed, removed, and kept separate.

Notice given when operation finished, for officer to take account.

Officer to attend proceedings thereon.

**31. Tobacco and Snuff.**

Not removing stalks when stripped, and keeping them separate, &c., till account taken; neglecting to give notice; deceiving officer, &c.; not removing manufactured cut tobacco, &c.

Forfeiture of tobacco, and penalty 50*l*.

Proviso as to credit in stock allowed for cut tobacco.

Manufacturers of tobacco to have only three operations of roll or carrot, and only two operations of lug tobacco, depending at one and the same time.

Notice given when operation is finished, and roll made up, for officer to take account.

neglect or refuse to remove, from time to time, all such tobacco-stalks as aforesaid, when the same are stripped from the leaf, as aforesaid, and keep the same separate and apart, and ticketed or labelled, as aforesaid, or shall add anything to or mix anything therewith, or conceal or make away with any part thereof, until the proper officer shall, on such operation being finished, have weighed and taken an account of the manufactured cut tobacco, tobacco-stalks, and returns of such operation, or shall not, when any such operation, as aforesaid, is completed and finished, and within the respective period hereinbefore prescribed for that purpose, according to the weight of such operation, give such notice and declaration as aforesaid, and produce all the manufactured tobacco, except, as aforesaid, tobacco-stalks (if any), and returns of such operation to, and give such officer, as aforesaid, all the aid and assistance such officer shall require, in weighing and taking a true account thereof; or if any such manufacturer shall use any art, device, means, or contrivance, by which such officer shall be hindered, molested, or prevented in weighing the same, or shall be deceived, or such account, as aforesaid, shall be defeated; or if such manufacturer shall not afterwards remove, or cause to be removed and kept, as aforesaid, all such manufactured cut tobacco, tobacco-stalks (if any), and returns, as aforesaid, all such tobacco, tobacco-stalks, and returns, shall be forfeited, and shall and may be seized by any officer or officers of excise; and if, on weighing the same, the officer shall find, when such operation is finished, or declared to be finished, any greater weight of manufactured cut tobacco, together with the stalks and returns of such operation, than after the rate of one hundred and five pounds for every one hundred pounds of the weight of the tobacco, or tobacco and returns, weighed and declared for such operation, so much of such manufactured tobacco as shall be equal to the weight of such greater increase, respectively, shall be forfeited, and shall and may be seized by any officer or officers of excise; and every such manufacturer shall, for every such offence, forfeit and lose the sum of 50*l*.: provided always, that no such manufacturer shall have or be allowed or entitled to any credit, in his or her manufactured stock, for more than the weight of the tobacco, or tobacco and returns, weighed and declared for such operation, actually manufactured into cut tobacco, and produced to and weighed by the officer, and removed by such manufacturer into his or her manufactured stock of cut tobacco, and the further credit of 5*l*. for every sixty-five pounds of the tobacco, or tobacco and returns, so manufactured; and after the same rate for any less quantity, so as such credit shall not exceed the rate of one hundred and five pounds for every one hundred pounds of the tobacco, or tobacco and returns, weighed and declared for such operation."

Sect. 8. "That no manufacturer of tobacco shall have depending, at one and the same time, more than three operations for the manufacture of roll or carrot tobacco respectively, or more than two operations for the manufacture of lug tobacco; and that every such manufacturer shall cause all the tobacco-stalks stripped from the leaf of the tobacco or tobacco and returns weighed and declared for any such operation, to be from time to time removed and kept and deposited in bin, cask, chest, bag, or parcel, separate and apart from all other tobacco-stalks, and ticketed or labelled as tobacco-stalks belonging to such operation; and shall not add to or mix anything therewith, or conceal or make away with any part thereof, until all the rolls, carrots, or boxes respectively of tobacco made up or to be made up from the tobacco or tobacco and returns of the operation to which such tobacco-stalks belong and are part, together with the whole of the returns thereof, have been respectively weighed and taken account of by the proper officer of excise, after such operation is declared to be finished; and that every such manufacturer shall, before the expiration of forty-two days from the date of his or her declaration of any operation for the manufacture of roll, carrot, or lug tobacco respectively, make up the whole number of the rolls, carrots, or boxes respectively to be made up of or from such operation, and shall, upon all such rolls, carrots, or boxes respectively being made up, and within the time aforesaid, deliver to the proper officer a note and declaration in writing, that all such rolls, carrots, or boxes respectively are made up, and that such operation is finished; specifying the

## II. PARTICULAR LAWS, &c. (31.) *Tobacco and Snuff.*

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number, date, and weight of such operation, and the weight of the tobacco-stalks and returns thereof, and the number and weight of such rolls, carrots, or boxes respectively; and such officer shall, within twenty-four hours, or if in a market-town within six hours, after the receipt of such notice and declaration, attend, and such manufacturer shall produce all such rolls, carrots, or boxes respectively (except such part of such roll tobacco as shall have been taken therefrom, and sent out pending such operation, under the laws in that case made and provided), to such officer, to be weighed and taken account of, together with all the tobacco-stalks and returns of such operation, and such officer shall thereupon weigh the same respectively; and such manufacturer shall, after such manufactured rolls, carrots, or boxes respectively, together with the tobacco-stalks and returns of the operation, have been weighed by the officer, remove all the tobacco-stalks and returns of such operation so weighed, to, and put place and keep the same with and as part of, his or her manufactured stock not in operation; and if, upon such rolls, carrots, or boxes respectively, together with the tobacco-stalks and returns of the operation, being weighed and taken account of, the same shall, when finished or declared to be finished, be found by the officer to weigh more than after the rate of 115lbs. for every 100lbs. of tobacco or tobacco and returns weighed and declared for such operation, all such excess and greater weight shall be forfeited, and a weight of such manufactured tobacco equal thereto shall and may be seized by any officer or officers of excise, and every such manufacturer shall forfeit and lose for every such offence the sum of 50*l.*; and if any such manufacturer as aforesaid shall have more than three operations for the manufacture of roll or carrot tobacco respectively, or more than two operations for the manufacture of lug tobacco, depending at one and the same time, or shall not cause all the tobacco-stalks stripped from the tobacco or tobacco and returns weighed and declared for any operation for the manufacture of roll, carrot, or lug tobacco respectively, to be from time to time removed and kept and deposited in bin, cask, chest, bag, or parcel, separate and apart from all other tobacco-stalks, and ticketed or labelled as aforesaid, or shall add to or mix anything therewith, or make away with or conceal any part thereof, before all the rolls, carrots, or boxes respectively of tobacco made up or to be made up of or from the operation to which such tobacco-stalks belong and are part, together with the whole of the tobacco-stalks and returns thereof, have been respectively weighed and taken account of as aforesaid by the proper officer of excise, at the time of such operation being finished, and declared to be finished; or if any such manufacturer shall not, before the expiration of forty-two days from the date of his or her declaration for any operation for the manufacture of roll, carrot, or lug tobacco respectively, make up the whole of the rolls, carrots, or boxes respectively to be made up of or from such operation, and within such time as aforesaid deliver to the officer such notice and declaration thereof, and that such operation is finished as aforesaid, and produce all the rolls, carrots, or boxes respectively (except as aforesaid), tobacco-stalks, and returns of such operation, to the proper officer of excise, to be respectively weighed and taken account of, and give to such officer all the aid and assistance that he may require for that purpose; or shall use any means, art, or contrivance to deceive such officer, or hinder, molest, or prevent him from taking such account; or if any such manufacturer shall not cause all the tobacco-stalks and returns of such operation, after the same shall have been so weighed and taken account of as aforesaid, to be removed to, and put, placed, and kept with and as part of the unmanufactured stock of such manufacturer not in operation, every such manufacturer shall for every such offence forfeit and lose the sum of 100*l.*: provided always, that no manufacturer of carrot or lug tobacco shall have or be allowed or entitled to any credit in his or her manufactured stock, for more than for the weight of carrot and lug tobacco respectively, which he or she shall actually bring off manufactured, and shall produce to the officer, and which shall be weighed by him, not exceeding the rate of 115lbs. for every 100lbs. of the tobacco or tobacco and returns weighed and declared for such operation, after deducting from such weight of tobacco or tobacco and returns the weight of the tobacco-stalks and returns (if any) of such operation; nor

31. *Tobacco and Snuff.*

Officer to attend.

Proceedings thereon.

If tobacco found to weigh more than after the rate herein mentioned, excess forfeited, and penalty on manufacturer of 50*l.*

Having more than the number of operations allowed; not removing the stripped stalks; keeping them separate, &c.; neglecting to give notice; deceiving officer, &c.

Penalty, 100*l.*

Proviso as to credit in stock, allowed for carrot and lug tobacco.

31. *Tobacco and  
Snuff.*

Manufacturer  
of cigars deemed  
a manufacturer  
of tobacco.  
Tobacco to have  
only three opera-  
tions depending  
at one and the  
same time, or  
any operation of  
less weight than  
herein men-  
tioned.

Notice to be  
given when  
operation is  
finished, for off-  
icer to take ac-  
count.

Manufacturers of  
cigars not making  
special entry  
before manufac-  
turing cigars;  
not removing the  
stripped stalks  
and keeping them  
separate, &c.;  
neglecting to  
give notice;  
dereiving officer;  
not removing  
cigars, &c.

shall any manufacturer of roll tobacco have or be allowed or entitled to any credit in his or her manufactured stock for more than the weight of so much of the tobacco-leaf weighed and declared for such operation, as shall be spun into roll, and so produced and weighed as aforesaid, and the further credit of 15 pounds for every 65 pounds of such weight of leaf so spun, produced, and weighed as aforesaid, and after the same rate for any less quantity, so as such credit shall not exceed the rate of 115 pounds for every 100 pounds of the tobacco, or tobacco and returns, weighed and declared for such operation for roll tobacco."

Sect. 9. "That every manufacturer of cigars shall be deemed a manufacturer of tobacco; and that no manufacturer of tobacco shall have depending, at one and the same time, more than three operations, or any operation of less weight than 30 pounds of tobacco, or tobacco and returns, for the manufacture of cigars; and that every manufacturer of cigars shall, in the entry made by him or her of premises for manufacturing tobacco, specify and distinguish some room or rooms, place or places thereof, to be used by him or her for making cigars, and which during the manufacture of cigars shall not be used by such manufacturer for any other purpose; and that every such manufacturer shall cause all the tobacco-stalks stripped from the leaf of any tobacco, declared for an operation for the manufacture of cigars, to be from time to time removed, as the same are stripped from the leaf, and kept and deposited in such room, in bin, cask, chest, bag, or parcel, separate and apart from all other tobacco-stalks, and ticketed or labelled as being the tobacco-stalks belonging to such operation, and shall not add to or mix anything therewith, or conceal or make away with any part thereof, until all the cigars made up or to be made up of or from such operation, together with the tobacco-stalks and returns thereof, have been weighed and taken an account of by the proper officer of excise; and every such operation shall be finished and completed within twenty-eight days from the date of the declaration of such manufacturer for such operation; and that, when and so soon as any such operation shall be completed and finished, the manufacturer thereof shall give twenty-four hours' notice, and a declaration thereof in writing, to the proper officer of excise, specifying the date and weight of such operation, and the number of the cigars manufactured therefrom; and such officer shall attend at the time specified in such notice and declaration, and such manufacturer shall thereupon produce all such cigars, together with the tobacco-stalks and returns of such operation, to such officer, to be weighed and taken an account of, and such officer shall thereupon weigh and take account of the whole of such manufactured cigars, and also of the tobacco-stalks (if any) and the returns of such tobacco; and so soon as the same are weighed by and to the satisfaction of such officer, such manufacturer shall remove all such cigars, and place the same with his or her stock of manufactured tobacco, and shall also remove the tobacco-stalks (if any) and returns of such tobacco, and place the same with his or her stock of unmanufactured tobacco or tobacco-stalks and returns not in operation, there to be respectively kept as aforesaid; and if any person manufacturing cigars shall begin to manufacture cigars without having first made such special entry for that purpose as aforesaid, and being duly licensed as a manufacturer of tobacco, or shall, whilst any such room or place so entered is used for manufacturing cigars, use or suffer such room or place to be used for any other purpose, or shall neglect or refuse to remove and keep all such tobacco-stalks as aforesaid, when the same are stripped from the leaf as aforesaid, separate and apart and ticketed or labelled as aforesaid, or shall add anything to or mix anything therewith, or conceal or make away with any part thereof, until the proper officer shall have weighed and taken an account of all the cigars made up or to be made up of or from such operation, together with the tobacco-stalks and returns thereof, or shall not finish and complete every such operation within twenty-eight days from the date of the declaration for such operation as aforesaid; or shall not, when such operation is finished, and within the time aforesaid, give such notice and declaration as aforesaid, specifying such particulars as aforesaid, and produce all such cigars, together with the tobacco-stalks and returns of such operation, to such officer,

to be weighed and taken account of, and give such officer all necessary aid and assistance in weighing and taking a true account thereof; or shall use any art, device, means, or contrivance by which such officer shall be hindered, molested, or prevented in weighing the same, or shall be deceived, or such account as aforesaid shall be defeated; or if any such manufacturer shall not afterwards remove or cause to be removed and kept, as aforesaid, all such cigars, tobacco-stalks (if any), and the returns of such tobacco as aforesaid, all such cigars, tobacco-stalks, and returns shall be forfeited, and shall and may be seized by any officer or officers of excise; and if, on weighing such cigars, tobacco-stalks, and returns, as aforesaid, the officer shall find any increase in the weight thereof, above the rate of 105 pounds for every 100 pounds of the weight of the tobacco or tobacco and returns weighed and declared for such operation, such increase or greater weight shall be forfeited, and a quantity of such cigars equal thereunto shall and may be seized by any officer or officers of excise; and every such manufacturer shall, for each and every such offence, forfeit and lose the sum of 100*l.*: provided always, that no manufacturer of cigars shall have or be allowed or entitled to any credit in his or her manufactured stock, for more than the weight of tobacco or tobacco and returns of the operation actually made into cigars, and produced to and weighed by the officer as aforesaid, with 5 pounds for every 100 pounds of the tobacco or tobacco and returns weighed and declared for such operation, and so in proportion for any less quantity."

Sect. 5. "That if, before the expiration of any period respectively prescribed by this act, for finishing, and declaring to be finished, any operation for the manufacture of tobacco, any unforeseen or inevitable cause or accident shall occur, by which any such manufacturer respectively shall unavoidably be prevented from finishing, and declaring the same to be finished, within such period, and such manufacturer shall forthwith give notice in writing of such cause or accident to his or her surveying-officer of excise, specifying therein the nature thereof, and shall give proof to, and to the satisfaction of, the supervisor of excise, in whose district the entered premises of such manufacturer are situate, of such cause or accident, and of the unavoidable delay thereby occasioned, and shall finish such operation, and declare the same to be finished, with as much diligence and despatch as the nature of such cause or accident, hinderance and obstruction, will allow and permit, no such manufacturer shall incur any forfeiture or penalty by reason of the delay in the performance thereof, within the respective period prescribed for that purpose, unavoidably occasioned by such cause or accident; anything in this act contained to the contrary thereof notwithstanding."

Sect. 11. "That if, upon any notice given by any manufacturer of tobacco or snuff respectively, under any of the provisions of this act, the officer of excise shall attend as thereby required for the purpose, and at the time specified in such notice, and such manufacturer shall not, within the space of one hour after such officer shall be present, as aforesaid, begin to do, and proceed in doing, the act or thing specified in such notice, or for which such notice was given; or if any such manufacturer shall previously declare in writing, delivered to any such officer, any such notice void, every such notice shall be void to all intents and purposes, and as if never given; and that it shall and may be lawful for any manufacturer of tobacco or snuff to proceed in any act, matter, or thing, requiring the presence only of the officer when done by any such manufacturer, and which shall be specified in any such notice, if such officer shall not attend for that purpose; provided always, that no such manufacturer shall proceed so to do, unless such officer shall not attend for the space of one hour after the expiration of the time specified in such notice for that purpose; and that no notice shall be given, or declaration made, by any manufacturer of tobacco or snuff (except in case of some unforeseen and inevitable accident), that shall require the attendance of any officer of excise at or upon the entered premises of any such manufacturer, on a Sunday, or at any other time, or between any other hours than between six of the clock in the morning and eight of the clock in the evening; and that, if any notice shall be given or declaration be made by any such manufacturer, which shall require such attendance of the officers (ex-

**31. Tobacco and Snuff.**

Cigars, tobacco-stalks, and returns forfeited, and penalty 100*l.*

Proviso as to credit allowed in stock for cigars.

If operation not completed within time limited, owing to unavoidable accident, of which notice shall be given, no forfeiture or penalty to be incurred.

Manufacturer not proceeding within one hour after officer attends, or declaring notice void, the same to be void.

Manufacturer, in what case to proceed if officer do not attend.

For what times of attendance by officer notice to be given.

31. *Tobacco and Snuff.* **cept as aforesaid), at any other time, or between any other hours than as aforesaid, the same shall be void, to all intents and purposes whatsoever."**
- Manufacturer not to make cut, roll, or carrot tobacco for exportation on drawback, unless made wholly from tobacco-leaf having the stalks stripped therefrom.** **Sect. 12.** "That no manufacturer of tobacco shall make, manufacture, or have in his or her custody or possession for exportation, or shall export on drawback, or ship, or give notice for that purpose, any cut, roll, or carrot tobacco, unless such tobacco has been wholly made from tobacco-leaf, having the tobacco-stalks stripped and separated therefrom, or from such leaf so stripped, and returns of tobacco-leaf so stripped, and without the stalks thereof; and if any manufacturer of tobacco shall make, manufacture, or have, in his or her custody or possession, for exportation, or shall give notice to ship, or ship for exportation on drawback, any cut, roll, or carrot tobacco, which shall have been made from tobacco, or tobacco and returns, without the tobacco-stalks being first wholly stripped and separated from the leaf thereof, so that such cut, roll, and carrot tobacco respectively shall have been wholly made from the leaf of tobacco from which the whole of the stalks have been stripped, or from such leaf so stripped, and returns of tobacco-leaf so stripped, the same respectively shall be forfeited, and shall and may be seized by any officer or officers of excise; and such manufacturer, who shall so make, manufacture, or have the same in his, her, or their custody or possession, for exportation on drawbacks, shall, for every such offence, forfeit and lose the sum of 200*l*."
- Forfeiture of tobacco, and penalty 200*l*.** **By the 29 Geo. III. c. 68, s. 83,** if any manufacturer shall make, or have in his possession, any roll tobacco, or carrot tobacco for exportation, with any tobacco-stalks therein, the same shall be forfeited, and may be seized by any officer of excise, and the manufacturer having the same in his possession shall forfeit 50*l*.
- Tobacco for exportation to have no stalks in.** **Sect. 84.** Every person who shall cut any walnut-tree leaves, hop-leaves, sycamore-leaves, or other leaves, herbs, or plants, in imitation of tobacco (not being tobacco-leaves or plants); or shall colour, stain, dye, or cure the same so as to resemble tobacco; or shall mix any such leaves, herbs, or plants with tobacco; or shall sell or expose to sale or have in his possession any such leaves, herbs, or plants, so cut, coloured, stained, dyed, or cured, or mixed, shall forfeit the same, with the casks and package, which may be seized, and also 200*l*. The same penalty attaches to the causing and procuring of such leaves (not being tobacco-leaves) to be cut, stained, &c. in imitation of tobacco-leaves.
- No person to cut leaves, &c. in imitation of tobacco.** **Sect. 85.—30 Geo. III. c. 40, s. 23.** Manufacturers of tobacco may keep and use any dye or stain for staining or dyeing tobacco or tobacco-stalks. See the 1 Geo. I. st. 2, c. 46, ss. 1, 7; 5 Geo. I. c. 11, s. 22, *post*.
- Manufacturers may keep and use dye.** **By the 29 Geo. III. c. 68, s. 86,** every manufacturer of snuff shall provide proper moveable casks for preparing, laying down, or putting into bins, snuff-work and tobacco-stalks for flour; and shall place them so as that the officer may conveniently examine and weigh the same, at all times; and shall mark every such cask with a progressive number, and the tare and weight thereof; and shall not lay down any snuff-work in any cask not so marked, nor put the same in any bin; on the penalty of 50*l*.
- Snuff manufacturers to provide casks, &c.** **Sect. 87.** Such manufacturer of snuff shall, before he begins to liquor, damp, strip, press, or cut any tobacco or stalks, &c. or to lay down any snuff-work, or tobacco-stalks for tobacco-stalk flour, give like notice as aforesaid to the officer, and shall in such notice declare the weights thereof respectively, and the number of each particular cask or bin in which the same is intended to be laid down; and such officer shall attend accordingly; and such person shall begin within one hour of the time so mentioned, and shall without delay proceed therein, until the whole is weighed; and shall then deliver an account in writing of the quantity intended for each sort of snuff or flour; and when put into casks he shall give a like notice, and, in the presence of the officer, shall affix to each cask a ticket, specifying the number of such cask, and the weight of the snuff-work, &c. therein, and the time when laid down, and what sort of snuff it is intended for: which ticket shall be signed both by such manufacturer or his servant and the officer; and when the same is intended to be taken out to be ground, like notice shall be given, and the same shall be weighed out in the presence of the officer; and no such manufacturer shall
- And to give notice when they begin to work.**

## II. PARTICULAR LAWS, &c. (31.) *Tobacco and Snuff.*

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mix snuff-work or tobacco-stalks for flour of one making with another; on 31. *Tobacco and Snuff.*  
penalty of forfeiting, for every offence aforesaid, 50*l.*

Sect. 88.—30 Geo. III. c. 40, ss. 9, 10. Provided always, that whilst such snuff-work shall be in cask or bin, and shall afterwards appear to be unfit for the purposes specified in such declaration, or be intended to be manufactured contrary thereto, notice thereof in writing shall be given to the officer within forty-eight hours after the delivery of such declaration, and a fresh declaration shall be given, specifying the sort it is intended for, and such manufacturer shall proceed therein in manner as aforesaid.

Snuff-work, &c. not fit for the purpose intended.

By the 30 Geo. III. c. 40, ss. 19, 20, 21, Scotch snuff and tobacco-stalk flour may be manufactured into brown Scotch snuff, and tobacco-stalk flour into rappee snuff, subject to the regulations aforesaid. And, on taking stock, certain credits shall be allowed (as set forth in the act); and if, on such taking stock, any excess be found, the same shall be forfeited, as brought without an authentic permit, and may be seized.

Snuff of one sort may be made into another sort.

Sect. 11, 12. And to snuff-work in operation, tobacco, tobacco-stalks or flour, or returns of tobacco, may be added, once while in cask or bin, or once immediately before the grinding, or once at or during each operation, on giving to the officer, previous to such increase being made, a like notice, specifying the cask or bin, and the number thereof, and the time when first laid down, and the time when any increase was made, and the weights of the tobacco, &c. intended to be added.

To snuff-work in operation, tobacco, &c., may be added.

Sect. 13. The whole of any parcel of snuff-work in cure may be mixed with the whole of any other parcel in cure, although laid down at different times, if the same be mixed in the presence of an officer, to whom notice is to be given as aforesaid.

Snuff-work in cure may be mixed.

Sect. 14. If any manufacturer has occasion to supply his customers with manufactured tobacco or snuff from any parcel in operation before the whole is finished, he may, in the presence of an officer, take for the purpose aforesaid any manufactured tobacco or snuff not less than 200 pounds from any parcel then in operation. But, if taken without conforming to the regulations specified in the act, he shall forfeit 50*l.*

200 lbs. or above may be taken from tobacco or snuff in operation.

By the 29 Geo. III. c. 68, s. 89, every manufacturer of snuff shall diligently manufacture such snuff-work and tobacco-stalks for flour, when taken out of such cask, into snuff, according to the notice given; and when the same is finished, he shall deliver to the officer a declaration in writing of the weight of each sort so made, and shall keep the same separate for twenty-four hours, or until the officer shall have taken an account thereof, on the penalty of 50*l.*

Snuff-work, when finished, to be kept separate till surveyed.

Sect. 90. But the same shall not extend to Scotch snuff returned directly from the mill; provided, at the time the same is taken out from the room where deposited, a declaration in writing be delivered to the officer, specifying the weight thereof, and the time when the same was laid down in snuff-work.

Except Scotch snuff returned from the mill.

Sects. 90, 91. Provided always, that every manufacturer may provide a store-room for keeping dried Scotch snuff, with good and sufficient fastenings, to be approved of by the surveyors and supervisors of the district; but the same shall have but one door or entrance, which shall be locked up, sealed, and secured by the officer when any Scotch snuff shall be therein; wherein may be deposited Scotch snuff returned directly from the mill for six months, without being taken as part of his stock. And when the same is intended to be taken out of such room, notice shall be given to the survey-officer, in six hours if within the limits of the head office of excise, and twelve hours if elsewhere in any city or its suburbs, and twenty-four hours if elsewhere, who shall attend and open such room, and such snuff shall be taken out in his presence, and shall be kept separate one making from another, on the penalty of 50*l.* And if any such manufacturer shall open such store-room, except in the presence of an officer, he shall forfeit 200*l.*

Store-rooms for dried Scotch snuff.

By the 1 Geo. I. st. 2, c. 46, s. 1, every person who shall cut or cause to be cut any walnut, hop, sycamore, or any other leaves, herbs, plants, or materials (not being tobacco-leaves or plants); or shall colour or cure, or cause any such to make the same resemble tobacco for sale; or shall sell or cause to be sold, or agree or offer to sell knowingly, the same, mixed or unmixed with tobacco,

Adulterating tobacco or snuff.



31. *Tobacco and Snuff.* as tobacco, shall forfeit 5s. a pound, half to the king (charges of the prosecution first deducted), and half with full costs to him who shall sue.

Sect. 7. — 5 Geo. I. c. 11, s. 22. Every person who shall make, mix, or colour, or cause or procure to be mixed or coloured, any snuff with ochre, umber, or other colouring, except water tinged with Venetian red only; or shall mix with snuff any fustic or yellow ebony, touchwood, or other wood, or any dirt, sand, or small tobacco sifted from tobacco, or knowingly sell or expose to sale any such, shall forfeit the same, and 3*l.* for every pound weight, half to the king, and half to him that shall sue.

By the 1 Geo. I. st. 2, c. 46, s. 3, all such leaves, herbs, plants, and materials, so sold, contracted for, or knowingly offered for sale, and all engines, utensils, and tools for working the same, may be searched for and seized, by warrant of three commissioners of the treasury or of the customs.

Sect. 4. But no house or warehouse shall be opened to search for or seize the same but at seasonable hours, and not without a special warrant from two justices of the peace.

Sect. 4. And the said materials or engines found and seized within the limits of any port, or within six miles of any port, shall be brought to the next custom-house warehouse; and if at a greater distance from any port, shall be secured by order of two justices at the king's charge, till the cause of such seizure shall be determined at the next, or, at farthest, the second quarter-sessions after seizure; and the same, after condemnation or recovery by judgment of such sessions, shall be openly burned or destroyed by order of the same, at his majesty's charge.

Sect. 5. All servants and labourers employed in manufacturing or knowingly selling such leaves or materials, shall, on conviction before two justices by oath of one witness, be committed to the common gaol or house of correction, to be kept to hard labour (not exceeding) six months.

By the 29 Geo. III. c. 68, s. 93, if any person shall mix any fustic, or other wood; or any walnut-tree, or other leaves, herbs, or plants (other than tobacco); or any earth, clay, or tobacco-sand, with any snuff-work or snuff; or shall make or colour, or cause, &c. the same with any sort of colouring (water tinged with colour only excepted); he shall forfeit 200*l.* And if any manufacturer or dealer in snuff shall sell, offer, or expose to sale, or have in his entered premises, any fustic, yellow ebony, touchwood, logwood, red or Guinea wood, Braziletto or Jamaica wood, Nicaragua wood, or Saunders wood; or any walnut-tree, hop, or sycamore leaves; or shall have in his possession any of the aforesaid articles; or any other wood, leaves, herbs, plants, earth, clay, or tobacco-sand, mixed with any snuff-work or snuff; or such snuff-work or snuff coloured (except as aforesaid); he shall forfeit 50*l.*, and the same shall be forfeited and may be seized.

By the 1 & 2 Geo. IV. c. 109, s. 14, "no manufacturer of, dealer in, or retailer of tobacco or snuff, shall mix with or put, or cause, permit, or suffer to be mixed with or put, into or amongst any tobacco, manufactured or unmanufactured, tobacco-stalks, tobacco-stalk flour, returns of tobacco, snuff-work, or snuff, any substance, material, or thing whatsoever, not being tobacco or snuff, and other than water only, or water tinged with colour or flavoured only; and if any tobacco, manufactured or unmanufactured, tobacco-stalks, tobacco-stalk flour, returns of tobacco, snuff-work, or snuff, shall be found in the custody or possession of any such manufacturer, dealer, or retailer, or in transit from any such manufacturer, dealer, or retailer, or other person or persons, to any other person or persons, mixed with any substance, material, or thing, not being tobacco or snuff, and other than water only, or water tinged with colour or flavoured only, or to or amongst which any substance, material, or thing, not being tobacco or snuff, and other than water only, or water tinged with colour or flavoured only, has been put, all such tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, and snuff, shall be forfeited, and shall and may be seized by any officer or officers of excise; and if any manufactured tobacco, or tobacco-stalk flour, in the possession of any manufacturer of, dealer in, or retailer of tobacco or snuff, shall be found, upon any examination of analysis thereof, to contain a greater weight of any substance, material, or thing, not

Persons mixing fustic, &c., with snuff-work, or having the same in their possession.

Adulterating tobacco or snuff, &c.

Forfeited.  
Provided as to allowance of weight of any substance in tobacco other than water, &c.

being tobacco, and other than water only, or water tinged with colour or flavoured only, than two *per centum* of the weight of the manufactured tobacco or tobacco-stalk flour under examination of analysis; or if any snuff in the possession of any manufacturer of or dealer in or retailer of tobacco or snuff shall be found, upon any examination or analysis thereof, to contain a greater weight of any substance, material, or thing, not being snuff, and other than water only, or water tinged with colour or flavoured only, than four *per centum* of the weight of the snuff under examination or analysis, such material, article, or thing, not being in such case respectively tobacco or snuff, and being other than water only, or water tinged with colour or flavoured only, shall be deemed to have been unlawfully added and mixed with such manufactured tobacco, tobacco-stalk flour, or snuff respectively, by the person or persons in whose possession such manufactured tobacco, tobacco-stalk flour, or snuff, shall be found; and all such manufactured tobacco, tobacco-stalk flour, and snuff respectively, shall be forfeited, and shall and may be seized by any officer or officers of excise; and every manufacturer of, dealer in, and retailer of tobacco or snuff, in whose possession any such adulterated tobacco, tobacco-stalks, tobacco-stalk flour, returns of tobacco, snuff-work or snuff, shall be found, or who shall commit, or cause, permit, or suffer to be committed, any such offence as aforesaid, shall forfeit for each and every such offence the sum of 100*l.*, over and above all other penalties and forfeitures."

31. *Tobacco and Snuff.*

In what case considered as unlawfully added.

Penalty.

By the 30 Geo. III. c. 40, ss. 15, 16, 17, any manufacturer of British rappee, Scotch, or brown Scotch snuff, completely finished, and of which an account has been taken by the officer, may liquor or damp the same before mixing with snuff of a different making, so as the weight exceed not the legal credit; and if such manufacturer shall intend to liquor or damp snuff for which the legal credit has not been received, he shall give notice thereof to the officer, specifying the kind, weight, and quantity (and other particulars in the act stated); but no snuff shall be liquored in less parcels than 200 pounds, nor one making in more than four different parcels.

Snuff completely finished may be liquored.

Sect. 18. Snuff for which such allowance shall have been made, shall be kept separate from all other snuff, and shall be shown to the officer on demand, on the penalty of 20*l.*

By the 29 Geo. III. c. 68, s. 94, every manufacturer and dealer who shall mix Spanish with short-cut tobacco, or any tobacco-stalk flour with British or foreign snuff, or any British rappee, Scotch, or brown Scotch snuff, the one with any other of them, or with any kind of foreign snuff, shall every day enter into a book or paper the quantity sold, sent out, or consumed, of two pounds or upwards, and the gross weight thereof, and the gross weight of the tobacco-stalk flour, and the time when mixed, on pain of forfeiting 50*l.*

An account to be kept of mixed tobacco or snuff sold or sent out.

Sect. 96. When any officer shall discover that the manufacturing of tobacco or snuff is carried on in any unentered place, and at the same time shall discover therein any person knowingly assisting, or any ways concerned in carrying on the same, every such person shall forfeit 30*l.* over and above all penalties and forfeitures that the proprietor thereof shall be liable to; and such officer or his assistant may stop and arrest such person, and convey him before a justice, who, on his confession or the oath of one witness, may convict such person so discovered, who shall immediately pay the said penalty to such officer or person who brought him; and, if not so paid, such justice shall commit him to the house of correction to hard labour for six months from the day of conviction, or until the said penalty be paid. And for a second offence he shall forfeit 60*l.*, which if not paid in manner aforesaid, he shall be committed in like manner for one year, or until such penalty be paid.

Manufacturing tobacco or snuff in unentered places.

Sects. 97, 98. The officers of excise (at any time between five in the morning and eleven in the evening, with or without a constable, or other officer of the peace, and between eleven in the evening and five in the morning with a constable or other peace-officer) may enter into any house or place belonging to or made use of by any manufacturer or dealer, and take an account of the stock found therein; and shall give credit (as particularly set forth in the act). And if at any time any excess in stock shall be found, the same shall be deemed and taken to be brought in without notice and without permit.

Officers may enter and take stock.

## 31. Tobacco and Snuff.

Scales and weights to be provided by manufacturer or dealer.  
And to assist the officers.

Not to be weighed whilst in operation.

To be kept separate.

Officers may take samples.

An account to be kept of the quantity daily sold.

Verification on oath not required, but a declaration to be made instead.

Dealers to make entries in books on being required by excise-officer.

Unfair increase in stock to be forfeited.

Supervisors and other officers of equal or superior rank, to weigh tobacco in possession of any manufacturer of tobacco or snuff.

Sect. 99. Every manufacturer and dealer shall keep sufficient scales and weights for the use of the officers, on the penalty of 100*l*.; and if any such person shall, in weighing, use any art or device to prevent such officer from taking a true weight of such tobacco, &c., he shall forfeit 200*l*., together with such scales and weights, which may be seized.

Sect. 100. And every such manufacturer and dealer shall, with a sufficient number of his servants, assist such officer in taking such account of stock, on pain of forfeiting 50*l*.

Sect. 101. But no officer shall weigh any tobacco-stalks, or snuff-work, whilst actually in the operation of manufacture; except snuff-work intended to be sent out or received by permit.

Sect. 102. And unmanufactured tobacco, tobacco in the state of operation, and manufactured tobacco, shall be kept separate from each other, on the penalty of 50*l*.

See the 1 & 2 Geo. IV. c. 109, ss. 7, 8, and 9, *ante*, p. 661, 2, 3, 4.

By the 29 Geo. III. c. 68, s. 103, the officers shall be permitted to take samples of tobacco or snuff, &c., in the possession of any manufacturer or dealer, paying for the same (if demanded) the value or usual price, on the penalty of 100*l*. upon refusal.

Sects. 104, 105. Every manufacturer and dealer shall, in a book or paper, to be furnished by the officers, on demand made, keep an account of all tobacco, &c., and snuffs, which he shall have sold, sent out, or consumed the preceding day, in quantities of four pounds or upwards of tobacco, &c., and two pounds or upwards of snuffs; and also another book or paper in like manner, if under four pounds of tobacco, &c., or two pounds of snuffs: but no such person shall have more than one such book or paper of each sort at the same time, which is to be returned to the officer, if in London, or any city or market-town, every six weeks, elsewhere every six months, or when the same is filled up, or demanded, and shall be verified on oath. And such books and papers shall lie open for the inspection of the officer, and shall be made up at his request, on the penalty of 100*l*. for every such offence.

By the 53 Geo. III. c. 88, s. 1, no verification on oath, as mentioned in the 29 Geo. III. c. 68, s. 105, shall be required; and when any of the books or papers therein mentioned shall be returned to the officer, the truth of the entries therein shall be verified upon the declaration in writing of, and subscribed by the manufacturer of or dealer in tobacco or snuff, in the presence of such officer, and if any manufacturer of or dealer in tobacco or snuff shall neglect or refuse to verify upon his declaration the truth of the entries made in any such book or paper, or to subscribe the declaration, or shall make or subscribe a false declaration, he shall forfeit 100*l*.

Sect. 2. Every manufacturer of, and dealer in tobacco and snuff, shall, on demand by the officer of excise under whose survey he shall then be, enter into the said book, or on such paper, the quantities of the said commodities, which he is by the 29 Geo. III. c. 68, ss. 94 and 104, required to enter; and shall immediately afterwards, if demanded by such officer, return such book or paper to him; and the truth of the entries shall be verified upon declaration as aforesaid, under the penalty of 100*l*. for every neglect or refusal.

By the 29 Geo. III. c. 68, s. 106, if any officer shall discover any increase in such stock not legally accounted for, the same shall be deemed and taken to be made by a commodity for which no duty has been paid, and privately brought in without permit; and such increase shall be forfeited, and may be seized; and the person in whose stock such increase shall be found, shall also forfeit 20*l*.

By the 1 & 2 Geo. IV. c. 109, s. 13, "it shall and may be lawful for any supervisor, or other officer or officers of excise of equal or superior rank to a supervisor, but in the presence and with the approbation of the collector or general surveyor of excise, if in a town in which such a collector or general surveyor is resident, and such collector or general surveyor be summoned and required by such manufacturer to attend for that purpose, at any time or times, to weigh all or any part or parcel of all the tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, and snuff, of any manufacturer of tobacco or

snuff respectively, whether the same or any part or parcel thereof be manufactured or unmanufactured, or is in or under any process of manufacture (except the snuff-work of any operation for the manufacture of snuff, between the time of being put into process of cure and the taking out any part of any of the snuff-work of such operation for drying or grinding the same); and if, upon any such weighing, such supervisor or other officer or officers as aforesaid shall find in the possession of any manufacturer of tobacco or snuff respectively any greater weight of any manufactured tobacco, tobacco-stalk flour, or snuff respectively, or any unmanufactured tobacco, tobacco-stalks, or returns (not being part of any depending operation weighed or declared for the manufacture of tobacco or snuff respectively), than the credit to which such manufacturer shall be entitled by law at that time entitled for such manufactured tobacco, tobacco-stalk flour, or snuff respectively, or for such unmanufactured tobacco, tobacco-stalks or returns respectively, such greater weight of manufactured tobacco, tobacco-stalk flour, or snuff, or unmanufactured tobacco, tobacco-stalks, or returns, respectively, shall be forfeited, and shall and may be seized by any officer or officers on demand, and every such manufacturer shall, for every such offence, forfeit and pay the sum of 100*l.*; and if any such supervisor or other officer or officers as aforesaid shall, upon any such weighing of any tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, or snuff, weighed or declared for, or in or under any process for the manufacture of tobacco or snuff, respectively, find such tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, or snuff, or any part or parcel thereof, to be of greater weight than shall be accounted for by such manufacturer, by the water added thereto for the purpose of the manufacture thereof, every such supervisor, or other officer and officers, as aforesaid, shall, and is hereby authorized and required to make thereupon a full and particular examination, not only of such operation on which such greater weight shall be found, and not accounted for, as aforesaid, but of all other operation and operations (if any) for the manufacture of tobacco or snuff of the same denomination, which such manufacturer shall then depending, and of every part and parcel thereof, and of all the circumstances relating thereto, as he or they shall think fit, or as he or they may be requested to make by any such manufacturer; and to take from each part and parcels of such tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, and snuff, as he or they shall think fit, any quantity or quantity of a sample thereof, not exceeding four pounds' weight from each such paying such manufacturer for the same at and after the current price of manufactured tobacco, including the duty thereon; and if, upon weighing such tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, and snuff, weighed and declared for, and in or under any process for the manufacture of tobacco or snuff of the like denomination, as aforesaid, by such manufacturer and which such manufacturer shall then show to such supervisor, or other officer or officers, and request him or them to weigh and examine, as aforesaid, the same shall be found to be together of greater weight than shall be accounted for by such manufacturer, as aforesaid, every such manufacturer shall, for every such offence, forfeit and lose the sum of 100*l.*; and if any manufacturer of tobacco or snuff respectively shall obstruct or hinder any supervisor or other officer or officers, as aforesaid, from weighing or taking account of any tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, or of any part or parcel thereof (except such snuff-work, as aforesaid, in examining the state or condition thereof, or taking any such sample, or shall not give to such supervisor, or other officer or officers, as aforesaid, such aid and assistance as he may require in or for any such weighing or taking any such account, as aforesaid, or shall use any art, device, or contrivance, by which any such supervisor, or other officer or officers, as aforesaid, shall be hindered, obstructed, deceived, or defeated therein; or if any manufacturer shall, after any supervisor, or other officer or officers, as aforesaid, shall have begun, or expressed or signified to such manufacturer, his intention or determination to begin to weigh or take account of any tobacco, tobacco-stalks, tobacco-stalk flour, returns, or snuff, or any part or parcel thereof, as aforesaid, remove or con-

**31. *Tobacco and Snuff.***

If weight is beyond credit allowed, excess forfeited, and penalty, 100*l.*

If, in weighing tobacco in process for manufacture, greater weight shall be found than accounted for, officer to proceed to examine operations, &c.;

and to take samples, paying for the same.

Penalty, 100*l.*

Obstructing or not assisting officers, &c.;

or deceiving officer;

or concealing, &c. tobacco;

<b>31. Tobacco and Snuff.</b>	<p>ceal any part thereof, or make any alteration or change therein, by which the weight thereof may be lessened or increased, or the weighing and taking an account thereof may be rendered imperfect, or in any respect more difficult, every such manufacturer shall, for every such offence, forfeit and lose the sum of 200<i>l</i>."</p>
<b>Penalty, 200<i>l</i>.</b>	By the 29 Geo. III. c. 68, ss. 107, 108, Scotch snuff, in the custody of a manufacturer or dealer in snuff, not having gained more than five pounds in the hundred pounds by the moisture of the air, shall be deemed a fair commodity, and such manufacturer shall have credit for the same in stock, and may remove the same by permit; and the manufacturer and dealer shall keep all such Scotch snuff on which such allowance shall be made separate from all other snuff, and at all times show the same to the officer of excise upon demand, on the penalty of 20 <i>l</i> .
<b>Scotch snuff not having gained more than 5lbs. in 100lbs.</b>	
<b>Tobacco or snuff not to be removed before weighing.</b>	Sect. 109. If any manufacturer shall remove any tobacco or snuff out of his entered house or place before the same has been weighed and taken an account of by the officer, or shall hide or conceal the same from the view of such officer, he shall forfeit 50 <i>l</i> .
<b>Not without a permit.</b>	Sect. 110. And no tobacco (except returns) of four pounds and upwards, nor snuff of two pounds and upwards, nor any tobacco-stalks, Spanish, returns of tobacco, tobacco-stalks for flour, snuff-work, or tobacco-stalk flour, exceeding two hundred pounds, shall be removed by land or water without a permit, on pain of forfeiting the same, with the casks or other packages, and also the horses, cattle, boats, barges, and carriages, used in conveying the same, which may be seized by any officer of customs or excise.
<b>Officers to grant permits.</b>	Sects. 111, 112. The officers of excise, on request, shall grant permits, wherein shall be limited the time for such removal, and distinguishing the weight and kind, according to the denominations in the request-note, and the name of the person to whom and place to which to be sent, and whether by land or water, and by what mode of conveyance; and if the goods permitted shall not be delivered and received within the time so limited, the same shall be deemed and taken to be removed without permit.
<b>Exceptions.</b>	By the 30 Geo. III. c. 40, s. 29, no permit shall be granted or be valid for the removal of any snuff-work from one part of the kingdom to another, except from the entered premises of a manufacturer of snuff where the same was laid down, to the mill, for the purpose of being ground into snuff, on pain of forfeiture thereof, together with the hogsheads, packages, horses, cattle, boats, barges, and carriages, used in the removal thereof, which may be seized.
<b>Request-notes to be given.</b>	By the 29 Geo. III. c. 68, ss. 113, 114, no such permit shall be granted or be valid, unless a request-note be sent from such manufacturer or dealer, containing the particulars specified in the act, and such permit correspond with the request-note; and if for removing unmanufactured tobacco (other than samples), except the same be in the original package, and be removed according to the regulations specified in the act (for which see this section in the act itself). And all tobacco, &c., removed contrary thereto shall be forfeited, together with the casks and package, and the horses, cattle, boats, barges, and carriages, used in the removal thereof, which may be seized.
<b>Permits for removing unmanufactured tobacco.</b>	
<b>Permit for removing to and from mills.</b>	The 30 Geo. III. c. 40, ss. 25, 28, provides always that permits may be granted for the removal of any unmanufactured tobacco in any quantity not less than two hundred pounds, in any package whatsoever, from the entered premises of any manufacturer to any mill to be manufactured, and back to such entered premises.
<b>Tobacco may be finished or snuff dried at mills.</b>	Sect. 27. And every manufacturer of tobacco or snuff may manufacture his tobacco, tobacco-stalks, snuff-work, and returns of tobacco, at any entered mill, and may remove the same by permit to and from such mill.
<b>Permits, when not used, to be returned.</b>	By the 29 Geo. III. c. 68, s. 115, nothing herein shall extend to prevent any manufacturer from stoving or finishing tobacco, or drying snuff-work at any cutting-mill or snuff-mill, provided the officer be allowed to weigh and take an account thereof, after such stoving, finishing, or drying.
	Sect. 116. Where any permit shall be granted for the removal of any tobacco, &c., or snuff, and the same shall not be removed agreeably thereto, such permit shall be returned before the expiration of the time limited for such re-

noval, on forfeiture of treble the value of such goods; and where such permit shall not be so returned as aforesaid, and, on taking stock, a decrease does not appear to answer the contents of such permit, a like quantity to that permitted to be removed shall be forfeited, and may be seized.

**34. Tobacco and Snuff.**

Sec. 117. No manufacturer of tobacco, not being a licensed dealer, shall have a permit for, or shall sell or send out, any manufactured tobacco, Spanish, or returns of tobacco, in a less quantity than four pounds, nor, being a manufacturer of snuff, any less quantity of snuff than two pounds, on the penalty of 20*l*.

Manufacturer not licensed as a dealer.

Sec. 118. No tobacco, tobacco-stalks, Spanish, tobacco-stalks for tobacco-talk flour, snuff-work, tobacco-stalk flour, or snuff, shall be brought into any house or place made use of by any manufacturer or dealer in tobacco or snuff, without a permit, and also notice thereof shall be first given to the officer, on pain of forfeiting the same, together with the casks and package, which may be seized; and such manufacturer or dealer shall also forfeit treble the value thereof, to be estimated according to the highest price at which such tobacco, &c., shall sell for in London at the time such forfeiture shall be incurred. See *e 1 & 2 Geo. IV. c. 109, s. 1, ante, 659.*

No tobacco, &c. to be taken into the house or premises of a manufacturer without a permit.

By the 1 & 2 Geo. IV. c. 109, s. 10, "every manufacturer of tobacco or snuff shall keep his or her respective stocks and packages of tobacco, tobacco-stalks, tobacco-stalk flour, returns, and snuff, not being part of any depending operation, according to their several denominations and descriptions, distinct, separate, and apart from each other, and in the places by him or her entered at that purpose (if any places shall be so specially entered), and shall also keep every operation for the manufacture of tobacco or snuff distinct and separate from and unmixed with every other operation for the manufacture of tobacco or snuff, and from all tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, and snuff, not being part of such operation; and shall, upon every bin, cask, box, chest, bag, or parcel, of any tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, and snuff respectively, not being part of any depending operation, mark, write, or print, or fix and attach, and continue and attached, a ticket or label, on which shall be marked, painted, written, or printed, in distinct and legible numbers and letters, the denomination or description of the contents thereof, and adding to such denomination, when the same is manufactured tobacco or snuff, the words 'Manufactured by' and shall hang up, and continue to be hung up, conspicuously upon every wall or door near to the place where any operation is depending and in process of manufacture, a board, ticket, or label, on which shall be painted, written, or printed, in distinct and legible numbers and letters, the number, name, and size of such operation then there depending, and the particular tobacco or snuff for which respectively the same is there in process of manufacture; and every such manufacturer shall, at the request of any officer or officers of excise, point out, produce, and show to him all and every part of his or her tobacco-stalk flour, and manufactured stocks of tobacco and snuff respectively, and of his or her unmanufactured stocks of tobacco, tobacco-stalks, and returns respectively, not being part of any depending operation, also the tobacco, tobacco-stalks, returns, tobacco-stalk flour, snuff-work, snuff, weighed and declared for any operation, and the whole and each of each and every operation for the manufacture of tobacco or snuff then depending in such manufactory; and if any such manufacturer shall refuse or neglect to mark, paint, write, or print on and distinguish every such bin, cask, chest, bag, or parcel, and operation, as aforesaid, or shall falsely or untruefully mark any such bin, cask, box, chest, bag, or parcel, and operation, as aforesaid, and refuse or neglect, on the request of any officer of excise, to point out, produce, and show to him all and every stock and particulars as aforesaid, of tobacco, tobacco-stalks, tobacco-stalk flour, returns, snuff-work, and contained in any such undistinguished or falsely distinguished or concealed bin, cask, box, chest, bag, or parcel respectively, together with the value thereof, shall be forfeited, and shall and may be seized by any officer or officers of excise; and every such manufacturer so refusing or neglecting to point out, produce, and show to any officer of excise making such request, as L. II.

Regulations for keeping stock and packages separate, and for ticketing and labelling bins, &c.

Manufacturer to show stocks to officer.

Forfeiture of tobacco packages, &c., and penalty 100*l*.

34. *Tobacco and Snuff.* aforesaid, all and every such stock and particulars as aforesaid, shall for every such offence forfeit and lose the sum of 100*l*."

Removing to  
London, or the  
parts aforesaid.

By the 29 Geo. III. c. 68, s. 119, no tobacco, tobacco-stalk, Spanish, tobacco-stalk for tobacco-stalk-flour, snuff-work, tobacco-stalk-flour, or snuff, shall be removed from any place without the limits of the bills of mortality, or excise-office in London, to any place within those limits, nor from any place without the limits of the ports hereinbefore enumerated to any place within, or within two miles of those limits, on forfeiture thereof, with the casks and packages, and also the vessels and boats, and the horses, cattle, and carriages, employed in removing the same, which may be seized by any officer of the customs or excise.

Sect. 120. No Spanish manufactured by any Spanish cutter from tobacco-stalks, received by him, accompanied with a legal permit, from any other manufacturer of tobacco, for the purpose only of manufacturing the same into Spanish, for or on account of such other manufacturer; nor any cut tobacco, cut by any cutter from tobacco, &c. (as before); nor any tobacco-stalk flour ground by any snuff-miller from tobacco-stalks received, &c. (as before); nor any snuff ground by any snuff-miller from any snuff-work received, &c. (as before); nor any hogshead, &c., or package containing any such Spanish, &c., or the vessel, boat, &c. &c., employed in removing the same, shall be forfeited by reason of the return of any such Spanish, &c., by any such Spanish cutter or snuff-miller, from his entered mill not within the limits of the weekly bills, or of the chief office of excise, or from any place not within the limits of the said first-mentioned ports, to the entered premises whence received, situate as aforesaid, or within two miles of the said ports, provided the said Spanish, &c., be accompanied with a permit according to this act.

Sect. 121. Provided also, that any manufacturer of snuff may send for sale, by permit, any snuff manufactured by him, from any part of the kingdom to any other part thereof.

By the 30 Geo. III. c. 40, s. 26, tobacco-stalks stripped from the leaf may be removed by permit from any entered premises out of the limits of the bills of mortality to any place within those limits, subject to the regulations in the aforesaid act and this act specified.

Manufacturers or  
dealers may  
return tobacco  
or snuff received  
into their stock,  
to the persons  
from whom they  
received it, under  
the regulations  
herein specified;

By the 29 Geo. III. c. 68, s. 122, "any manufacturer or manufacturers or dealer or dealers in tobacco or snuff, who shall have received into his, her, or their stock any tobacco or snuff removed according to the directions of this act, accompanied with a legal permit, shall see cause to return the same to the person or persons from whom he, she, or they received the same, then and in every such case such manufacturer or manufacturers, or dealer or dealers, shall be at liberty, within forty-eight hours after he, she, or they shall have received the same tobacco or snuff into his, her, or their stock, to give twelve hours' notice in writing to the officer of excise under whose survey he, she, or they shall then be, of his, her, or their intention to return such tobacco or snuff, and shall in such notice express the true cause and occasion for returning the same; and such officer shall, and is hereby required to, attend and examine such tobacco or snuff; and when and so soon as such officer shall have examined the same, and taken an account of the quantity and quality thereof, such manufacturer or manufacturers, or dealer or dealers, shall forthwith, in the presence of such officer, repack such tobacco or snuff, and shall immediately, or within half an hour after the coming of the said officer, and in the presence of the said officer, write on the outside of the package in which the tobacco or snuff so intended to be returned shall be, in large legible characters, as well his, her, or their own christian and surname, or the known name of his, her, or their firm, as also the christian and surname of the person or persons, or the known name of the firm or company, from whose stock the same tobacco or snuff was received, and likewise the words, 'Returned Tobacco,' or 'Snuff,' as the case may require; and such officer shall thereupon underwrite on the package his own christian and surname, and mark the said package with some mark or number; and then, and not before, the proper officer of excise shall grant a permit to accompany such tobacco or snuff so to be returned; in which permit shall be expressed the quantity and quality of the tobacco or snuff so

to be returned, the cause and occasion of returning the same, the mark or number put on the package, the christian and surnames both of the person or persons from whose stock such tobacco or snuff is removed, and of the person or persons to whom the same is to be returned, and also the time for which such permit shall be in force; and if any such tobacco or snuff be found returned, or in part returned or returning, without such permit as aforesaid accompanying the same, or if such tobacco or snuff be found returned, or in part returned or returning, to any other person or persons than the person or persons from whom such tobacco or snuff had been first received, or if the tobacco or snuff returned, or in part returned or returning, with such permit as aforesaid, be not the identical tobacco or snuff which had been received as aforesaid, without any addition to, subtraction from, or alteration of the same, then, and in each and every such case, such tobacco or snuff, with the hogsheads, casks, chests, cases, and packages whatsoever, containing the same, shall be forfeited, and the same respectively shall and may be seized by any officer or officers of the customs or excise, and the person or persons returning the same, contrary to the true intent and meaning of this proviso, shall forfeit the sum of 50*l*."

Sect. 123. If any tobacco of four pounds' weight or upwards, or any snuff of four pounds' weight or upwards, or any tobacco-stalks, Spanish, tobacco-stalks tobacco-stalk flour, snuff-work, or tobacco-stalk-flour, shall be found re-  
turning, unless between seven in the morning and five in the evening from twenty-ninth September to twenty-fifth March, and between five in the morning and seven in the evening from twenty-fifth March to twenty-ninth September  
rept by a common carrier or vessel usually travelling or navigating out of the hours, all such tobacco, &c., shall be forfeited, together with the casks, package, and the cattle, carriages, and vessels containing and made use of conveying the same, which may be seized by any officer of customs or excise, unless the same be accompanied with a permit or not.

the 48 Geo. III. c. 84, s. 7, if any person shall offer for sale any tea, rum, geneva, or other foreign spirits, or any tobacco or snuff, not being sold to deal therein, and not having a permit for the same; or if any pedlar, petty chapman, or other trading person, going from town to town or to other men's houses, and trading either on foot, or with any horse, or other cattle, or otherwise, within Great Britain, shall offer for sale any tea, rum, geneva, or other foreign spirits, or any tobacco or snuff, unless he have a permit for the same, it shall be lawful for the person to whom the same shall be offered for sale to stop, arrest, and detain the person offering the same for sale, and to seize such tea, &c., and carry the same to a warehouse for the customs or excise, and to carry the person so offering for sale before a justice of peace, who may require such person to give recognizance, as directed by the 45 Geo. III. c. 121, and such person shall be subject to the provisions in the said act, in relation to recognizances of persons seized as smugglers; and, if the offender be a subject of Great Britain, and a seaman, and capable of serving in the navy, may send such offender to any officer of the impress service, to be dealt with according to the provisions of the 22 Geo. 2, c. 66, or be by such justice committed to prison, and for the penalties incurred for such offence; and such goods may be sold in the name of the person who seized them, as if seized by an officer of the customs or excise; and, after condemnation of the goods, or commitment of the offender, the person who seized them shall be entitled to 5*l*., if one moiety shall exceed 5*l*., then a moiety of such value, which the justice of the customs and excise are to cause to be paid; and the person offering any such offender shall also be entitled to such further reward as shall be given to any officer or non-commissioned officer of the army, or non-commissioned officer, for arresting any offender against any acts of Parliament for the prevention of smuggling.

2 Geo. IV. c. 109, s. 2, "from and after the 10th day of October 1811 and every person and persons who shall deal in or retail, or be concerned in the entry to deal in or retail, tobacco or snuff, shall, upon demand, be bound to produce to the proper officer of excise a book or books, to be prepared with

#### 34. *Tobacco and Snuff.*

but if found returned or returning, without permit, &c., may be seized, and the party to forfeit 50*l*."

But removed only during certain hours, except by common carriers.

Tobacco, &c., offered to sale without a permit, or by hawkers with none, may be seized by any person to whom the same shall be offered.

Retailers of tobacco or snuff to receive from officer books with forms and titles herein described, to be kept in his shop.



**34. Tobacco and Snuff.**

Certificates cut out of such books and filled up to be sent out with tobacco and snuff and not less than 1lb. or not exceeding 10lbs. Corresponding entry to be made in such books.

Books subject to inspection of officer.

Sending out tobacco and snuff without certificate, neglecting to make entry in the book, obstructing officer, &c., penalty 50*l*. and articles forfeited.

Assisting, penalty 50*l*.

Tobacco or snuff exceeding 10lbs. to be accompanied with a permit, or seized.

Forging permits.

Obstructing officers.

Offering bribe.

proper forms and titles for the purposes hereinafter mentioned, and to be kept by every such dealer or retailer in some public and open part of his, her, or their entered shop or premises for dealing in or retailing tobacco or snuff; and that, from and after the said 10th day of October, 1821, no tobacco or snuff of any weight not less than one pound, or which shall not exceed ten pounds, shall be sold, sent out, or delivered by any dealer in or retailer of tobacco or snuff to any person or persons whatsoever, without being accompanied by a certificate filled up and cut out progressively from the printed forms of such certificates contained in such book, as aforesaid, signed by such dealer or retailer selling, sending out, or delivering the same, or some person or persons on his, her, or their behalf, certifying the date thereof, the quantity, quality, denomination, or sort or kind, when sent out on order, and to whom sold, and from whose stock delivered; which certificate shall be firmly and permanently pasted on the outside cover or wrapper of such parcel or weight of tobacco or snuff as shall be specified in such certificate; and that the dealer or retailer selling, sending out, or delivering any tobacco or snuff of any weight not less than one pound, or exceeding ten pounds, as aforesaid, shall at the same time make a correspondent entry thereof, containing the same particulars, in such book as aforesaid (and that such tobacco or snuff, when not sent out on order, was sold and delivered to the purchaser on their retail premises); and that such book, with such entries so made therein, as aforesaid, shall at all times, from the hour of seven of the clock in the morning until the hour of eight of the clock in the evening, lie open and exposed in the entered premises of such dealer or retailer, as aforesaid, to the perusal of any officer or officers of excise, and shall be delivered and given up by such dealer or retailer, as aforesaid, to any officer or officers of excise, upon demand; and if any dealer in or retailer of tobacco or snuff shall at any one time retail or sell, send out, or deliver, from his or her stock, any weight or quantity of tobacco or snuff not less than one pound, and which shall not exceed ten pounds, without being accompanied by such certificate pasted thereon, as aforesaid, or without making such entry in such book, as aforesaid, or shall convey away or conceal any such book or books as aforesaid, or cancel, obliterate, destroy, or tear out any leaf or leaves therefrom, or entry or entries therein, or shall make any false entry or entries therein, or shall oppose, molest, obstruct, or hinder any officer or officers of excise in inspecting any such book or books, or any such entry or entries therein, as aforesaid, or shall at any time neglect or refuse, when required, to deliver or give up to any officer or officers such book or books as aforesaid, all and every such person and persons so offending shall for every such offence forfeit and lose the sum of 50*l*.; and all such manufactured tobacco and snuff respectively so retailed or sent out, as aforesaid, shall be forfeited, and shall and may be seized by any officer or officers of excise; and the person or persons removing, carrying, or conveying the same, or who shall be or shall have been employed or concerned, or aiding or assisting therein, or in whose custody the same shall be found, shall forfeit and lose the sum of 50*l*.: provided always, that every dealer in or retailer of tobacco or snuff shall send out every quantity of tobacco or snuff exceeding ten pounds thereof respectively at one time, by and accompanied with a legal permit, and not with or under such certificate, as aforesaid, on pain of forfeiting all such tobacco and snuff respectively, which shall and may be seized by any officer or officers of excise."

By the 29 Geo. III. c. 68, s. 125, if any person shall counterfeit or forge, or cause or procure to be counterfeited, any permit for the removal of tobacco or snuff from any part of this kingdom to any other part thereof, he shall forfeit 500*l*.

Sect. 149. If any person shall assault, resist, oppose, molest, obstruct, or hinder any officer in the due execution of this or any other act, or shall rescue any such goods which have been seized, or any vessel, horses, cattle, or carriages, which have been forfeited, and for which no particular penalty is provided, he shall forfeit 200*l*. for each offence.

Sect. 150. If any person shall give or offer any bribe, recompense, or reward to any officer to prevent him doing his duty, whether the same be accepted or not, he shall forfeit 500*l*.

Sect. 152. No tobacco, &c., or snuff, shall be landed without first making entry thereof with the officers of the customs, on forfeiture thereof, with the casks and package.

34. *Tobacco and Snuff.*

Sect. 153. If any officer of excise shall have cause to suspect that any tobacco, &c., or snuff, which shall have been imported contrary to this act, or forfeited by this or any other act, is deposited, lodged, hid, or concealed, if within London or Westminster, or the limits of the chief office, upon oath made before two commissioners, elsewhere upon oath made before one justice, setting forth the ground of his suspicion, such commissioners or justice may by warrant authorize such officer, by day or night, but, if in the night, in the presence of a constable or other peace-officer, to enter into such suspected place, and to seize and carry away all such tobacco, &c., or snuff which shall be there found, together with the casks and package containing the same; and if any person shall obstruct or hinder any such officer so authorized, or person assisting him, in the execution of such warrant, he shall forfeit 100*l*.

Entry to be made before landing. Officers may search suspected places.

Tobacco and snuff, taken as prize, are subjected to the regulation of this act by the 43 Geo. III. c. 134, s. 5.

Sect. 154. No manufacturer or dealer in tobacco or snuff, or who is or shall be in anywise interested or concerned in manufacturing or dealing in tobacco snuff, shall act as a magistrate in the execution of any act relating to tobacco snuff; and all acts done by such person shall be utterly null and void.

No manufacturer or dealer to act as a magistrate.

By the 12 Geo. I. c. 28, s. 13, 5 Geo. III. c. 43, s. 4, 6, 8 Geo. I. c. 18, 6, if any tobacco-stalks or stems stripped from the leaf shall be imported, the same shall be forfeited and burned; and the officer seizing the same shall be rewarded 1*d*. per pound; and every person who shall be assisting or otherwise concerned in unshipping the same, or to whose hands they shall knowingly come after unshipping, shall forfeit treble value, together with the vessels, bags, or other things, wherein the same are contained, and the horses, cattle, and other carriages made use of in removing the same; half to the king, and half to such officer of the customs who shall seize, inform, or sue for the

Importing tobacco-stalks.

the 52 Geo. III. c. 159, tobacco (and also liquors) derelict are subject to the laws of excise.

Sect. 2, every person bringing into this kingdom, or finding or discovering on the coasts of this kingdom, any foreign liquors or tobacco derelict, jetsam, wreck, or flotsam, in respect whereof any duty of customs or excise is imposed, shall, within twenty-four hours next after he shall have so discovered the same, if the same be found on land, or within twenty-four hours after the same shall have been landed, if the same be found at sea, convey thereof to the next custom-house or excise-office, or to some neighbouring officer of customs or excise, specifying the place where the same are deposited; and the proper officers shall forthwith take a particular account of such liquors or tobacco, and shall demand of the person in possession they may be, or who shall have found or brought to land the same, the full duties of customs and excise due in respect thereof; and in case such duties shall not on such demand be paid, the said officer shall cause such tobacco to be securely lodged and deposited in a warehouse, under the lock of the said officer, until the duties shall be paid, or until they shall be sold; and every person shall bring into this kingdom, or find or discover on the coasts of this kingdom, any foreign liquors or tobacco derelict, jetsam, flotsam, wreck, or flotsam, in respect whereof any duty is by law imposed, and shall not neglect to give notice thereof to the proper officers, as aforesaid, every such person shall forfeit 100*l*.; and if any person shall remove, open, or alter, in quantity or quality, or cause to be removed, or aid or assist in the removing, &c., any such liquors or tobacco, or shall remove, or destroy, or cause to be broken, &c., or aid or assist in the breaking, &c., of any such cases or packages containing any such liquors or tobacco, or shall neglect to give notice thereof to the proper officers, and before the said liquors or tobacco shall be by them lodged or deposited, as aforesaid, every such person shall forfeit 100*l*.; and all such liquors and tobacco so removed, together with the casks and other packages containing the same, shall be forfeited, and may be seized by any officer: provided always, that if

Regulations observed for securing duties on tobacco, or foreign spirits, derelict.

Penalty.

**34. Tobacco and Snuff.**

the duties shall not be paid within eighteen months next after such lodging, as aforesaid, the said liquors and tobacco shall be so deposited, the commissioners of customs or excise may sell and dispose of such liquors and tobacco, or any part thereof, for the satisfying the duties payable, and also the costs, charges, and expenses attending the conveying to such warehouse, and of the keeping and sale thereof, rendering the overplus, after payment, to such person as shall be by law entitled to the same; and if, upon such tobacco, &c. being put up or offered to sale, no person shall bid for the same as much or more money than the duties payable in respect thereof, together with the warehouse-rent, costs, charges, and expenses, taken together, would amount to, the commissioners may permit the person entitled to the same to expose, or to sell and dispose thereof for exportation only, subject to the usual regulations in such cases, or if such persons should refuse so to do, then to sell and dispose of such liquors or tobacco for exportation, or to destroy the same, as such commissioners may deem most expedient: provided also, that nothing hereinbefore contained shall extend to prevent any such liquors or tobacco as the said commissioners may deem necessary for that purpose, being sold duty free, for the payment of the salvage expenses incurred in respect thereof.

Goods may be retained in custody of person bringing or finding the same for one year, upon entering into bond for payment of duties.

Penalties, &c., how levied.

Sect. 3. The lord of the manor on which such liquors or tobacco shall be found, having by law just claim thereto, or where no such lord of the manor shall exist, then the person or persons bringing into this kingdom, or finding or discovering, on the coasts thereof, any such foreign liquor or tobacco, shall be at liberty to retain the same in his own possession for one year and one day, to be computed from such bringing or finding thereof, on his entering into bond, with two sufficient sureties, to be approved of by the proper officer of customs or excise, in treble value, for the due payment of the duties in respect thereof, at the end and expiration of such year and day, or, in default of such payment, to restore such liquors and tobacco at the end or expiration of such year and day, to the proper officer of the customs or excise, in the same state as the same was in at the time of such bringing, &c.

By the 9 Geo. IV. c. 44, s. 2, all penalties and forfeitures relating to the excise or customs are to be recovered, &c. according to the provisions of the 7 & 8 Geo. IV. c. 53. See *ante*, p. 197 to 226.

**(35.) Vinegar, Acetous Acid, and Verjuice.****(35.) Vinegar, Acetous Acid, and Verjuice.**

[12 Car. II. c. 24; 7 & 8 Wil. III. c. 30; 10 & 11 Wil. III. c. 21; 26 Geo. III. c. 73; 58 Geo. III. c. 65; 1 & 2 Geo. IV. c. 102; 6 Geo. IV. cc. 81, 111; 9 Geo. IV. c. 44.]

Vinegar-maker to be licensed. (a)

The 4 Geo. IV. c. 81, repeals all former duties on excise licenses, and imposes new duties: *viz.* (*inf. al.*) upon every license required to be annually taken out by every maker of vinegar or acetous acid, for sale, 5*l.*

Duties. Excise.

The 58 Geo. III. c. 65, s. 1, repeals all former duties of excise on vinegar, verjuice, &c., and s. 2 imposes other duties: *viz.*

(a) It was held, that a maker of vinegar for sale, whether as vinegar or as blacking, or as any other article not being vinegar properly so called, or pure and applicable to the common uses of vinegar, is liable to the duty of excise, and the other provisions of the several statutes relating to the makers and preparers of vinegar for sale; and that it is not necessary to state in the information that the liquid was preparing for sale; that may be proved. *Attorney-General v. Green*, 4 Price, 224. And it was held, that tar-distillers, necessarily making tar-acid, or acetous acid, in the

progress of their manufacture, are therefore taken to be vinegar-makers within the sixth section of the 24 Geo. III. c. 56, and that they were thereby subjected, as such, to all the excise regulations made by the statutes passed in respect of the makers of vinegar, and were not protected by the proviso in that section; and, consequently, were liable to an information for penalties for not giving the usual notice to the excise required by the fourteenth section of the 10 & 11 Wil. c. 21. *Attorney-General v. Hangrave*, 11 Price, 217.

For every gallon (wine measure) of vinegar or acetous acid, or liquors prepared for vinegar or acetous acid, made in Great Britain for sale, 4d., to be paid by the maker. 35 Vinegar, &c.

For every gallon of vinegar or acetous acid, or liquors prepared for vinegar or acetous acid, made in Ireland and imported into Great Britain, 4d., to be paid by the importer.

For every gallon of vinegar or acetous acid, or liquors prepared for vinegar or acetous acid, imported into Great Britain from foreign parts, 1s., to be paid by the importer.

For every gallon (wine measure) of vinegar made in Great Britain for sale, made in Ireland and imported into Great Britain, and exported from thence to foreign parts, on which the duties shall have been paid, there shall be allowed and paid a drawback of 4d.

By 6 Geo. IV. c. 111, imposes a duty in lieu of all former duties of custom; viz. 18l. 18s. the tun (see *ante*, 147). Customs.  
Entry, &c.

By the 10 & 11 Wil. III. c. 21, s. 15, thirty-four gallons shall be accounted equal of vinegar, vinegar-beer, or liquors preparing for vinegar, according to standard ale quart.

t. 14. If any vinegar-maker shall, without giving notice at the next excise-house any storehouse, warehouse, cellar, or other place, for the making, or keeping any vinegar-beer, or liquors preparing for vinegar, he shall, by such storehouse or other place so made use of without such notice, forfeit 10l. Penalty on using  
any place without  
giving notice.

By 26 Geo. III. c. 73 (made perpetual by the 35 Geo. III. c. 89), s. 56, any person shall be entitled to carry on the trade of a vinegar-maker, make an entry with the proper officer of excise of the brewhouse, shop, yard, or place, for the carrying on such trade; and in such entry signify whether he be a maker of vinegar from malt or corn, or from sugar, or from any and what other materials; and every entry not made thereto shall be void.

5. No vinegar-maker from melasses or sugar, or from any other malt except malt or corn, shall carry on, alone or in partnership, the trade of brewer, or maker or rectifier of spirits, in the same buildings or premises, two miles thereof; and all entries made for carrying on the trade of brewer or maker or rectifier of spirits, contrary hereto, shall be void. See IV. c. 80, s. 36, *ante*, 595. Vinegar-maker  
not to be a distiller  
or rectifier.

By 8 Wil. III. c. 30, s. 17, if any maker or retailer of vinegar shall, on request or demand made by the officer in the day-time, or if in the night, refuse to permit him to enter his house, storehouse, or other place belonging to or used by him, and to take account of the vinegar or liquors prepared for vinegar, he shall forfeit 15l. Refusing to admit  
the gauger.

By 3 Geo. III. c. 65, s. 10, every officer of excise shall at all times, on request (but, if in the night, to be accompanied by a supervisor or other person permitted to enter into the entered house, warehouse, and other place) to or used by any vinegar-maker for sale, and to take an account of such liquor and material, and of all sulphuric acid, in the custody of such maker; and if any person shall obstruct, molest, or hinder him from so doing, he shall forfeit 200l. Officers of excise  
may enter premises  
used by any vinegar-  
maker.

By 11 Wil. III. c. 21, s. 12, no vinegar-maker shall receive into his custody ale beer, returns of beer or ale, cider, verjuice, or other liquors, nor deliver out any vinegar in casks or by the gallon, until first given to the officer, unless from September 29, to March 29, between seven in the morning and five in the evening, and from March 29, between five in the morning and seven in the evening, in the night, of 50l. At what times  
only to receive  
liquors.

When receiving such liquors into his custody, he shall show the gauger before he mixes them with any other liquors, rape, or other spirit, a main of 20l. To be shown to  
the gauger.

By 3 Geo. III. c. 65, s. 11, no vinegar-maker for sale shall have or be in the custody or possession any vinegar or acetous acid, or any

35. *Vinegar, &c.*

negar, or preparations for vinegar, without giving 12 hours' notice to the officer, on pain of forfeiting 100*l*.

sugar-water, sugar-wash, melasses-water, melasses-wash, aleger, stale beer, returns of beer or ale, cider, verjuice, or other liquor prepared or preparing for vinegar or acetous acid, or capable of being used as or applied to the purposes of vinegar or acetous acid, or any sulphuric acid, melasses, brown sugar, honey (except for his private family), or any pyrolignite or acetate of lime or soda, or other material (except corn or grain) fit or proper to be made into or mixed with vinegar or acetous acid, without giving twelve hours' previous notice thereof in writing to the officer of excise, under whose survey such maker shall then be, specifying the day and time of the day when the same will be taken or received into his custody, and the quantity and description thereof, that such officer may be present to take account thereof, by weight, measure, or gauge; nor shall diminish, remove, or mix the same or any part thereof with his stock, until such officer shall have taken account, nor afterwards use or employ any such materials uncharged with duty, without accounting for the same to the satisfaction of the officer, on pain of forfeiting or every such offence 100*l*.

No wort to be sent out, nor vinegar or preparation for vinegar, unless duty paid, and accompanied with a permit.

Sect. 12. No person shall sell, deliver, or send out any fermenting or fermented wort or wash, not being fermented beer, charged with duty, to any person whatsoever; and no person, not being an entered vinegar-maker, shall sell, deliver, or send out any vinegar or purified acetous acid, aleger, stale beer, stale ale, or stale cider, verjuice, sugar-water, or melasses-water, or other liquors prepared or preparing for vinegar or acetous acid, or capable of being used as or applied to the purposes of vinegar or acetous acid, except to an entered vinegar-maker, under such notice for receiving the same, as aforesaid, or without the duties hereby imposed being first paid or charged in respect of such vinegar, or purified acetous acid, aleger, stale beer, stale ale, or stale cider, verjuice, sugar-water, or melasses-water, or other liquors, and the same being accompanied with a permit or certificate as herein mentioned, on pain of forfeiting all such liquors, which may be seized by any officer of excise, together with the cattle and carriages used in removing the same; and every person so offending or receiving such liquors shall forfeit 200*l*.

## Concealing.

Vinegar or materials found concealed, adulterated, &c. to be forfeited, and the offender forfeit 100*l*.

By the 7 & 8 Will. III. c. 30, s. 16, if any maker of vinegar for sale shall conceal or convey any vinegar, or liquor preparing for vinegar, from the view of the gauger, he shall, for every barrel, forfeit 40*l*.

By the 58 Geo. III. c. 65, s. 25, if any person shall remove, hide, or conceal any vinegar, or acetous acid, or liquors preparing for or capable of being used as or applied to the purposes thereof, or any material for making, rectifying, or purifying the same, subject or liable to the duties of excise, with intent to evade the payment of such duties, or to defraud the king; or shall adulterate or mix with any vinegar or acetous acid any other acid (except sulphuric acid), in the proportion not exceeding one-thousandth part thereof by weight, all such vinegar or acetous acid, liquors, and materials so removed, taken away, hidden, concealed, or adulterated, shall be forfeited, and may be seized by any officer of excise; and beside such forfeiture, every person so offending, and all persons assisting therein, or receiving any vinegar, liquor, or materials, without such permit, shall severally forfeit 100*l*.

For the provisions of this act for trying the strength of vinegar by an acetometer, see sections 8 and 9; and for regulating the mode of charging the stills, see sections 13 and 14.

## What deemed vinegar, &amp;c.

Liquors, of whatever kind, prepared for vinegar for sale, to be charged with the duty hereby imposed.

By the 10 & 11 Wil. III. c. 21, s. 11, all stale beer, returns of beer or ale, cider, verjuice, or any other liquor proper to be made into vinegar, which shall be found in the possession of any common vinegar-maker (except such as are to be drank in his family, and which shall be kept separate for that purpose), shall be deemed vinegar, or liquors preparing for vinegar.

By the 58 Geo. III. c. 65, s. 6, all liquors brewed or made, by whatsoever means or manner, into vinegar or acetous acid for sale, and all liquors prepared or preparing for, or capable of being used as, or applied to, the purposes of vinegar or acetous acid made for sale, or found in the possession of any vinegar-maker for sale, in Great Britain, or imported into Great Britain, whether any such liquor shall be sold, or made for sale, unmixed or mixed with any other ingredients, or shall be known and called by the name of vinegar, ale-

gar, verjuice, radical vinegar, acetous acid, acetic acid, pyroligneous acid, or by any other name, shall be respectively subject to and chargeable with the duties hereby imposed.

Sect. 6. And every person who shall make, prepare, extract, distil, rectify, purify, or sell any such liquors, as aforesaid, not being a dealer in, retailer, or seller of such vinegar, or acetous acid only, as he shall receive by permit or certificate, as herein mentioned, from some entered vinegar-maker, shall be deemed a vinegar-maker, and be subject to all the license and other duties, regulations, restrictions, and penalties, to which makers of vinegar are subject and liable.

Persons preparing such liquors deemed vinegar-makers.

Sect. 24. So much of the 6 Geo. III. c. 14, s. 16, as directs that the duty on der or perry unfit for sale, and charged with the duties on vinegar, should be lowered and drawn back, shall be repealed.

Sect. 27. If any question shall arise whether any vinegar or acetous acid, liquors or materials prepared for the purposes of vinegar, &c., which shall have been seized, the proof of such vinegar, &c. not being so, shall lie upon owner or claimer thereof.

By the 58 Geo. III. c. 65, s. 15, "no person shall make vinegar for sale from malt, or other fermenting material, at, in, or upon any house or place entered or used for making, distilling, rectifying, or purifying acetous acid, or pyroligneous acid, or for making or compounding white lead, sugar of lead, verdigris, iron liquor, or acetate of lime, acetate of soda, or acetate of lime, or within the distance of three hundred feet in a direct line from any house or place, nor shall any person make, prepare, distil, rectify, or purify acetous acid, called pyroligneous acid, or make or compound any white lead, sugar of lead, verdigris, iron liquor, or acetate of lime, acetate of soda, or acetate of alumine, at, in, or upon any house or place entered or used for making vinegar from malt, or other fermenting materials, for sale, or within the distance of three hundred feet in a direct line from any such house or place, as aforesaid; nor shall any person rectify or purify any acetous acid, or pyroligneous acid, for sale, from any other materials than pyrolignite, or acetate of lime, or soda, upon pain of forfeiting, for every such offence, the sum of £1000."

Making vinegar for sale from malt, &c. in or at a certain distance from any entered place for distilling or preparing pyroligneous acid, &c. in or at a certain distance from any place entered for making vinegar from malt, &c., penalty 500*l.*

Sect. 20. "That if, at any time hereafter, any officer of excise shall find or suspect that the quantity of vinegar or acetous acid, called pyroligneous acid, or acetous acid, extracted, rectified, or purified from pyrolignite, or acetate of lime, or any such maker, as aforesaid, and taken account of and charged with by the quarters ending, respectively, on the fifth day of January, the fifth day of April, fifth day of July, and tenth day of October, in every year, shall be deficient, or fall short of the quantity of vinegar, or acetous acid, or ought to have been, or was capable of being produced from pyrolignite, or acetate of lime, or soda, respectively, received by such maker in such quarter respectively, for the purpose of being rectified or compounded into dry or concrete pyrolignite, or acetate of lime, to produce one gallon of a gallon of acetous acid of the strength of proof, for every two gallons thereof, and dry or concrete pyrolignite, or acetate of soda, one gallon of acetous acid, of the strength of proof for every pound and acetate of lime, in solution, to produce one gallon of acetous acid of the strength of proof, for every two gallons thereof of like strength, and dry or concrete pyrolignite, or acetate of soda, one gallon of acetous acid, of the strength of proof for every three gallons thereof of the like strength thereof, the deficiency being duly accounted for to the satisfaction of the officer is hereby authorized and required to charge such maker with so much and such quantity of such acetous acid, of the strength of proof, as shall be equal to the quantity so found or discovered to be deficient."

Officer, on discovering a deficiency in the quantity of vinegar, &c. which should have been produced, to charge such deficiency with the duty, unless satisfactorily accounted for.

Sec. II. c. 24, ss. 29, 30, 31, 32, every such vinegar-maker shall be liable to pay, at the next excise-office, of all liquors made within the year, and shall, within a month after such entry, clear off the duties, and penalties.

Entry and payment of the duty.

Sect. IV. c. 44, s. 2, all penalties, forfeitures, &c., relating to the

Penalties, &c. how to be recovered.

## 36. Wine.

excise or customs are to be recovered, levied, mitigated, and applied, according to the provisions of the 7 & 8 Geo. IV. c. 53. See *ante*, p. 197 to 226.

(36.) Wine. (a) See title *Imports*.

## (36.) Wine.

[28 Hen. VIII. c. 14; 37 Hen. VIII. c. 23; 12 Car. II. c. 25; 32 Geo. II. c. 19; 26 Geo. III. c. 59; 54 Geo. III. c. 77; 57 Geo. III. c. 123; 4 Geo. IV. c. 69; 6 Geo. IV. cc. 81, 111; 9 Geo. IV. c. 44.]

## Duty on Importation.

The 6 Geo. IV. c. 111, imposes various duties of customs upon wines imported. See *ante*, 148.

By the 59 Geo. III. c. 52, a drawback of all the duties was allowed on wine for the use of his majesty's naval officers, for their actual consumption on board ships; and see the 45 Geo. III. c. 45, s. 2; similar provisions, 53 Geo. III. c. 44.

Wine may be imported in packages of three dozen quart or of six dozen pint bottles, as well for sale as private use, upon payment of duty as French wine.

The 4 Geo. IV. c. 69, s. 19, enacts, that it shall be lawful to import into Great Britain any wine whatever, as well for sale as for private use, in packages, each of which shall contain at least three dozen reputed quart bottles or flasks, or six dozen reputed pint bottles or flasks, on payment of the same duties, as well of customs as excise, as French wine is or shall be subject to, in such manner, and under and according to such and the like rules, regulations, conditions, and restrictions, and subject to such and the like penalties and forfeitures, as are provided and enacted in any act or acts of Parliament with respect to French wine so imported into Great Britain, so far as the same are applicable thereto.

The 6 Geo. IV. c. 81, s. 1, repeals all former duties on excise licenses. See *ante*, 245.

## Licenses for selling foreign wine. (b)

Section 2 imposes new duties upon every excise-license required to be taken out annually by dealers in and retailers of foreign wine (*ante*, 248), viz:

	£	s.	d.
Every dealer in foreign wine who shall not have an excise-license for retailing spirits, and a license for retailing beer . . .	10	0	0
Every retailer of foreign wine, who shall have taken out a license for retailing beer to be drank or consumed on his, her, or their premises, but shall not have taken out an excise-license for retailing spirits to be so drank or consumed . . .	4	4	0
Every retailer of foreign wine who shall have taken out excise-licenses for retailing beer and spirits respectively, to be so drank or consumed (c) . . .	2	2	0

By the 26 Geo. III. c. 59, s. 11, every person who shall have taken out a license for retailing foreign wine, and who shall not take out a license for retailing spirits or ale, shall be deemed a dealer in foreign wines by wholesale; and every person having a license for retailing spirituous liquors, or ale and beer, shall be deemed a dealer in foreign wine by retail.

## Certain words to be put up.

Section 14. And every wholesale dealer shall cause to be painted or written in large legible characters, over the outer door, or in the front, or on some conspicuous part, of each house, &c., and other place by him used for the keep-

(a) As to permits, see *ante*, 307 to 310; 1 *Chit. C. L.* 843. A mere breach of revenue regulations will not preclude a vendor from recovering the price of goods from purchaser. *Brown v. Duncan*, 10 B. & C. 93, *ante*, 627; and see cases, 1 *Chit. C. L.* 784-5.

(b) A person who intends to become a dealer in foreign wine, must take out his license and enter his warehouse before he lays in his stock; and a dealer

in wine is not entitled to a permit to remove wine sold, which wine was laid in before he took out his license. *R. v. the Commissioners of Excise*, 2 T. R. 381.

(c) The several other provisions of this act, as to the licenses, fines, &c., are inserted at length, *ante*, 245 to 267; and see 29 Geo. II. c. 12, s. 22. A spirit license not to be granted to any person who has not an ale license. *R. v. Downes*, 3 T. R. 566, 7.

**-86. Wine.**

**Warehouses, &c.  
to be entered.**

**Officers,  
may enter ware-  
houses, &c., and  
take samples.**

**Casks, &c. to be marked by dealer with the quantity they will contain.**

**Wine the pro-  
duce of the Cape  
of Good Hope  
kept separate  
from other so-  
reign wine.**

**Places for keep-  
ing wine to be  
shown to officer,  
and the casks to  
be marked by  
him.**

**Notice to be  
given when wine**



36. *Wine.*  
Is intended to be  
drawn off.

writing, if within the limits of the chief office in London, twelve hours' notice in other places in Great Britain, to the officer of excise, of his intention to draw off or bottle any foreign wine, the time when, and the particular warehouse or place in which such foreign wine is to be drawn off, and the quantity, and into how many casks or bottles, the same is intended to be drawn, and what sort of wine, and from what particular cask or vessel; and such officer may attend, if he think fit; and the same shall be packed or piled in the presence of such officer, if he attend, or an account thereof given to him upon his next survey; and no foreign wine shall be removed from the bin or place in which it shall have been so deposited without giving like notice, on the penalty of 50*l.*; but not to extend to a small number of bottles drawn off, or more or less than is contained in such notice.

Sect. 22. Provided, that if the dealer or seller of foreign wine by wholesale shall not begin and proceed to draw off or bottle such wine at the time mentioned in such notice, or within one hour after such time, then such notice shall be void, and he shall give a fresh notice to such officer.

Exception.

Sect. 22. But nothing herein contained shall extend to make it unlawful for any wholesale dealer to draw off or bottle any wine at his will and pleasure, for the purpose of immediately sending out the same, without giving such notice to the officer of excise under whose survey such dealer or seller shall then be.

Wine of different  
sorts to be  
kept separate.

Sect. 23. Every dealer in and seller of foreign wine shall keep all French red wine in their possession apart, in separate bins, casks, bottles, jars, vessels, utensils, piles, parcels, and divisions, from other wine; and shall also, in like manner, keep separate all other wine in his possession, upon pain of forfeiting 50*l.*

Red and white  
Cape wine to be  
kept separate.

By the 54 Geo. III. c. 77, s. 4, every dealer in or seller of foreign wine shall keep all red wine in his possession, the produce of the Cape of Good Hope, its territories, or dependencies, separate and apart, and in separate bins, casks, bottles, and divisions; and in like manner keep all white wine of the said settlement and its dependencies, separate, and in separate bins, casks, bottles, and divisions; on pain of forfeiting 50*l.*

Cape wine not to  
be mixed with  
other wine.

Sect. 8. If any dealer in or seller of foreign wine shall mix red wine or white wine in his possession, of the produce of the said settlements, territories, or dependencies, with or among any other wine, or shall give notice to any officer of excise to have packed, or shall enter for exportation any red or white wine, the produce of the said settlement, &c., mixed with any other wine, such dealer or seller shall forfeit 300*l.*, and all the wine so mixed.

Cider and spirits  
to be kept separate  
from wine.

By the 26 Geo. III. c. 59, s. 24, all retail dealers, who shall have in their custody any cider, spirituous or other liquors, shall keep the same separate and apart from foreign wine; on pain of forfeiting 10*s.* for every gallon of cider or spirits which shall not be so kept separate, together with such wine, cider, and spirits, and the cask, bottles, and packages containing the same: which may be seized by any officer of excise.

Cider, &c. found  
amongst wine.

Sect. 29. All cider, sweets, British-made wine, mead, spirits, and other liquors whatsoever, found in any entered place for the keeping or selling of foreign wine by any wholesale dealer, shall be deemed and taken to be foreign wine within the meaning of this act, of the same sort as the wine with which it shall be kept; or, if kept separate from any wine, then the same shall be deemed and taken as French red wine.

No dealer in foreign wine to  
have sweets in  
his possession.  
No dealer in foreign wine, not  
being an entered  
dealer in spirits,  
shall have more  
than two gallons  
of spirits of wine  
at a time, or any  
other British  
spirits of greater  
strength than 20  
per cent. under  
hydrometer proof.  
Penalty, 100*l.*

Sect. 25. But no dealer in or seller of foreign wine shall have in his possession any British-made wine, or sweets; on pain of forfeiting the same, and also 10*s.* a gallon.

By the 57 Geo. III. c. 128, s. 14, no dealer in foreign wine, not being an entered dealer in or retailer of spirits in England, shall have, receive, or take into his custody any spirits of wine, exceeding two gallons at one time, or any British spirits, except spirits of wine, of a greater strength than twenty per centum under hydrometer proof at least; on pain of forfeiting such spirits, which may be seized by any officer of excise; (a) and the person offending shall, for each and every offence, forfeit 100*l.*

(a) The words, "officer or officers of excise," in the 57 Geo. III. c. 123, s. 13, are general, and apply to any officer of excise whose accounts may be frus-

By the 26 Geo. III. c. 59, s. 26, for the better ascertaining the quantity of wine sold by dealers, every person who shall sell any foreign wine shall keep an account of the quantity sold, sent out, or consumed in each day under three gallons, expressing the number of gallons or bottles; and shall, every day, enter into a book to be kept for that purpose an account of the gross quantities sold, sent out, &c. the preceding day; and also in another book shall enter each parcel of three gallons or more which shall be sold or sent out in each day, expressing the number of gallons or bottles; which books are to be prepared by the commissioners, and delivered unto the dealer upon demand; but no dealer shall have above one book of each sort in his custody one time; and when filled up, it shall be returned to the officer from whom was received, and the truth of the entries shall be verified on oath by such dealer, or his servant, who kept the same and made the entries therein, to the satisfaction of his knowledge and belief, to be administered by the officer; and a new book shall be thereupon delivered to the dealer, and so *toties quoties* as often each book shall be filled up; and such book shall lie open to be perused by the officer; and the dealer shall, at the request of the officer, fill up such books, respectively, with the quantity by him sold in each day. And every dealer or seller offending in any of the matters aforesaid, or making any false entry in any such books, shall forfeit 20*l*.

36. *Wine.*

An account to be kept of wine daily sold.

ss. 27 and 28. If any officer shall find that the quantity of foreign wine stock of any wholesale dealer, added to the quantity for which permits have been granted, and also to the quantity sold, sent out, or consumed in quantities, under three gallons, since the last account was taken, exceeds the stock left in hand, on taking the account, after adding the quantity since last by permit (if any), such quantity so found in excess shall be deemed to be made up by foreign wine for which no duty has been paid and privately sold in without permit, and shall be forfeited, and may be seized by the officer, and the person in whose stock the same is found, shall also forfeit the value thereof; but not to extend to an excess of stock occasioned by the dealer lawfully receiving wine from any lawful quay, and in the original casks the same was imported, and no part drawn thereout.

Excess in stock to be forfeited.

29. No foreign wine exceeding three gallons shall be removed from the kingdom to another, by land or by water, without a permit, granted by this act, on pain of forfeiture thereof, together with the casks and packages containing the same.

Not to be removed without permit. (a)

30. No permit for the removal of foreign wine shall be granted or made by the dealer or seller requiring the same send or deliver to the excise granting the same a note in writing, specifying the name of the person to whom such wine is to be sent, the quantity of each sort, whether French red or French white wine, or any other description of wine, and the mode of conveyance by which it is intended to remove the same, on pain of forfeiting the same, together with the bottles, packages, and the horses, carriages, &c., used in the removal thereof, which may be seized by any officer of excise.

36. If any wine shall not be delivered within the time limited in the act (except in case of some unavoidable accident), the same shall be

If not delivered within the time limited. (b)

seized by the fraudulent use of the same. *The Attorney-General v. Chitty's Stat.* 268,

permits in general, see *The Attorney-General v. Chitty*, 1 Chitty's Stat. 268, for the removing of wine from place to another, under 29, dated nine o'clock in the day, and giving the officer a permit to remove it out of the stock of B., ex-

pires at ten in the morning of the second day after it is granted. *Cooks v. Sholl*, 5 T. R. 255. See other cases as to permits, ante, title *Spirits*.

In *Toissaint v. Darlam*, 3 Moore, 217, it was made a question, whether a private individual, having sold wine to a third person, for which he had paid the duties, and which constituted part of his stock, can remove such wine without taking out a license for that purpose; and another question arose, whether such individual can remove wine so

## 36. Wine.

deemed and taken as wine removed without permit: provided always, that the same shall be restored without delay, if the person who hath the charge thereof at the time of the seizure enter into recognizance with one surety before a neighbouring justice, in double the value of such seizure (which recognizance such justice is hereby required to take), to prove, within one month next ensuing, to the satisfaction of the commissioners of excise, that such wine, through unavoidable accident, could not be so delivered and received; and the justice shall certify upon the back of the permit that such recognizance hath been entered into, and also allow such further time for the wine to be delivered as to him shall seem meet; which indorsement shall have the same force as a permit granted according to this act; and the justice shall forthwith transmit every such recognizance to the king's remembrancer in the Court of Exchequer.

Permits for removal to distinguish Cape from other wine.

By the 54 Geo. III. c. 77, s. 6, every permit granted for the removal of wine, the produce of the Cape of Good Hope, its territories, or dependencies, shall distinguish such wine from all other wine according to the denomination thereof specified in the request-note, according to the directions of the 26 Geo. III. c. 59.

Wine brought into warehouses without permit.

By the 26 Geo. III. c. 59, s. 32, no wine shall be brought into any place made use of by any dealer in foreign wine without an authentic permit granted and given according to the directions of this act, which shall be produced to and left with the officer under whose survey such dealer shall then be, on pain of forfeiture thereof, together with the casks, bottles, and packages containing the same; and the said wine, &c., may be seized by any officer of excise.

Private persons removing wine to have a permit. (a)

Sect. 33. Every private person (*not being a dealer either by wholesale or retail*), who shall have occasion to remove any foreign wine from one place to another, shall have a permit from the officers of excise, on proof of payment of duties, and on a request-note, specifying the quantity and kind and number and contents of the vessels, and whether by land or water, and by what mode of conveyance, on pain of forfeiture thereof, with the casks, bottles, and packages containing the same, and also the horses, cattle, carriages, or boats used in the removal thereof; and the same may be seized.

But if not removed, such permit to be returned.

Sects. 37, 38. Where any permit shall have been granted to any dealer in wine, or private person, as aforesaid, and he shall not actually and really send away the wine by such permit authorized, nor return the permit to the officer who granted the same, before the expiration of the time limited therein, he shall for every gallon of wine mentioned in such permit forfeit treble the value thereof, to be estimated according to the highest price of such sort of wine of the best quality in London.

Where the decrease in stock is not proportionate to the permit.

Sect. 37. Where such permit shall not be by the dealer returned as aforesaid, and upon taking an account of the stock remaining in his hands there shall not appear a decrease to answer the wine mentioned in the permit, then and in such case such dealer shall forfeit the like quantity of wine so permitted and not removed, to be seized by the officer, out of any wine in his custody of the denomination given in the permit; but if he shall not then have such quantity of the same denomination in his custody, he shall forfeit 100*l*.

Using false permits, or forging recognizances, &c.

Sect. 39, 40. If any person shall counterfeit or forge, or cause to be counterfeited or forged, any such permit, or any certificate of such recognizance as is hereinbefore required to be taken, or any such indorsement as is hereinbefore

sold, under the 26 Geo. III. c. 59, s. 33, although he might have obtained a permit for so doing. In the same case, it appearing that the plaintiff had purchased a quantity of wine, for which he paid the duties; and it was accordingly removed to his house, and he afterwards disposed of part of it to a friend, and employed the defendant to convey it, who promised to obtain a permit for that purpose; and the de-

fendant's servant changed the wine during its transfer. Held, that the plaintiff was entitled to recover against the defendant for this negligence, although the defence relied on was, that the removal took place contrary to the excise laws. *Touissant v. Durlan*, 3 Moore, 217.

(a) As to permits, see *ante*, 307 to 310.

directed to be made, or fraudulently alter or erase any permit or certificate, &c., or knowingly or willingly give or receive any false or untrue permit, &c., or publish or make use of the same, or receive the same with any wine, he shall forfeit 500*l*.

36. *Wine.*

Sect. 42. In case any foreign wine shall be fraudulently deposited, hid, or concealed with intent to defraud his majesty of the duties, the same shall be forfeited, together with the casks, bottles, and packages containing the same. And the better to enable the officers to make discovery thereof, if any officer shall have cause to suspect that any wine is so fraudulently deposited, hid, or concealed, if within London or Westminster, or the limits of the chief office of excise, upon oath made by such officer before two commissioners of excise, newhere before a justice, setting forth the grounds of his suspicion, such commissioners or justice respectively, before whom such oath shall be made, by warrant empower such officer, by day or night (but if in the night in presence of a constable or other peace-officer), to enter such suspected place, to seize and carry away such wine which shall be found so concealed, as aforesaid, together with the casks and packages.

Hiding or concealing foreign wine.

Act. 44, 45. If any person shall assault, resist, oppose, molest, obstruct, or hinder any officer in the due execution of this act; or shall rescue any foreign wine after seizure; or stove, break, destroy, or damage any cask, vessel, bottle, or package, whilst any officer is attempting to seize the same; or shall offer any bribe or corrupt any officer to do contrary to his duty, whether such offence be accepted or not; he shall forfeit 100*l*. for every offence.

Obstructing or attempting to corrupt officers.

Sect. 47. If any person (except the proper officer) shall open any package of foreign wine sealed for exportation, or shall wilfully destroy or deface the mark, he shall forfeit 50*l*.

Opening wine sealed for exportation.

Sect. 48. Provided, that if any wine so shipped for exportation shall be unshipped or laid on land (shipwreck, &c. excepted), the same, or the value thereof, shall be forfeited, over and above the penalty in any bond which may be given.

Landing wine which has been shipped.

Sect. 50. But no officer of the customs shall be entitled to any reward for seizure, unless he give notice thereof within twelve hours at the next excise to the supervisor of excise.

Officers not entitled to reward unless notice of seizure be given in 12 hours.

Sect. 51. No person, being a dealer in or seller of foreign wine, or in any way interested or concerned therein, shall during such time act as a justice in or about this act; and all acts done by any such person shall be utterly void.

No dealer in wine to act as a justice.

Geo. III. c. 59, s. 11, provides, that nothing herein shall be prejudicial to the privileges of the two universities of England, nor to the scholars thereof.

Not to extend to the two universities.

The Company of Vintners of the city of London, or to any other city or corporation; but they may enjoy such privileges as they have heretofore enjoyed: provided, that no person, who shall be admitted to the said Company of Vintners by redemption only, shall be exempted from such license; but only the freemen of the said company who were already admitted to their freedom, or who shall, after the said 5th 1757, be admitted to their freedom in right of patrimony or apprenticeship, shall be entitled to such exemption.

Nor to the Vintners' Company.

And to the mayor and burgesses of St. Alban's, for the erecting, building, and licensing, by virtue of their charter, three wine taverns, for the maintenance of the free-school there.

Nor to the mayor and burgesses of St. Alban's.

IV. c. 69, s. 20, repeals all former enactments relating to drawbacks of customs and excise, and, in lieu thereof, allows, upon the importation of any wine from Great Britain a drawback, of the full duties of excise, paid upon the importation thereof into Great Britain: and that drawback be paid and allowed under the rules and regulations, and subject to the like penalties and forfeitures, as former drawbacks upon wine exported in packages, each containing not more than a dozen reputed quart bottles or flasks, or six dozen reputed pint

VIII. c. 14, ss. 2, 3; 37 Hen. VIII. c. 23, s. 2; 12 Car. II. Setting the prices of wines.

- 36. Wine.** q. 25, s. 13, the lord chancellor, lord treasurer, lord president of the king's council, lord privy seal, and the two chief justices, or any three of them, shall yearly, between November 20 and December 31, set the prices of foreign wine sold in gross; so that proclamation be made thereof in term-time in the Court of Chancery, or in the town where they shall be sold; and if any person shall offend against the said assessment, he shall forfeit for every vessel 40s.; half to the king and half to the mayor, if in a town corporate; and, if not, to him that shall sue.
- By the 28 Hen. VIII. c. 14, s. 14, the justices of the peace and mayors may hear and determine the faults of such offenders, and punish them by imprisonment or otherwise, by their discretions.
- Refusing to sell at prices limited.** By the 37 Hen. VIII. c. 23, s. 3, if any person shall refuse to sell at the prices limited, the mayor and recorder and two ancient aldermen in London, being no vintners, and the mayor, aldermen, and other head officers elsewhere, or any two of them, whereof the mayor or chief alderman to be one, may enter and sell the same to the owner's use.
- Mixing wine, penalty 100l.** By the 12 Car. II. c. 25, s. 11, no person selling wine shall mix wines together, nor with any other thing, on pain that the seller in gross shall forfeit 100l. and the retailer 40l., half to the king, and half to him that shall sue in any court of record.
- Penalties, &c., how to be recovered.** By the 9 Geo. IV. c. 44, s. 2, all penalties and forfeitures relating to the excise or customs are to be recovered, levied, mitigated, and applied according to the provisions of the 7 & 8 Geo. IV. c. 53. (See *ante*, p. 197 to 226.)

(37.) ~~Wine~~ *Wirt.*(37.) *Wire.*

[6 Geo. IV. cc. 81, 111; 7 Geo. IV. c. 53.]

- Duties—customs.** The 6 Geo. IV. c. 111, imposes certain duties of customs upon wire imported. (See *ante*, 148.)
- Licenses. Excise-duties and drawbacks repealed.** The 7 Geo. IV. c. 53, s. 6, reciting that by the 43 Geo. III. c. 69, schedule (A), and the 45 Geo. III. c. 30, schedule (A), certain duties are imposed upon gilt wire and silver wire made in Great Britain, and certain countervailing duties are imposed upon Irish gilt wire and silver wire, &c., and certain drawbacks are also by the said acts allowed on gold thread, gold lace, or gold fringe made of plate wire spun upon silk, &c., and reciting also that by the 6 Geo. IV. c. 81, passed to repeal several duties payable on excise licenses in Great Britain and Ireland, and to impose other duties in lieu thereof, and to amend the laws for granting excise licenses, a duty is imposed upon every license thereby required to be taken out by every wire-drawer or other person who shall draw or cause to be drawn any gilt or silver wire, commonly called big wire: and recites, it is expedient to repeal the several duties and drawbacks hereinbefore recited, and so much and such parts of 10 Anne, c. 26, for laying new duties on gilt and silver wire, to secure a yearly fund for satisfaction of orders to the contributors of a further sum of 1,800,000l. toward her majesty's supply, as relate to gilt and silver wire and big wire respectively; enacts, that from and after the fifth day of July, 1826, the said several duties and drawbacks hereinbefore recited, and so much and such parts of the said act passed in the said tenth year of the reign of her said late majesty as relates to gilt wire, silver wire, and big wire respectively, shall be and the same are hereby respectively repealed, save and except as to any arrear of such duties which shall at that time remain unpaid, and as to any penalty or forfeiture theretofore incurred in respect of such duties and drawbacks, or under so much of an act of her late majesty Queen Anne as is hereby repealed.

III. The Practical Proceedings before Justices relating to the  
Excise Laws. (a)

III. Proceed-  
ings, &c., before  
Justices, &c.

This subject may be subdivided under the following general heads:—

- First. *Proceedings for Penalties and Condemnation of Seizures*, p. 687 to 702.
- Secondly. *Proceedings to recover Excise Duties*, p. 702.
- Thirdly. *Proceedings for Penalties on immediate Arrest of Persons found employed in unentered Excise Manufactories*, p. 703.
- Fourthly. *Of Search-Warrants and Writs of Assistance*, p. 705.
- Fifthly. *Of Overcharges and Relief*, p. 707.
- Sixthly. *Forms of Proceedings*, p. 708.

**Proceedings for Penalties and Condemnation of Seizures.**

This head may be subdivided as follows:—

*Within what Time to prosecute*, p. 689.  
*By whom Information to be exhibited, and Conduct of Officer*, p. 689.  
*Against whom*, p. 691.  
*Before whom*, p. 691.  
*The Information itself*, p. 692.  
*Monitions and Process thereon*, p. 693.  
*Apprehension, Appearance, or Default*, p. 695.  
*Evidence, and Hearing of Information, and the Defence*, p. 695.  
*Conviction*, p. 697.  
*Proceedings on hearing Information*, p. 697.  
*Ending Proceedings and nolle prosequi*, p. 697.  
*Writs, Affidavit, and Petition*, p. 698.  
*Writs by Habeas Corpus and Certiorari*, p. 699.  
*Proceedings in Execution*, p. 699.  
*Liability of and Indemnity to Magistrates and Officers*, p. 702.

**Within what Time the Prosecution to be commenced.**

(1) Within what  
time the prosecu-  
tion to be  
commenced.

Information must be exhibited within four calendar months next after the offence committed, or the goods seized (b); but the conviction need not be within time (c). Under the enactments antecedent to the 7 & 8 Geo. 4, in most cases, the prosecution must have been within three months; but may, under recent regulations in particular cases, be a less time than is allowed. If goods are found subjecting the party having possession to a forfeiture, the day on which they are found will be the day whereon such forfeiture was incurred. (e)

on of the subject, *ante*, (c) See *ante*, 211.  
as to the customs, *ante*, (d) See *Paley on Convictions*, 2d ed.  
467.  
IV. c. 53, s. 66, *ante*, (e) *R. v. Bass*, 5 T. R. 251.

III. *Proceedings, &c., before justices, &c.*

(2.) By whom information, &c., to be instituted, and conduct to be pursued by officer.

(2.) *By whom Information, &c., to be instituted.*

The information must be commenced and prosecuted by order of the commissioners of excise, in the name of an officer of excise; and, in Ireland or Scotland, by order of the commissioner or commissioners and assistant commissioners of excise in Ireland or Scotland respectively, and in the name of an officer of excise; except in cases where summary proceedings are instituted by or at the instance of any officer of excise for the conviction, upon *immediate arrest* of any person under or by virtue of any act relating to the revenue of excise. (a) The averment in the information that it was duly authorized, need not be proved (b); and proof of acting as an officer of excise is to be admitted sufficient proof of being such officer, without producing or proving his commission. (c)

Clear instructions for officers of excise, and for the assistance of justices of the peace, have been given by a gentleman of great intelligence and experience in the department of the excise, and by the authority of the chief office; and which, in the liberal conduct directed to be pursued by the officers against the party accused, do the highest credit to those gentlemen who now regulate this branch of revenue.

When any detection or seizure is made, it must, as soon as the facts can be carefully collected, be reported to the commissioners; and the officer by whom any detection or seizure is *reported*, is to state the facts perspicuously and  *candidly*, not omitting the account given by the offender at the time of the detection or seizure, or at any other time, or the excuse or defence he actually does or is likely to set up to justify or palliate his conduct, in order that the commissioners may be the better able to judge of the course that it is expedient to adopt in every case.

To accomplish this object, the officer who reports is not merely to commence his report (except in common cases) with an account of the detection or seizure, but is to introduce the account of the detection or seizure, by stating such preliminary matter (particularly any fact or circumstance that will in the subsequent part of the report be referred to) as will make the case plain and easy to be understood.

These preliminaries having been complied with, the next (and a main object it is), in drawing up such a report, is to state every fact of the transaction which is the subject of the report, in succession, as it arose.

Particular care, in every report of this kind, must be taken to state accurately the time and place, and (besides the place) the full and proper name of the parish and county, shire, division, city, or town, when, where, and within which the transaction occurred.

These instructions, however, are not to supersede any directions as to any particulars required to be reported in any cases by former general letters or orders; but such letters and orders must be complied with, the same as if these instructions had not been issued.

In selecting the officer whose name is used as the informer in the information, formerly, care must have been taken not to use the name of an officer who might be wanted as a witness at the hearing of an information; and it was a general rule, that neither the name of a supervisor or officer in whose division or ride the offence had been committed, or the seizure made, should be used. But it was provided by the 7 & 8 Geo. IV. c. 53, s. 75, that, upon the trial or hearing of any information, or other legal proceeding, for the recovery of any penalty incurred, or for the condemnation of any goods seized or forfeited under any excise law, any officer of the excise, or other person entitled to any share of the penalty or seizure, shall be a competent witness. Therefore, an officer may be an informer, and also a witness.

(a) 7 & 8 Geo. IV. c. 53, s. 61, *ante*, 285; s. 65, *ante*, 288; and see *ante*, 289.  
 (b) 7 & 8 Geo. IV. c. 53, s. 71, *ante*, 282. As to customs, see *ante*, 211.  
 (c) *Id.* s. 17, *ante*, 236.

(3.) *Against whom an Information may be laid.*

The same law as prevails in case of offences against the laws of customs, would prevail against offenders under the excise laws. Therefore, infants (a) and married women (b) are liable; a master is liable for his servant's crimes committed in the course of his employ; (c) and partners are liable for the acts of each other; (d) and several persons may be proceeded against jointly or severally (e).

III. Proceedings, &c., before justices, &c.

(3.) Against whom an information may be laid.

(4.) *Before whom it is to be laid. (f)*

The 7 & 8 Geo. IV. c. 53, s. 128, directs that all penalties, incurred under any act relating to the revenue of excise, shall be recovered as described by section 65: viz. when the offence is committed, or the person committing the same found, or the goods are seized, in any part of the United Kingdom, out of the limits of the chief office of excise in London (comprising only London and Westminster, Southwark, and the suburbs thereof, and parishes within the weekly bills of mortality, with the parishes of St. Mary-le-Bone and St. Pancras, (g) in Middlesex), by information before a justice of the peace for the place where the offence was committed, or the offender found, or goods seized. (h)

(4.) Before whom it is to be laid. (f)

But the information must not be laid before a justice of the peace who is a clerk, subject to the excise laws, in any case which relates to the particular trade or business of such justice, or in any case in which he is in anywise as concerned or interested; for otherwise the proceedings are declared to be void. (i)

The information may be exhibited to, and the summonses and subpoenas issued by, one or more of his majesty's justices of the peace; but it is generally found convenient to prepare the information, summonses, and subpoenas, in the singular number, and present them to one justice, if one can conveniently find; but if at any time that should not be the case, the justices of the peace, or any two or more of them, in the several counties, shires, cities, towns, and places, throughout the United Kingdom, are, by 3 Geo. IV. c. 53, s. 67, (k) required to meet once in every three calendar months in their respective jurisdictions, or oftener, if there shall be occasion, to hear, adjudge, and determine all matters and things brought before them relating to the revenue of excise, and all informations exhibited in relation to any penalty incurred, or the condemnation of any goods seized, as for any act relating to the revenue of excise. (l)

It is particularly provided; that if it shall happen that any justice of the peace, before whom any such information shall have been exhibited, shall die, or be absent at any time after the exhibiting of the information, and before the defendant shall appear or plead to such information, no judgment shall be thereupon given, or before any judgment given shall be duly executed, so that the further attendance of any justice or justices thereupon cannot be procured, any other justice or justices of the peace, within the same jurisdiction, may act therein, for and in the stead of the justice or justices so dying or absent, in all respects as if the information, and the due completion of the proceedings thereon, were in the same manner as if the information had been at first exhibited before the justice or justices, respectively. (m)

s. 265.

1120; and see *ante*, 265,

v. *Torup*, *Parker's Rep.* 429; 3 M. & S. 11;

211; *Paley*, 471.

289.

as to customs, 211, 212.

(g) 5 Geo. IV. c. 75.

(h) 7 & 8 Geo. IV. c. 53, s. 65, *ante*, 286; s. 128, *ante*, 228; s. 14, *ante*, 235.

(i) 7 & 8 Geo. IV. c. 53, s. 68, *ante*, 288.

(k) See *ante*, 288.

(l) 7 & 8 Geo. IV. c. 53, s. 65, 67, *ante*, 287.

(m) *Ib.* s. 67, *ante*, 288.



### III. Proceedings, &c., before justices, &c.

Reference to former general powers of justices. (a)

The act (sect. 67) further provides, that all powers and authorities, rules and regulations, given and granted by any act of Parliament, relating to justices of the peace, or to constables or other officers, acting under their authority, respecting summary proceedings (except altered by or repugnant to it, which are by section 127 repealed), shall be enforced, and shall be applied and executed for the conviction of any person prosecuted by order of the commissioners of excise, or the commissioner or commissioners and assistant commissioners of excise in Scotland or Ireland respectively, for any penalty incurred by such person, under any act relating to the revenue of excise, and for the levying of any such penalty, or for the imprisonment of any such offender, in the same manner as if such powers and authorities, rules and regulations, were repeated and contained in that act. (a)

The 3 Geo. IV. c. 23, s. 2, enacts, that in all cases, where two or more justices of the peace are authorized to hear any complaint, one justice shall be competent to receive the original information or complaint, and to issue the summonses, requiring the parties to appear before two or more justices of the peace, and that (after examination upon oath into the merits of the complaint, and the adjudication thereupon by any such two justices being made) all the subsequent proceedings, to enforce obedience thereto, or otherwise, whether respecting the penalty, fine, imprisonment, costs, or other matter or thing, may be enforced by either of the said justices, or any other justice of the peace for the same county, riding, or place, in such and the like manner as if done by the same two justices who heard and adjudged the complaint.

(5.) Of the information and requisites. (b)

### (5.) Of the Information and Requisites. (b)

If, upon consideration of the report, the board order proceedings, either for the recovering of a penalty or the condemnation of a seizure, or both, before justices of the peace, and an order is received for that purpose, an information must be carefully prepared, in the name of an officer of excise, from the act of Parliament referred to in the order of the commissioners, and the instructions contained in such order.

We have before observed upon some of the requisites of the information, and have seen that it should be in the name of an officer of excise, and show that it has been instituted by order of the commissioners of excise or customs. (c) It may now be in the name of an officer who is to give evidence in support of the information. (d) It has been said that it need not be in writing, (e) but, from the language of the act, it should seem that it must be in writing. (f)

It should state the day on which it is exhibited, in order that it may appear to have been within the limited time.

It should allege that the offence complained of was committed within four calendar months last past, to wit, on, &c.; but, to support such statement or allegation, it is not necessary to prove that the offence was committed on the very day stated in the information; and proof that it was committed at any time within the four months will suffice.

So, with respect to quantities and numbers, certain quantities and numbers must be stated in the information; but proof of more or less will suffice: though, if the quantity and number proved should be *more and greater* than stated in the information, the latter can only, on the hearing, be condemned.

The information must not state the offence in the *alternative*; and, if a conviction be in the alternative, viz. that the defendant did sell beer or ale,

(a) 7 & 8 Geo. IV. c. 53, s. 67, *ante*, 288; the 3 Geo. IV. c. 23, gives a general form of conviction; and see 7 & 8 Geo. IV. c. 53, s. 127, *ante*, 227.

(c) See *ante*, 687; and 7 & 8 Geo. IV. c. 53, s. 61, *ante*, 285.

(d) 7 & 8 Geo. IV. c. 53, s. 75, *ante*, 290.

(e) See *ante*, 286, n. (c), and 299.

(f) See ss. 65, 66, 71, &c. *ante*, 286.

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### III. Proceedings, &c., before justices, &c.

Some forms of informations in different cases will be found in the collection  
under the last division of this subject.

(6.) Of the proceedings upon the information viz. notice, summons, &c. (c)

ect to the mode of the service of the summons, it is good and  
vice of any such notice or summons (whether the information is

### Service of summons. (g)

(g) 7 & 8 Geo. IV. c. 53, s. 66, ante;

**287.**

III. *Proceedings, &c., before justices, &c.*

Notice in cases of unclaimed seizures.

Cattle and perishable goods.

exhibited for the recovery of double duty or any other penalty, or the condemnation of any seizure), if the same be left at or upon the place used or occupied by the defendant for carrying on trade or business, or at the building or place where the offence shall have been committed or the seizure made, or at the place of residence, or with the wife, or child, or menial servant of the defendant, such notice or summons being directed to him by his right or assumed name; except in cases of seizures not claimed, in which other provision is made. (a)

In all cases where any seizure is made of any goods by virtue of any act relating to the revenue of excise, in any part of the United Kingdom out of the limits of the chief office of excise, and no person appear to claim them, any one of the seizing officers may cause a notice, issued by any justice of the peace within whose jurisdiction such seizure shall have been made, and before whom any information shall have been exhibited for the condemnation thereof, to be affixed to some conspicuous part of the outside of the office of excise, next to the place where such seizure shall have been made, during the market-day next after the expiration of six days from the day on which such seizure was made, or during any other subsequent market-day; in which notice shall be specified the day (the same being any day after the termination of eight days from the date of such notice), and the place when and where the justices of the peace will proceed to the hearing and adjudicating of the matter (b) of any such seizures, to whom, within their respective jurisdictions, authority is given to proceed at the time and place mentioned in such notice, to examine into the cause of any such seizure, and to give judgment accordingly; and such judgment will be as good, valid, and effectual in law, as if the proprietor of the goods had been summoned in the manner directed by sect. 66. (c)

Where any horses or other cattle, or any goods of a perishable nature, are seized by any officer of excise, as forfeited by any act of Parliament relating to the revenue of excise or customs, the commissioners of excise, or the commissioners and assistant commissioners of excise in Scotland and Ireland respectively, are authorized to order any such seizure to be delivered up to the claimant thereof, upon his entering into a bond to his majesty in the penalty of double the value of the horses or other cattle or goods delivered up, with a condition thereunder written, that such bond shall be void upon payment of the appraised value of such horses or other cattle or goods, on the condemnation thereof. (d)

If no claimant of any such horses or other cattle, or goods of a perishable nature, appears, or if appearing, he refuse or neglect to enter into such bond, the commissioners of excise, and commissioner and assistant commissioners of excise in Scotland and Ireland respectively, are authorized, at any time after the expiration of fourteen days from the making of any such seizure, to order and direct the sale of all such horses or other cattle, or goods, at public auction, notwithstanding the condemnation thereof has not at the time taken place. (e)

If any such horses or other cattle, or goods, shall afterwards be ordered to be restored without any proceeding being instituted for the condemnation thereof, or if instituted before the same are condemned, or if, upon the hearing for the condemnation thereof, the decision thereupon is in favour of the claimant, the appraised value of such horses or other cattle, or of such goods, or the proceeds of the sale thereof, at the election of the claimant, shall on demand thereof be paid to him, together with such further reasonable sum by way of compensation for the loss sustained by reason of the seizure, detention, and sale of such horses or other cattle, or goods, as the commissioners of excise, or commissioner and assistant commissioners of excise in Scotland and Ireland respectively, shall think fit. (f)

If the proprietor or claimant of any such horses or other cattle, or goods, accepts such appraised value or proceeds of sale, together with such further sum as may be offered by the directions of the commissioners, or commissioner and

(a) 7 & 8 Geo. IV. c. 53, s. 66, *ante*, 287.

(b) *Id.* ss. 63, 93, *ante*, 279-80.

(c) *Id.* s. 66, *ante*, 287.

(d) *Id.* ss. 55, 94, *ante*, 280.

(e) *Id.* s. 94, *ante*, 280.

### III. Proceedings, &c. before Justices, &c.

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assistant commissioners of excise, he shall not have or maintain any action or suit for any recompense or damage on account of such seizure, detention, or sale. (a)

III. Proceedings, &c., before justices, &c.

#### (7.) Of the Apprehension, Appearance, or Default.

(7.) Of the apprehension, appearance, or default.

Under the customs' laws, an arrest in the first instance is given by express enactment. (b) And though, in general, under the excise laws, the proceedings before commissioners and magistrates should be by *summons*, (c) yet, in some cases, an immediate apprehension is allowed,—as, where persons are found employed in unentered excise manufactories, when any excise officer may arrest him and convey him before a magistrate, who may convict him; (d) and sheriffs are to grant warrants or writs of *capias* out of the Court of Exchequer; (e) and here no sufficient distress can be found to pay the penalty, a warrant against the person may be issued. (f) Under the former excise laws, there were many cases in which the offender might be arrested in the first instance, upon oath of offence having been committed. (g)

#### (8.) Of Summoning Witnesses to attend on Hearing of the Information.

(8.) Of summoning witnesses to attend on hearing of the information.

For the attendance of any witnesses who will not otherwise attend should be ordered, then, under the 7 & 8 Geo. IV. c. 53, s. 74, (h) the justice or justices before whom any excise information or any matter or thing under any act relating to the revenue of excise shall be judicially brought, are authorized and empowered to summon every person (other than the person against whom such information is exhibited), in whatever part of the United Kingdom any such person so summoned shall then reside or be, to appear before the justices, who shall hear, adjudge, and determine such information, matter, or thing, at a time and place to be specified and set forth in such summons, to give evidence upon oath of the truth of any facts alleged in such information, or of any matter or thing relating thereto, or to any matter or thing judicially brought before them. (i)

Summons for witnesses on subpoena.

Every person so summoned, and having the reasonable expenses for such attendance tendered to him, who neglects or refuses to appear according to the tenor of such summons, or who, having appeared, refuses to take oath or (if required) to affirm, or refuses to give evidence or to answer according to the tenor of such summons, or who, being sworn, is known to be guilty of perjury, or is known to be guilty of wilful disobedience, incurs the penalty of 50*l.* (k)

Form of summons or subpoena for witnesses which may be used, will be given in the last division, *post*.

#### (9.) Proceedings on hearing Information. (l)

(9.) Proceedings on hearing information.

The time and place appointed for hearing the information, the prosecutor, collector or supervisor should attend, with the witnesses, before two justices of the peace at least; and thereupon the defendant should be called in and if he do not, the officer of excise, or other person who served the

Hearing.

Geo. IV. c. 53, s. 94, *ante*,

customs' laws, see *ante*,

Geo. IV. c. 53, ss. 65, 66,

3, *ante*, 272.

1, *ante*, 281.

0, *ante*, 296.

II. c. 26, s. 4; *Paley*,

(h) See *ante*, 290. As to the customs, see *ante*, 215. See the former provisions under the excise laws, 7 & 8 Wil. III. c. 30, s. 24; and *Paley*, 474.

(i) 7 & 8 Geo. IV. c. 53, s. 74, *ante*, 290.

(k) *Id.* ss. 30, 74, *ante*, 290, 271.

(l) As to customs, see *ante*, 214; and as to excise, see the former provisions, *Paley*, 474 to 478.

111. *Proceedings, &c., before justices, &c.*

If defendant appears, how to proceed.

Who are witnesses, and what evidence to be adduced by prosecutor, and what by defendant.

summons or affixed the notice, should be sworn, and prove the time, place, and mode of serving (a) or affixing it, and then the other witnesses for the crown, after being duly sworn (or in case of a Quaker having taken his affirmation) are examined in order to prove the charge contained in the information, and the justices are then to call on the defendant for his defence, and swear and examine his witnesses, and give judgment, without regarding any defects of form in the information, or in any proceedings thereon (b); and, in all trials of seizures, the seizure, and form and manner of making it, are to be taken to have been as alleged in the information, without requiring any evidence thereof; and all judicial persons before whom any such seizure shall be brought to hearing, shall proceed to a determination on the merits without inquiring into the fact, form, or manner of making the seizure. (c.)

If the defendant be in prison, a copy of the information (besides his being summoned) must be delivered for him to the gaoler, and such service proved at the hearing. (d)

If the defendant appear, the information is to be read to him; and if he plead guilty, the justices will, of course, give judgment for the crown. If not guilty, the several witnesses for the crown should be called, sworn, and examined, the defendant being present and being informed, at the end of the examination of each witness for the crown, that he is at liberty to cross-examine him.

When the case on the part of the crown is closed, the defendant should be called upon for his defence; and after stating, if he pleases, the nature of his defence to the justices, his witnesses should be examined in the same manner as the witnesses have been for the prosecution; and then the justices, after hearing any observations that the prosecutor has to make on the case by way of reply, are to give judgment.

The collector or supervisor, as well as the defendant, should also call, in every case, all the witnesses that he has present, though at the time it may appear unnecessary, because, in case of appeal, it is enacted that no witnesses but those who have been sworn and examined on the hearing of the information, shall be examined on the appeal; (e) it will not, however, be necessary to examine every witness at length, when several speak to the same facts, but merely to have them sworn and examined shortly in confirmation of the other witnesses.

The informer, officers, and any other persons who may be entitled to the whole or any share of the penalties sought to be recovered, or of the goods to be condemned, are now authorized and required, notwithstanding their interest, to be admitted to give evidence, and to be deemed and taken to be competent witnesses; (f) though it was formerly otherwise.

Quakers are competent witnesses for and against the prosecution, and are to be affirmed. (g)

As a general rule, the prosecutor should be prepared to prove every material allegation in the information. But, under several provisions in the excise laws, there are many formal and indeed substantial proofs dispensed with, and in other cases the *onus probandi* of the converse of the averments is thrown on the defendant.

Thus, it is provided, that if, upon the trial of any information, or in any other legal or judicial proceeding, any question arises touching or concerning the keeping of any office of excise, or whether any person is a commissioner or assistant-commissioner of excise, or a collector, or other officer of excise, or commissioned or appointed to act as such, evidence of the *actual keeping* of such office of excise, or that such person is, or at the time in question was *reputed* to be, such commissioner or assistant-commissioner, or such collector or other officer, or does or did then *act* as such commissioner or assistant-commissioner, or as such collector or other officer, so commissioned and appointed,

(a) 7 & 8 Geo. IV. c. 53, s. 65, *ante*, 286-7.

(b) *Id.* s. 73, *ante*, 290.

(c) *Id.* s. 64, *ante*, 285.

(d) *Id.* s. 77, *ante*, 291.

(e) *Id.* s. 84, *ante*, 294.

(f) *Id.* s. 75, *ante*, 290.

(g) *Id.* s. 30, *ante*, 271.

### III. *Proceedings, &c. before Justices, &c.*

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shall in every such case be admitted, and be deemed and taken to be sufficient and legal proof of such facts respectively, without producing or proving the particular commission, appointment, or other authority, whereby such person is or was commissioned or appointed to be such commissioner or assistant-commissioner, or such collector or other officer, unless by other evidence the contrary be made to appear. (a)

So, there is an enactment as to what shall be deemed sufficient proof of entry of premises, when that shall come in question; (b) so, on all trials of seizures, a seizure shall be taken to have been as alleged in the information. (c)

So, the allegation that the commissioners ordered the prosecution need not be proved. (d)

So if, upon any information for the recovery of any penalty, or for condemnation of chattels seized as forfeited by any act relating to the excise or customs, any question is made or arises whether any duty of excise or customs has been paid upon or in respect of the goods or commodities in such information mentioned, or whether such goods, commodities, or chattels, are of such sort and as in such information alleged, the proof of the payment of such duty, at such goods, commodities, and chattels respectively, are not of such a kind as stated in the information, lies upon the proprietor or claimer of. (e)

When the justices give judgment for the crown, and the defendant prays a mitigation of the penalty awarded against him, the justices may, if they think fit in cases where there is or shall be any provision that no mitigation shall be by them, reduce it to not less than one-fourth part thereof; and payment of such mitigated sum is a discharge of the penalty for the offence of the defendant has been convicted. (f)

It is not necessary that the justices should be attended by a clerk; but it is necessary that they, or some person on their behalf, should care-fully down in writing, at the time each witness gives his evidence, if not words, the substance, as well as the substance of the defence advanced by the defendant; and that such minutes be carefully preserved, as they are useful for the satisfaction and justification of the justices, and may, in cases, be subsequently required, in order to draw up the conviction as by the statute. (g)

III. *Proceedings, &c., before justices, &c.*

#### (10.) *Form and Requisites of Conviction. (h)*

Any defects in form in convictions are aided and may be amended by the justices or commissioners of appeal, (i) still, however, the conviction must be correct in matters of substance. (k) It may be framed as directed by Geo. IV. c. 23. (l) Mere minutes will in the first instance suffice, but must be drawn up in full form afterwards. (m) It must not be in the form of a plea. (n) We have before considered the requisites of a conviction by the justices' laws, and which may be referred to. (o)

(10.) Form and requisites of conviction.

#### *Of Staying Proceedings by the Attorney-General or Commissioners of Excise. (p)*

The attorney-general may enter a *nolle prosequi*, or otherwise stay any prosecution.

(11.) Of staying proceedings by the attorney-general or commissioners of excise.

By Geo. IV. c. 53, s. 17, *ante*, laws, see *ante*, 217 to 220; and also *Paley*, 478, 484.

, 264.

, 277, 285.

, 289.

Geo. IV. c. 53, s. 76, *ante*,

, *ante*, 291.

V. c. 23.

Convictions against customs'

(i) 7 & 8 Geo. IV. c. 73, s. 73, 82, *ante*, 290, 293.

(k) 4 B. & A. 519.

(l) See form, *post*.

(m) See *ante*, 220; 1 *East*, 186.

(n) 6 D. & R. 143; 3 *McClell.* 88.

(o) *Ante*, *Paley*, 482.

(p) As to customs, *ante*, 220.

III. *Proceedings, &c., before justices, &c.*

cution for penalties, or condemnation of any seizure, if he be satisfied that the penalty or forfeiture was incurred without any intention of fraud, or of offending against any law of excise. (a) The application to the attorney-general should be supported by petition and affidavit. (b)

So, a party threatened with a prosecution, or already proceeded against, may apply to the *commissioners of excise*, under the 7 & 8 Geo. IV. c. 53, (c) by *petition*, supported by *affidavit*, and pray that they will be pleased to order that no prosecution be instituted, or that the prosecution be stayed, either altogether or upon terms; and the commissioners may order such stay of proceedings, or restoration of the goods absolutely or conditionally, on such terms as they may think just. (d)

(12.) Of appeals.

Appeal.

(12.) Of Appeals. (e)

If either party be dissatisfied with the decision of the justices, he may appeal to the next general quarter sessions of the peace; but this is not allowed unless the appellant, immediately upon the giving judgment, give notice in writing of such appeal to the convicting justices, and also to the adverse party, and lodge such notice with the clerk of the peace for the justices at the general quarter sessions, by whom the appeal is to be finally determined; and also give the adverse party at least one week's notice in writing, of the time and place where the appeal is to be heard. (g)

If the judgment appealed against is a conviction of the appellant in any penalty, he is required also, within three days after conviction, to deposit in the hands of the proper collector or supervisor the amount of the penalty, or the sum to which it is mitigated; and, in case of appeal for or against a condemnation, the seizure is to remain in the hands of the excise (whichever party appeals) until the final adjudication and determination of the appeal. (h)

These conditions having been complied with, if there be above a week between the time of giving notice of appeal and the next general quarter sessions, the justices at such quarter sessions are required to hear, adjudge, and finally determine such appeal. And if, upon any such appeal, any defect in form shall be found in the information, or in any part of the proceedings thereon, or relating thereto, or in the record thereof, every such defect of form shall be rectified and amended by order of such justices, or the major part of them, assembled at such quarter sessions. (i)

If there be not one week between the time of giving such notice and the next general quarter sessions, then the appeal is given to the general quarter sessions next after the expiration of one week after the giving of such notice. (k)

On the *hearing* of such appeal, the justices at the quarter sessions are required to proceed to re-hear upon oath, and to re-examine the *same* witnesses as to evidence, and the merits of the case, whereon the original judgment appealed against has been given; and they are not to examine any fresh evidence; and the court of quarter sessions may reverse or confirm, in whole or in part, the judgment appealed against, or give such new or different judgment as in its discretion it shall think fit; and the same power of mitigation is given to the quarter sessions as is given to the justices who heard the information. (l)

Where the original judgment is affirmed, the same is to be enforced by the justices of the peace as if there had been no such appeal. But where the

(a) 7 & 8 Geo. IV. c. 53, s. 97, *ante*, 297.

(b) See a form of petition and affidavit, on application to the commissioners of excise, *post*, which may be readily applied.

(c) Sects. 98, 99, *ante*, 298; see forms of petition and affidavit, *post*.

(d) *Ante*, 298, 175; in *Matter of the Ship Maria*, 1 Price, 4.

(e) As to customs, see *ante*, 251; *Palay*, 492; *ante*, 293.

(f) 7 & 8 Geo. IV. c. 43, s. 82, *ante*, 293.

(g) *Id.* s. 83, *ante*, 293.

(h) *Id.* *ante*, 293-4.

(i) *Id.* s. 82, *ante*, 293.

(k) *Id.*

(l) *Id.* s. 84, *ante*, 294.

judgment appealed against is reversed, and another or different judgment given, such new judgment is to be executed by the justices of the peace at the general quarter sessions. (a)

### III. Proceed- ings, &c., before justices, &c.

(13.) *Of the Removal by Habeas Corpus and Certiorari.* (b)

No *certiorari* or other process lies at the suit of any defendant to supersede or affect any proceeding by commissioners of excise or justices of the peace. (c) It was held, on the prior acts, that no *certiorari* to remove a conviction under the excise laws, can be sustained. (d) But some of the acts before the 7 & 8 Geo. IV. c. 55, s. 79, did not take the *certiorari* away. (e)

A *habeas corpus* lies whenever a defendant is illegally imprisoned; and therefore, if he be confined under a conviction totally defective, he may by *habeas corpus* be discharged. (f)

(12.) Of the removal by *habeas corpus* and *certiorari*.

**(14.) *Of the Proceedings in Execution. (g)***

1 no case in which a penalty is awarded, and such penalty is not imme-  
 2 diately paid, should the collector, supervisor, or any other officer, take security  
 3 for the payment of such penalty without the express orders of the commis-  
 4 sioners.

on the hearing of an information, the justices give judgment for the crown; such judgment is not appealed against, or if appealed against is affirmed (by a court of appeal), the next step is to *enforce* it.

the judgment is for *condemnation of goods* seized as forfeited, the justices peace are required to grant a warrant under their hands, to any officer of for the sale of the goods condemned. (h)

judgment to be enforced is for a full or mitigated penalty, the justices are authorized and required to grant a warrant to an officer of excise, authorizing him to levy the penalty, or so much thereof as shall not have been satisfied, upon the goods of the defendant, and either to detain and keep them where found, or to deliver them to the next office of excise.

judgments are to be enforced by the *justices* of the peace at the *general sessions*.

if it was for condemnation of goods, at the general quarter sessions, they are required to grant a warrant under their hands, or under of any two of them, to any officer of excise, for the sale of the goods d. (i)

the judgment is for any penalty, they are required to apply the m-  
ball have been deposited, as before stated; (k) in satisfaction of such  
and, if not sufficient, they are to grant a warrant under their hands,  
e hands of any two of them, to any officer of excise, requiring him  
penalty or balance upon the goods of the offender, and either to  
ep the goods where found, or remove them to the next office of ex-

(14). Of the proceedings in execution. (g)

**Officer ought not to take security for penalty.**

e cases, it will be observed, the statute directs the warrant to be  
r hands of the justices, &c. : it need not, therefore, be under seal. (m)  
at for several penalties imposed by different acts suffices. (n)

**eo. IV. c. 53, s. 85, ante, Paley, 485, ante, 270, 294, 299, 300.**

istoms, ante, 222 to 292; 295. (h) 7 & 8 Geo. IV. c. 53, s. 86, ante,

o. IV. c. 53, s. 79, ante, (i) *Id.* s. 87, ante, 295.  
(k) *Ante*, 696.

(1) 7 & 8 Geo. IV. c. 53, s. 87, ante,  
 295.

(m) 3 Lev. 205; *Willis*, 411; *Paley*, 485.

stoms, see *ants*, 220; (n) *Paley*, 487.



III. *Proceedings, &c., before justices, &c.*

The goods upon which such levy is made are to be sold, as soon as conveniently may be, after a certain time to be limited in the warrant (not less than four days, nor more than eight days), unless the penalty for which the levy is made be previously paid. (a)

The officer making the levy is empowered to deduct out of the money arising by the sale—

1st. The penalty.—And, 2ndly, All reasonable charges and expenses attending the levy.

The overplus is to be returned to the proprietor of the goods, or the person legally entitled thereto. (b)

The officer, if required, must show the warrant to the person upon whose goods the levy is made, and suffer him to take a copy of it, and the warrant itself is of the same force and effect, in all respects, as a writ of *feri facias* issued out of the Court of Exchequer in England, for the recovery of any debt due to his majesty. (c)

Goods liable to an excise duty, and the materials, vessels, &c., subject to arrears of duty and penalties.

When the offender is a person in any trade or business subject to the excise laws, the 7 & 8 Geo. IV. c. 53, s. 28, in order to secure the duties of excise due from any such person, and for the enforcement of penalties, enacts, that all goods and commodities, for or in respect whereof any duties of excise is or shall be by law imposed, and all materials, preparations, utensils, and vessels for the making thereof, or by which any such trade or business has been carried on, in the custody or possession of the person carrying on such trade or business, or of any other person, to the use of or in trust for him, shall be subject and liable to, and chargeable with, all the duties of excise, which, during the time of any such custody or possession, shall be charged, or become chargeable, or be in arrear, or owing, from or by the person carrying on such trade or business, for or in respect of the same, or of any such or the like goods and commodities, respectively; and also subject and liable to all penalties and forfeitures, which, during any such custody or possession, shall be incurred by the person carrying on such trade or business, for any offences by such person committed, against any act relating to the revenue of excise. (d) And all such goods, commodities, materials, preparations, utensils, and vessels, shall be and remain subject and liable to all such duties, penalties, and forfeitures, into whose hands soever the same shall afterwards come, or by what conveyance or title soever the same shall be claimed; and it shall be lawful, in all such cases, to levy thereupon such duties, penalties, and forfeitures, and to use such proceedings for the recovery or enforcement of such duties, penalties, and forfeitures, respectively, as may lawfully be done, where the debtors or offenders are true and lawful owners of such goods, commodities, materials, preparations, utensils, and vessels.

Body-warrant.

For want of sufficient goods to satisfy the penalty, with the charges and expenses, and on a return in writing made upon the levy-warrant by an officer to whom such warrant is directed, to the persons by whom such warrant has been granted, or any one or more of the justices of the peace within whose jurisdiction respectively any such warrant shall have been issued, that such officer cannot find within the jurisdiction in which such warrant shall have been issued any goods of the defendant whereon the same can be levied; (e) or on a return, that part of such penalty, charges, and expenses have been levied or paid, and that such officer cannot find any further goods of the person against whom such warrant has been granted (beyond the goods already seized and sold) within the jurisdiction in which such warrant has been issued whereupon the residue of such penalty, charges, and expenses can be levied, the persons by whom such warrant was granted, or any one or more of the justices of the peace to whom respectively such return shall have been made, are respectively authorized and

(a) 7 & 8 Geo. IV. c. 53, s. 88, *ante*, 295.

(b) *Id.* s. 89, *ante*, 296.

(c) *Id.*

(d) *Id.* s. 28, *ante*, 270 and notes; and see *Dougl.* 411; 6 *T. R.* 436.

(e) It seems that a levy-warrant for goods must therefore be first issued. *Shaw's Excise*, 363; *Paley*, 482.

(f) 7 & 8 Geo. IV. c. 53, s. 90, *ante*, 296.

required thereupon to grant a warrant to any officer of excise to arrest and convey the defendant to the common gaol or house of correction within his or their jurisdiction respectively, and then to deliver the defendant, with a duplicate of such warrant for arrest (or body-warrant), to the gaoler or keeper of such gaol or house of correction, there to remain and be kept until satisfaction be made of such judgment, or until he shall be ordered by the commissioners of excise or the commissioner and assistant commissioners of excise in Scotland and Ireland respectively, to be liberated. (a)

A body-warrant of this description must not be executed on a Sunday. (b) Where any goods of the defendant are discovered after the execution of the levy-warrant, any one or more justices are required (notwithstanding the grant of such warrant of arrest or body-warrant) to grant a fresh warrant to any officer of excise to levy upon the goods so found any penalty, charges, or expenses which the former levy-warrant may have been granted, or to levy so much thereof as may not have been before paid; and, upon payment and satisfaction thereof, the warrant for arrest or body-warrant shall be discharged, and the defendant be forthwith liberated out of custody. (c)

Where any warrant (whether levy-warrant or body-warrant) has been granted, it cannot be executed by reason that sufficient distress or that the defendant cannot be found within the limits of the jurisdiction of the commissioners or justices in which such warrant has been issued, one or more of the justices of peace for any other county or place within the United Kingdom, are authorized and required to indorse his or their name or names respectively upon the warrant; and such warrant and indorsement thereon is a sufficient authority to the officer of excise to whom such warrant is directed, or having the warrant thereof, to execute the same in such other county or place, and to levy any duty for which the warrant shall have been so granted, or so much thereof not have been before paid, upon the goods of the defendant which shall be found within the jurisdiction of the justice or justices indorsing such warrant, and to convey the defendant to the common gaol or house of correction in any county or place where such warrant shall have been indorsed, there to remain until delivered as before directed. (d)

Where any such warrant is by the act saved harmless and freed from any consequences arising therefrom, and the original maker of the warrant remains responsible for its legality. (e)

Goods seized as forfeited by virtue of any act of Parliament relating to the revenue of excise, after condemnation (such cases only excepted for which special provisions by any act relating to the revenue of excise may be specially made) shall be *publicly sold* to the best bidder, at such time and place, and in such manner, as the commissioners of excise or the commissioner and assistant commissioners of excise in Scotland and Ireland respectively order, under such special provisions as are by any act of Parliament in that behalf made and provided. (f)

Goods subject to any duty of excise or customs, and for which every pound has not been paid, which shall be ordered to be sold under any act of the revenue of excise, or the sale of which shall be directed under any act of Parliament, shall be sold for home consumption at a less price than the amount of the duty which shall not have been paid. (g) For which, at any sale so ordered or directed, a price is not offered equal to the amount of the duty, and all condemned goods the importation of which is prohibited, shall be forthwith destroyed or sold for any other public use as shall be ordered by the Treasury. (h)

III. *Proceedings, &c., before Justices, &c.*

Fresh levy-warrant after body-warrant.

Backling warrant.

How goods are to be sold.

- o. IV. c. 53, s. 90, *ante*, 297. (e) 7 & 8 Geo. IV. c. 53, s. 92, *ante*, 297.  
 9; 1 T. R. 263. (f) *Id.* s. 100, *ante*, 300.  
 o. IV. c. 53, s. 91, *ante*, 297. (g) *Id.* s. 101, *ante*, 300.  
 ante, 297. (h) *Id.*

### III. Proceedings, &c., before Justices, &c.

Costs and expenses.

Distribution of penalties and forfeitures, half to the king, and the other half to the officer or informer.

All costs and expenses attending the seizure, detention, custody, removal, prosecution, condemnation, and sale of any goods whatsoever, forfeited by any act of Parliament relating to the revenue of excise are (such cases only excepted for which other directions are by any act of Parliament relating to the revenue of excise specially given) to be paid out of the gross proceeds arising from the sale thereof, whenever the same are sold; and, if not sold, but the same are destroyed or otherwise disposed of, such costs and expenses are to be paid out of the revenue of excise. (a)

All penalties and forfeitures incurred and recovered under any act of Parliament relating to the revenue of excise (such cases only excepted for which other directions are specially given), are, after deducting of all costs and expenses incurred relating thereto, to be distributed, one moiety to his majesty, and the other to the officer of excise, or the person who shall discover, inform, or sue for the same. But, on proof of any officer acting collusively, the commissioners may direct his share to be forfeited. (b)

(15.) Of the liability and indemnity to magistrates and officers. (c)

### (15.) Of the Liability and Indemnity to Magistrates and Officers. (c)

We have seen, that the general enactments in the 7 and 8 Geo. IV. c. 53, ss. 114 to 119, enact, that no action shall be commenced against any officer of excise, or person employed in the revenue of excise, &c., without first giving an explicit notice, in a certain form, of the intended action. The action must be commenced within three months next after the cause of action occurred. The venue must be laid in the proper county. The defendant may plead the general issue; and, if the plaintiff fails, the defendant is entitled to treble costs. The act also authorizes a tender of amends to be pleaded, or money may be paid into court; and if, on trial for seizures, the judge shall certify there was probable cause of seizure, the officer is not liable to any action, &c. (d) The constructions on this and on similar acts will be found *ante*, 223, &c.

An action against an officer for acting under any excise warrant, or otherwise, in execution of his office, may be removed from the Court of Common Pleas, or any other court, into the Exchequer. (e)

Secondly. Recovery, before Justices, of excise duties.

### Secondly. Recovery before Justices of Excise Duties. (f)

It has been observed, that the prevention and punishment of frauds are material parts of the duty of an excise officer; but the securing and recovering of *excise duties* payable by persons subject to the excise laws, is of still higher importance.

The 7 and 8 Geo. IV. c. 53, s. 25, (g) directs, that every person carrying on any trade or business subject to any law of excise, shall pay and clear off the duties imposed by any act of Parliament, and charged upon or incurred by such person, at such time and place, and to such person respectively, as shall for that purpose be specially directed by any act of Parliament, or as shall be from time to time directed by the commissioners of excise; and that, if any such person shall not pay and clear off such duties at such time and place, or upon demand thereof made (under order of the commissioners of excise, or of the commissioner and assistant-commissioners of excise in Scotland and Ireland respectively) by the collector of excise

(a) 7 & 8 Geo. IV. c. 53, s. 102, *ante*, 301.

(b) *Id.* s. 104, *ante*, 301.

(c) See the enactments, *ante*, 303, and the regulations as to customs, *ante*, 223; and see *Paley*, 500.

(d) *Ante*, 303 to 305.

(e) *Liddon v. East*, 1 *Crompt. & Jer.* 12, *ante*, 299.

(f) See division of the subject, *ante*, 269, 270, 271.

(g) *Ante*, 269.

in whose collection such trade or business shall be carried on, or by any officer authorized and directed by such collector under such order, to make such demand (whether such demand be made personally of the person who shall have incurred such duty or duties, or shall be left at the dwelling-house of any such person, or on the premises where such duties shall have been charged or incurred), every such person forfeits and loses double the value of the duty so neglected to be paid and cleared off. (*a*)

III. *Proceedings, &c., before Justices, &c.*

By the above provision, each collector in his own collection, under order of the commissioners of excise, or of the commissioner and assistant-commissioners of excise, may (when, upon due consideration, there are solid grounds for believing that duties charged on any trader are in danger of being lost, and the time for payment of such duties has not in the ordinary course arrived) accelerate the time of such duties becoming payable, by either demanding payment thereof himself, or by any officer (authorized and directed by him to make such demand) demanding the same; and if such duties are not forthwith paid on such demand, the trader incurs the penalty of double the value of the duties demanded. But, in all such cases, it is very desirable that the collector (if his other business will permit him, and the trader lives within any reasonable distance) should make the demand himself; and in no case (although the law allows him to authorize an officer to make the demand) should he incur the performance of this duty to any one below the rank of a supervisor, unless extreme despatch is necessary, and no supervisor is at hand. (*b*)

The 7 & 8 Geo. IV. c. 53, s. 72, (*c*) enacts, that the letter or instructions officially received by the collector, or other officer of excise, of the collection, district, or place in which the subject-matter of any such information, or other legal or judicial proceeding, may have arisen, for his direction and government, and in which such order is mentioned or referred to, and under which after such officer shall have acted, shall be admitted to be sufficient evidence and proof of such order.

Proof of order.

The 7 & 8 Geo. IV. c. 53, ss. 15 and 26, (*d*) limits the distance that the trader may be required to go to pay such duties.

The above regulations are applicable to the whole of the United Kingdom; and if a trader out of the limits of the chief office of excise does not pay the excise duties charged upon him accordingly, he incurs the penalty of double the value of the duty; (*e*) and an information may be exhibited against him before any one or more of his majesty's justices of the peace, within whose jurisdiction the offence has been committed or the offender is found, and the proceedings are to be conducted in the manner before pointed out for the recovery of other penalties incurred by persons for other offences against the excise laws; except that, instead of its being necessary to give the defendant fourteen days' notice of trial, it is sufficient if the summons is served twenty-four hours the least before the time appointed in such summons for the hearing of the information. (*f*)

### **Thirdly. Recovery of Penalties on Immediate Arrest of Persons employed in unentered Excise Manufactories. (*g*)**

Power is given to the officers of excise immediately to arrest any persons and employed in unentered excise manufactories, and to take them before a justice, who is forthwith to hear and determine the case, without the officer's waiting for an order from the commissioners of excise, or the commissioner and assistant-commissioners in Scotland and Ireland, to prosecute. (*h*)

3rdly. Recovery of penalties on immediate arrest of persons employed in unentered excise manufactories. (*g*)

1) 7 & 8 Geo. IV. c. 53, s. 25, *ante*,

(*f*) *Id.* s. 66, *ante*, 287.

2) See forms of demand, *post*.

(*g*) See division of the subject, *ante*, 687 and 272.

3) See *ante*, 289.

(*h*) 7 & 8 Geo. IV. c. 53, s. 61, *ante*,

4) See *ante*, 235, 269.

285.

5) 7 & 8 Geo. IV. c. 53, s. 25, *ante*,

III. *Proceedings, &c., before justices, &c.*

Mode of proving entry; no entry legal except in real owner's name; penalties, &c.

Excise penalties are to be distributed in moieties, between his majesty and the informer.

The 7 & 8 Geo. IV. c. 53, s. 18, directs that every person required to make entry (which all persons carrying on any trade or business subject to the excise laws are) of any buildings, place, vessel, or utensil, under any act relating to the revenue of excise, shall deliver such entry, with his signature thereto, to the officer of excise in whose survey such building, place, vessel, or utensil shall be intended to be used. (a)

And, by s. 33 (b), where any officer of excise shall find, in any private or unentered place, manufacturing, or in the course of manufacturing, any goods or commodities in respect whereof any duty of excise is or shall be imposed, or any materials or preparations for manufacturing any such goods or commodities, and shall at the same time discover in or about such private or unentered place any person knowingly aiding, assisting, or in anywise concerned in the manufacturing of such goods or commodities, every person so discovered shall forfeit 30*l.*, over and above all other penalties to which the proprietor of the same, or the person in whose custody or possession the same shall be found, or by whom the manufactory of such goods or commodities may be carried on, is or may be subject and liable.

Any officer of excise and his assistants may arrest and detain every person so discovered, and convey him or her before one of his majesty's justices, who, on confession or proof on the oath of one or more credible witness or witnesses made of such offence, may convict every person so discovered. (c) And the person so convicted shall, immediately on such conviction, pay the sum of 30*l.* into the hands of the officer who shall have conveyed such offender before such justice of the peace, to be paid to the commissioners of excise, or the commissioner and assistant-commissioners of excise in Scotland and Ireland respectively, or to such persons as they may respectively appoint, to be applied in such manner as other excise penalties are by that act directed to be applied. And on such offender neglecting to pay the said 30*l.*, the convicting justice is to issue his warrant to commit him to prison and hard labour for three calendar months, unless he pays in the meantime the said sum of 30*l.* And for a second offence upon a like conviction the offender shall forfeit 60*l.*, and in default of payment be committed for six months, or until the sum of 60*l.* shall be paid. (c)

With a power, nevertheless, for the commissioners of excise, or for the commissioner and assistant-commissioners of excise in Scotland and Ireland, respectively, to order any person so imprisoned to be discharged, at any time before the term of his or her imprisonment shall have expired. (c)

On arresting such an offender, it is the duty of the officer forthwith to convey the offender before a justice of the peace for the place in which the offence has been committed, and when the justice is ready to hear the case, give information against the offender, and charge him orally with the offence imputed to him, and be prepared with his witnesses to support it.

The officer, and any other person, who may be entitled to the whole or any share of such penalty, shall, notwithstanding their interest, be admitted to give evidence. It is not incumbent on the officer to prove that the manufactory is not entered, but it lies upon the defendant (if such is his defence) to prove that it is entered. (d)

If any question, or doubt, or dispute be made or arise, whether the person who arrested the offender and conveyed him before the justice, is an officer of excise, it is, by the 7 & 8 Geo. IV. c. 53, s. 17, (e) enacted, that evidence that he is reputed to be or acts as an officer of excise, shall be admitted, and deemed and taken to be sufficient and legal evidence thereof, without producing or proving the particular commission, appointment, or authority, whereby he is commissioned or appointed to be such officer, unless by other evidence the contrary be made to appear.

(a) See *ante*, 264.

(b) See *ante*, 272.

(c) 7 & 8 Geo. IV. c. 53, s. 33, *ante*, 272.

(d) *Id.* s. 75, *ante*, 290; see the form of warrant of commitment, *post*.

(e) See *ante*, 236.

**Fourthly. Of Search-Warrants and Mode of obtaining same, and Assistance of Peace-Officers and others.**

III. Proceedings, &c., before justices, &c.

All goods, commodities, and chattels whatsoever, forfeited under or by virtue of any act of Parliament relating to the revenue of excise, may, without special or particular warrant, be seized:—1st, By any officer of excise.—2ndly, By any person employed in the revenue of excise.—Or, 3rdly, By any person acting in the aid and assistance of any such officer or person so employed. (a)

4thly. Of search-warrants and mode of obtaining same, and assistance of peace-officers, &c.

Amongst others, all goods and commodities subject to any duty of excise, and all materials, utensils, and vessels, proper or intended to be made use of in the making thereof, removed, or deposited, or concealed in any place, to defraud his majesty of such duty, are forfeited; and in every such case, and in every case where any goods or commodities are forfeited by any law relating to the excise, all the casks, vessels, cases, and other packages whatsoever, containing, or which shall have contained, such goods or commodities, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other cattle, and all things used in the removal, or for the deposit or concealment hereof, are also forfeited; and every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any such goods or commodities, forfeits treble the value thereof, or 100*l.*, at the election of the commissioners of excise or customs, or of the commissioner and assistant-commissioners of excise or custom in Scotland and Ireland, respectively, or the person who sues for the same. (b)

Besides goods forfeited by any law of excise, every officer of excise has, and may use and exercise, all such and the like powers and authorities for the arrest and prosecution of any person, or for the search, examination, seizure, detention, removal, and prosecution of any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any foreign or imported goods or commodities whatsoever, forfeited under any act of Parliament relating to the revenue of the customs, as are or shall be granted, or be used or exercised, in that behalf by any officer of the customs. (c)

Officers of excise to have the like powers as officers of customs. (c)

This right of seizure, however, does not authorize any officer of excise, or person employed in the revenue of excise, or their assistant, to enter or go into, *their own authority*, any place into which they are not otherwise legally authorized; and if any officer of excise *has cause to suspect* that any goods or commodities, forfeited under or by virtue of any act of Parliament relating to the revenue of excise, are deposited or concealed in any place to which he has no right of access, and such place is in any part of the United Kingdom out of the limits of the chief office of excise in London, he may apply to any one or more of the justices of the peace for the county, shire, division, city, town, or place where he suspects such goods and commodities are deposited or concealed; and any one or more of such justices may, *upon oath* being made by such officer before him or them, *setting forth the ground of such suspicion*, if he or they judge reasonable, by *special warrant* under his or their hands, authorize and empower such officer, by day or by night (but if between the hours of eleven of the clock at night and five in the morning, then in the presence of a constable or other officer of the peace), to enter into every such place where any such goods or commodities are suspected to be deposited or concealed, and to seize and carry away the same. (d)

But officer of excise cannot of his own authority enter a place (not especially provided for by act), to search for suspected goods, but must make oath, and obtain a warrant. (d)

And the officer, in case of resistance, having such warrant, may break open the door, and force and remove any other impediment or obstruction to such entry, search, or seizure, and removal. (d)

In the late case of *The King v. Walls and another*, 1 Bar. & Adolph. 166, the right of entry and search under a *writ of assistance*, and under the different former provisions in the law relating to the customs and excise, was fully considered. The 6 Geo. IV. c. 108, empowers any officer of customs, or person

What may be done under a writ of assistance.

) 7 & 8 Geo. IV. c. 53, s. 64, *ante*,

(c) 7 & 8 Geo. IV. c. 53, s. 38, *ante*, 274.

) *Id.* s. 32, *ante*, 271.

(d) *Id.* s. 34, *ante*, 273.

OL. II.

Z Z

III. *Proceedings, &c., before justices, &c.*

Instructions to be attended to before applying for a search-warrant.

Attendance of peace-officers.

acting under the commissioners of customs, authorized by writ of assistance, to enter any house, shop, &c., there to seize, and from thence to bring, any untaxed or prohibited goods.

A writ of assistance was addressed to certain officers therein mentioned, and to all other his majesty's officers, ministers, and subjects in England and Wales; it set out the commission of the officers of the customs, which empowered them to enter and search any house, shop, &c., where smuggled goods were, or were suspected to be concealed, to appoint officers, &c., and to do all other things necessary for his majesty's service in such cases, according to law; and it commanded the several persons to whom it was directed to permit and suffer the commissioners of customs, their deputies, servants, and officers, to enter and search the houses, shops, &c. where smuggled goods were, or were suspected to be concealed, and to do all things which ought to be done in that behalf, according to the commission, and to the laws of the realm; and all persons addressed by the writ were to assist in the execution of the premises. It was held, that this writ did not confer a general and *absolute* authority to enter and search houses for smuggled goods; but that such entry and search must be justified by reference to the event, or to *probable cause*: and the evidence on those points, and whether there was reasonable ground to suspect a concealment of goods, being uncertain, a new trial was directed.

The following judicious instructions have been given in a work before alluded to:—"When any officer of excise, either from his own view, knowledge, or observation, or from information received from any other person, suspects that any goods or commodities, forfeited under any excise law, are deposited or concealed in any place to which he has not access, he should make use of his best discernment by considering the fair weight of the circumstances which lead to his suspicions, and not conclude that, because from such circumstances it is possible that goods or commodities forfeited may be deposited or concealed, they necessarily are so; or, because the informer gives a plausible account, that it must necessarily be true; but, by minutely interrogating him and entering into detail with him on the subject, so as to ascertain whether one part of it agrees with the other, endeavour to ascertain its truth or falsehood, and also learn his character and his connexion with the party against whom he gives information, and his motive and inducement to give such information, and whether revenge forms any part of it; and then, if, upon turning all these things in his mind, the officer is, upon the whole, satisfied that his suspicions are true, then, and not till then, he should apply to a justice of the peace for a warrant. Every failure in a search under a warrant lowers, in a certain degree, if it does not disgrace, the unsuccessful officer, and brings odium and obloquy on the whole revenue."

If the justice applied to has no warrant of his own that he prefers, a warrant in the form presently given may be used; annexed to which is the formal part of the affidavit, to which must be added the grounds of the officer's suspicion; and, on the same having been sworn before the justice, he will, if he judges the suspicion reasonable, issue his warrant, directed to the officer by whom the affidavit is made.

If the warrant is executed between the hours of eleven of the clock at night and five in the morning, the presence of a constable or other lawful officer of the peace is necessary; (a) and upon notice given or request made by any officer of excise to any constable, headborough, or other ministerial officer of the peace, to go with him, and to be present at the doing or performing of any act or thing at which the presence of a constable, headborough, or officer of the peace is required, by any act of Parliament relating to the revenue of excise, such constable, headborough, or officer of the peace is required to attend and be present, under a penalty of 20*l.* (b)

It cannot very well occur in executing a search-warrant, but it may in many other cases happen, that a constable, headborough, or other ministerial officer of the peace, who has begun to assist an officer of excise in the execution of

(a) 7 & 8 Geo. IV. c. 53, s. 34, *ante*, 273.

(b) *Id.* s. 36, *ante*, 273.

### III. Proceedings, &c. before Justices, &c.

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his duty, in a place where such officer has jurisdiction, may be taken in the progress of such assistance out of such place, and then he may continue his assistance into any other place, otherwise out of his jurisdiction. (a)

III. Proceedings, &c., before justices, &c.

And by the 7 & 8 Geo. IV. c. 53, s. 35, all justices of the peace, bailiffs, constables, and all his majesty's officers, ministers, and subjects serving under his majesty, by commission, warrant, or otherwise, are required to be aiding and assisting to every officer of excise, in the due execution of any act or thing required and enjoined by any act of Parliament relating to the revenue of excise to be done, and all such persons who so aid and assist are by the same act saved harmless. (b)

#### Fifthly. Of Overcharges and Relief. (c)

8thly. Of overcharges and relief. (c)

It sometimes happens that persons subject to the excise laws are charged with, or have paid, more than by law they are liable to pay; and provision for relief, in such cases, in a summary way, is provided by the 7 & 8 Geo. IV. c. 53, s. 120, and other acts. (d)

When any person, chargeable with any duties of excise, has been charged herewith, any two or more justices, out of the limits of the chief office of excise, may (upon complaint of any overcharge made by any officer of excise, within twelve calendar months next after the making of such charge) hear, adjudge, and determine such complaint, and examine the witnesses upon oath, who shall be produced as well on behalf of the complainant as of his majesty, and of all parties therein concerned, and by warrant under their hands discharge or acquit such person of so much of such charge as shall be made out and proved before them to have been overcharged. (e)

If the complainant has, before such acquittal, paid any money in respect of such overcharge, the commissioners of excise, or the commissioner and assistant-commissioners in Scotland and Ireland respectively, are required, upon such acquittal, to repay to the complainant, out of the public monies in their hands, or at their discretion to allow out of the next duties becoming payable to the complainant, so much money as has been so paid. (e)

Such complaint, however, is to be heard before the justices, unless a notice in writing of the time and place of hearing thereof (which must contain and set forth the ground and substance of such complaint) has been given to the collector of excise in whose collection, or to the supervisor of excise in whose district, such overcharge has been made, eight days at the least before the time appointed for the hearing of such complaint. (e)

The payment of any duty with which the complainant has been charged, or proceedings for the recovery thereof, are nevertheless not to be delayed or impeded by reason of the making of any such complaint, or of the same being pending. (e)

These provisions are general with respect to all overcharges of excise duties, there are other cases for which, though not strictly falling under the head of overcharge, special provision is made, as in the case of sales by auction. (f)

7 & 8 Geo. IV. c. 53, s. 37, *ante*, III. c. 37, s. 19; 38 Geo. III. c. 54, s. 3.

See *ante*, 273.

See division of the subject, *ante*,

and *ante*, 263.

7 & 8 Geo. IV. c. 53, s. 120, *ante*,

19 Geo. III. c. 56, s. 11; 28 Geo.

(e) 7 & 8 Geo. IV. c. 53, s. 120, *ante*, 263.

(f) 19 Geo. III. c. 56, s. 1; 28 Geo.

III. c. 37, s. 19; 38 Geo. III. c. 54, s.

3; *ante*, 359, 360, title Auction.



III. Proceedings, &c. before justices, &c.

VI. The Forms of Proceedings in general before Justices, &c. under Excise Laws.

As the 7 & 8 Geo. IV. c. 53, s. 73 (*ante*, 290), directs justices to proceed on the merits without regarding any defect of form in any information or proceeding therein, and the 82nd sect. of the same act (*ante*, 293) directs commissioners of appeal and justices of the peace at quarter sessions not to regard matters of form, so great accuracy is not necessary as would be otherwise required; still, however, matters of substance must be observed, and it may assist in practice to give a few of the usual forms. (a)

No. I.—INFORMATIONS.

A. Formal parts of information for recovery of a penalty or penalties, and condemnation of a seizure exhibited before one justice of the peace.

1. Formal parts of information for recovery of penalties and condemnation of seizure before one justice.

County of [Essex], } Be it remembered, that, on this [first] day of [January], in the  
to wit. } year of our Lord [1830], at [Chelmsford], in the county of  
[Essex], A. B., being one of his majesty's officers of excise, now here in his proper person, as well for his present majesty as for himself, exhibiteth to and before me, E. F., Esq., one of his majesty's justices of the peace in and for the said county of [Essex], wherein the offence (b) hereinafter mentioned was committed, and where the goods, commodities, and chattels hereinafter mentioned were seized, an information (which same information is commenced and prosecuted by order of the commissioners of excise (c)), and thereby informeth me, the said justice, that within four months last past, to wit, on the [tenth] day of [September], in the year of our Lord [1829], at [Witham], [here state the offence with certainty and not in the alternative, and then proceed as follows]; and the said A. B., who sues as aforesaid, prayeth judgment in the premises, and that he may have one moiety of the said penalty and forfeiture, according to the form of the statute in such case made and provided; and that the said C. D. may be summoned to answer the said premises, and to make defence thereto. A. B.

Exhibited to and before me, }  
the day and year first }  
above written, E. F. }

B. Formal parts of information for recovery of a penalty or penalties, and the condemnation of a seizure exhibited before two justices of the peace.

2. The like before two justices.

County of [Essex], } Be it remembered, that, on this [first] day of [January], in the  
to wit. } year of our Lord [1830], at [Chelmsford], in the county of  
[Essex], A. B., being one of his majesty's officers of excise, now here in his proper person, as well for his present majesty as for himself, exhibiteth to and before us, E. F. and G. H., two of his majesty's justices of the peace for the said county, wherein the offence hereinafter mentioned was committed, and where the goods, commodities, and chattels hereinafter mentioned were seized, an information (which same information is commenced and prosecuted by order of the commissioners of excise), and thereby informeth us, the said justices, that [here state the offence with certainty and not in the alternative.] Whereupon the said A. B. prayeth judgment in the premises, and that he may have one moiety of the said penalty and forfeitures, according to the form of the statute in such case made and provided, and that the said C. D. may be summoned to answer the said premises and to make defence thereto. A. B.

Exhibited to and before us, }  
the day and year first }  
above written, E. F. G. H. }

(a) See other forms of proceedings under the excise laws, *Paley on Convictions*, 2nd edit. 691, &c.

(b) If more than one offence is stated in the information, insert the word "several," and add an s to the word offence.

(c) If the information be exhibited in England, insert the words "commissioners of excise;" if in Scotland or Ireland, "commissioner and assistant commissioners of excise in Scotland" or "Ireland," as the case may be.

C. Formal parts of information for the recovery of a penalty or penalties exhibited before one justice of the peace.

III. Proceedings, &c. before justices, &c.

County of Essex, } Be it remembered, that this [first] day of [January], in the year  
to wit. } of our lord, [1830], at [Chelmsford], in the county of [Essex],  
A. B., being one of his majesty's officers of excise, now here in his proper person, as  
well for his present majesty as for himself, exhibiteth to and before me, E. F., one of  
his majesty's justices of the peace for the said county of [Chelmsford], wherein the  
offence hereinafter mentioned was committed, an information (which same information  
is commenced and prosecuted by order of the commissioners of excise), and thereby in-  
formeth me, the said justice, that one C. D. [here state the offence.] Whereupon the  
said C. D. prayeth judgment in the premises, and that he may have one moiety of the  
said penalty [state the sum], according to the form of the statute in such case made  
and provided, and that the said C. D. may be summoned to answer the said premises,  
and to make defence thereto. A. B.

3. Formal parts  
of information  
for the recovery  
of penalties be-  
fore one justice.

Exhibited to and before me, }  
the day and year first }  
above written, E. F. }

D. Formal parts of information for recovery of a penalty or penalties before one justice of the peace for the county, shire, division, city, town, or place, where the person committing the offence or offences is found.

County of [Essex], } Be it remembered, that this [first] day of [January], in the  
to wit. } year of our Lord [1830], at [Chelmsford], in the county of  
[Essex], A. B., being one of his majesty's officers of excise, now here in his proper per-  
son, as well for his present majesty as for himself, exhibiteth to and before me, E. F.,  
one of his majesty's justices of the peace for the said county of [Essex], wherein C. D.,  
the person committing the offence hereinafter mentioned is found, an information (which  
same information is commenced and prosecuted by order of the commissioners of excise),  
and thereby informeth me, the said justice, that [here state the offence], and the said  
C. D. is now found in the said county of [Essex]. Whereupon the said C. D. prayeth  
judgment in the premises, and that he may have one moiety of the said penalty and for-  
feitures, according to the form of the statute in such case made and provided, and that  
he said C. D. may be summoned to answer the said premises, and to make defence  
thereto.

4. The like for  
the county, &c.  
where the person  
committing the  
offence is found.

Exhibited to and before me, }  
the day and year first }  
above written, E. F. }

5. Information before one justice for the condemnation of British spirits, with packages, carriage, and cattle, and the recovery of the optional penalty of 100*l.*, applicable to England. (a)

County of [Essex], } Be it remembered, that on the [first] day of [January], in the  
to wit. } year of our Lord [1830], at [Chelmsford], in the county of  
[Essex], A. B., one of his majesty's officers of excise, now here in his proper person,  
well for his present majesty as for himself, exhibiteth to and before me, E. F., Esq.,  
one of his majesty's justices of the peace for the said county of [Essex], wherein the  
offence hereinafter mentioned was committed, and where the goods, commodities, and  
articles hereinafter mentioned were seized, an information (which same information is  
commenced and prosecuted by order of the commissioners of excise); and thereby in-  
formeth me, the said justice, that within four calendar months last past, to wit, on the  
[fourth] day of [September], in the year of our Lord [1829], at [Witham], in the  
said county of [Essex], one G. H., being then and there an officer of excise, did seize  
by arrest, as forfeited, from one C. D., a certain large quantity, to wit, twenty gallons  
of British spirits, contained in divers packages, to wit, four bottles, and a certain car-  
riage, to wit, one cart, and certain cattle, to wit, one mule, then and there used in the  
haul of the said spirits [the same spirits], for that the said C. D. then and there  
wrongly had in his custody and possession the said spirits, after the same had been

5. Information  
for condemnation  
of British spirits,  
with packages,  
&c., and recovery  
of optional pe-  
nalty of 100*l.*

### III. Proceedings, &c.

removed from the place where the same ought to have been charged with the duty payable in respect thereof, before either the duty to which the same was liable had been charged and paid, or secured to be paid, or such spirits had been lawfully condemned as forfeited, the said packages, for that the same then and there contained the said spirits so forfeited as aforesaid, and the said carriage and cattle, for that the same were then and there used in the removal thereof, contrary to the form of the statutes in that case made and provided, whereby and by force of the statutes in that case made and provided, the said spirits then and there became forfeited, together with the said packages containing the same, and the said carriage and cattle then and there used in the removal thereof, and the said C. D., being the person so offending, hath forfeited and lost the sum of 100*l.*, the said A. B., who sues as aforesaid, having elected, and hereby electing, the said penalty of 100*l.* in lieu and instead of treble the value of such spirits; whereupon the said A. B. prayeth judgment in the premises, and that the said C. D. may be summoned to answer the said premises, and to make defence thereto.

A. B.

Exhibited to and before me, }  
the day and year first }  
above mentioned, E. F. }

### F. Form of information exhibited before one justice for the condemnation of a seizure not claimed.

#### 6. Information for condemnation of seizure not claimed.

County of [Essex], } Be it remembered, that this [first] day of [January], in the  
to wit. } year of our Lord [1830], at [Chelmsford], in the county of  
[Essex], A. B., being one of his majesty's officers of excise, now here in his proper  
person, as well for his present majesty as for himself, exhibiteth, to and before me,  
E. F., Esq., one of his majesty's justices of the peace for the said county of [Essex],  
where the goods, commodities, and chattels, hereinafter mentioned were seized, an infor-  
mation (which same information is commenced and prosecuted by order of the commis-  
sioners of excise), and thereby informeth me, the said justice, that within four calendar  
months last past, to wit, on the [tenth] day of [September], in the year of our Lord  
[1829], at [Witham], in the said county of [Essex], one G. H., being then and there  
an officer of excise, did seize and arrest as forfeited, from a certain person unknown, as  
well to the said A. B. as to him the said G. H., a certain large quantity, to wit [twenty]  
gallons of [British] spirits, contained in divers packages, to wit [five bottles], and a  
certain carriage, to wit, a [cart], and certain cattle, to wit, one [mule], then and there  
used in the removal of the said spirits; for that the said person so unknown, as aforesaid,  
then and there knowingly had in his custody and possession the said spirits, after  
the same had been removed from the place where the same ought to have been charged  
with the duty payable in respect thereof, before either the duty to which the same was  
liable had been charged and paid, or secured to be paid, or such spirits had been law-  
fully condemned as forfeited; and for that the said packages then and there contained  
the said spirits so forfeited as aforesaid, and for that the said carriage and cattle were  
then and there used in the removal thereof, contrary to the form of the statutes in that  
case made and provided, whereby and by force of the statutes in that case made and  
provided, the said spirits then and there became forfeited, together with the said pack-  
ages containing the same, and the said carriage and cattle then and there used in the  
removal thereof. Whereupon the said A. B. (no one appearing to claim the said goods,  
commodities, and chattels, so seized as aforesaid) prayeth judgment in the premises.

A. B.

Exhibited to and before me, }  
the day and year first }  
above written, E. F. }

### G. Form of information before one justice for recovery of double the value of duties neglected to be paid.

#### 7. Information for the recovery of double the value of duties not paid.

County of [Essex], } Be it remembered, that on this [first] day of [January], in the  
to wit. } year of our Lord [1830], at [Chelmsford], in the county of [Essex],  
A. B., being one of his majesty's officers of excise, now here in his proper person, as  
well for his present majesty as for himself, exhibiteth to and before me, C. D., one of  
his majesty's justices of the peace for the said county of [Essex], where the offence here-  
inafter mentioned was committed, an information (which same information is com-  
menced and prosecuted by order of the commissioners of excise), and thereby informeth

### III. Proceedings, &c. before Justices, &c.—6thly. Forms, &c.

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III. Proceedings, &c.

me, the said justice, that one E. F., being, before and at and after the several times, and at the place in that behalf hereinafter mentioned, a maltster and maker of malt, did, within four calendar months last past, that is to say, between the [first] day of [September] now last past, and the [twentieth] day of [October] then next following, to wit, at [Chelmsford], in the said county of [Essex], make divers, that is to say, [ten thousand] bushels of malt, chargeable with certain duties of excise payable to his said majesty, by the statutes [if duty sought to be recovered is imposed by one statute, cancel the s] in that case made and provided; and the same having been charged upon and incurred by the said E. F., he thereby became indebted to his said majesty in the sum of [120l. 10s. 6d.] which [if the payment is accelerated by a demand, insert the words "having been demanded," but if not, and the duties are payable, dash up this blank] having been demanded according to the directions of the statute in that case made and provided, he ought, before the day of exhibiting this information, to have paid and cleared off, but hath omitted and neglected so to do, contrary to the form of the statute in such case made and provided, whereby and by force of the statute in that case made and provided, he hath forfeited double the value of the said duties, that is to say, the sum of [120l. 10s. 6d.]: whereupon the said A. B. prayeth judgment in the premises; and that the said C. D. may be summoned to answer the said premises, and to make defence thereto.

A. B.

Exhibited to and before me, }  
the day and year first }  
above written, E. F. }

Of late a printed form of information, or rather informations, against several offenders, for several distinct offences committed at different times, has been issued, with a form, printed on the back, of one conviction against several offenders for several distinct offences. These forms may be used as minutes, and the formal convictions may afterwards be drawn up fully. But it may be safer to adopt at once separate informations and convictions, when time will allow.

See the form of such information, *post*, 710; and the form of such conviction, *post*, 717.



NO. II.—SUMMONSES, NOTICES, AND SUBPÆNA.

III. Proceedings, &c.

A. Form of formal parts of summons for the recovery of a penalty or penalties, and the condemnation of a seizure, when information exhibited before one justice of the peace for the county, &c., where offence or offences committed. (a)

To C. D.

County of [Essex], }  
to wit. } You are hereby to take notice, that A. B., officer of excise, having, on the day of the date of this summons, exhibited to and before me, E. F., Esq., one of his majesty's justices of the peace for the said county of [Essex], at [Chelmsford], in the said county, an information by order of the commissioners of excise against you, for the forfeiture of the sum of [100l.], and also for the forfeiture of certain goods and chattels, to wit, [fifty gallons of British spirits], for that [state the legal ground of forfeiture], and also for the forfeiture of the further sum of [100l.], and also for the forfeiture of certain other goods and chattels, to wit, &c. [name them], for that [state the legal ground of forfeiture]. I have appointed that all parties shall be heard of and concerning the matter and matters of fact in the said information mentioned and alleged, on the [tenth] day of [January] now instant, at [eleven] of the clock in the [forenoon] of the said day, at the house of W. R., being an inn and public-house known by the sign of the [Bell], at [Chelmsford], in the said county of [Essex]; at which time and place you are hereby required to be and appear before such of his majesty's justices of the peace for the said county as shall be then and there present, and have jurisdiction to hear and determine the same, then and there to make your defence in and to the matters contained in the said information; but, though you fail therein, the said last-mentioned justices (at the time and place in that behalf before mentioned) will proceed to the examination of the matter and matters of fact in the said information mentioned and alleged, and thereupon then and there give judgment and sentence as in and by the statute in that case made and provided is directed. And I do hereby authorize and require any officer of excise to serve this summons, and to attend at the time and place in that behalf before mentioned, then and there to make a return of the execution hereof. Given under my hand, at [Chelmsford], in the said county of [Essex], this [first] day of [January], in the year of our Lord [1830].

1. Summons for recovery of penalty and condemnation of seizure, by one justice of the county where offence was committed.

B. Form of formal parts of summons for the recovery of a penalty or penalties, and the condemnation of a seizure, when information exhibited before two justices of the peace for the county, &c., where offence or offences committed.

To C. D.

County of [Essex], }  
to wit. } You are hereby to take notice, that A. B., officer of excise, having, on the day of the date of this summons, exhibited to and before us, E. F. and G. H., Esqs., two of his majesty's justices of the peace for the said county of [Essex], at [Chelmsford], in the said county, an information, by order of the commissioners of excise, against you, for the forfeiture of the sum of [100l.], and also for the forfeiture of certain goods and chattels, to wit, [fifty gallons of British spirits], for that [state the legal ground of forfeiture], and also for the forfeiture of the further sum of [100l.], and also for the forfeiture of certain other goods and chattels, to wit, &c. [name them], for that [state the legal ground of forfeiture]. We have appointed that all parties shall be heard of and concerning the matter and matters of fact in the said information mentioned and alleged, on the [tenth] day of [January] now instant, at [eleven] of the clock in the [forenoon] of the same day, at the house of W. R., being an inn and public-house known by the name of the [Bell], at [Chelmsford], in the said county of [Essex]; at which time and place you are hereby required to be and appear before such of his majesty's justices of the peace for the said county as shall be then and there present, and have jurisdiction to hear and determine the same, then and there to make your defence in and to the matters contained in the said information; but, though you fail therein, the said last-mentioned justices (at the time and place in that behalf before mentioned) will proceed to the examination of the

2. The like, by two justices.

(a) This is required by the 7 & 8 Geo. IV. c. 53, s. 66, *ante*, 287.

### III. Proceedings, &c.

matter and matters of fact in the said information mentioned and alleged, and thereupon then and there give judgment and sentence, as in and by the statute in such case made and provided is directed. And we do hereby authorize and require any officer of excise to serve this summons, and to attend at the time and place in that behalf before mentioned, then and there to make a return of the execution hereof. Given under our hands, at [Chelmsford], in the said county of [Essex], this [first] day of [January], in the year of our Lord [1830].

### C. Form of formal parts of summons for the recovery of a penalty or penalties when information exhibited before one justice for the county, &c., where offence or offences committed.

#### To C. D.

3. Summons for recovery of penalty, by one justice of the county where offence was committed.

County of [Essex], } You are hereby to take notice, that A. B., officer of excise, to wit. } having, on the day of the date of this summons, exhibited to and before me, E. F., Esq., one of his majesty's justices of the peace for the said county of [Essex], at [Chelmsford], in the said county, an information, by order of the commissioners of excise, against you, for the forfeiture of the sum of [100*l.*], for that [state the legal ground of forfeiture], and also for the forfeiture of the further sum of [100*l.*], for that [state the legal ground of forfeiture]. I have appointed that all parties shall be heard of and concerning the matter and matters of fact in the said information mentioned and alleged, on the [tenth] day of [January] now instant, at [eleven] of the clock in the [forenoon] of the said day, at the house of W. R., being an inn and public-house known by the sign of the [Bell], at [Chelmsford], in the said county of [Essex]; at which time and place you are hereby required to be and appear before such of his majesty's justices of the peace for the said county as shall be then and there present, and have jurisdiction to hear and determine the same, then and there to make your defence in and to the matters contained in the said information; but, though you fail therein, the said last-mentioned justices (at the time and place in that behalf before mentioned) will proceed to the examination of the matter and matters of fact in the said information mentioned and alleged, and thereupon then and there give judgment or sentence, as in and by the statute in such case made and provided is directed. And I do hereby authorize and require any officer of excise to serve this summons, and to attend at the time and place in that behalf before mentioned, then and there to make a return of the execution hereof. Given under my hand, at [Chelmsford], in the said county of [Essex], this [first] day of [January], in the year of our Lord [1830].

### D. Form of formal parts of summons for the recovery of a penalty or penalties exhibited before one justice for the county, &c., where the person committing the offence or offences is found.

#### To C. D.

4. The like, by one justice of the county where person committing the offence is found.

County of [Essex], } You are hereby to take notice, that A. B., officer of excise, hath to wit. } on the day of the date of this summons, at [Chelmsford], in the county of [Essex], exhibited, by order of the commissioners of excise, to and before me, E. F., Esq., one of his majesty's justices of the peace for the said county of [Essex], wherein you, the said C. D., being the person who committed the several offences hereinafter mentioned, and found an information against you, and thereby informeth me, the said justice, that [state the grounds of the information]; and that you, the said C. D., are now found in the said county of [Essex]. And you will further take notice, that I have appointed that all parties shall be heard of and concerning the matter and matters of fact in the said information mentioned and alleged, on the [tenth] day of [January] now instant, at [eleven] of the clock in the [forenoon] of the said day, at the house of W. R., being an inn and public-house known by the sign of the [Bell], at [Chelmsford], in the said county of [Essex]; at which time and place you are hereby required to be and appear before such of his majesty's justices of the peace for the said county of [Essex] as shall be then and there present, and have jurisdiction to hear and determine the same, then and there to make your defence in and to the matters contained in the said information; but, though you fail therein, the said last-mentioned justices (at the time and place in that behalf before mentioned) will proceed to the examination of the matter and matters of fact in the said information mentioned and

alleged, and thereupon then and there give judgment and sentence, as in and by the statute in that case made and provided is directed. And I do hereby authorize and require any officer of excise to serve this summons, and to attend at the time and place in that behalf before mentioned, then and there to make a return of the execution hereof. Given under my hand, at [Chelmsford], in the said county, this [first] day of [January], in the year of our Lord [1830].

III. Proceedings, &c.

E. Summons upon an information before one justice for the condemnation of British spirits, with packages, carriage, and cattle, and the recovery of the optional penalty of 100*l.*, applicable to England.

To C. D.

County of [Essex], } You are hereby to take notice, that A. B., officer of excise, hath  
to wit, } on the day of the date of this summons, at [Chelmsford], in the  
county of [Essex], exhibited, by order of the commissioners of excise, to and before me,  
E. F., Esq., one of his majesty's justices of the peace for the said county of [Essex],  
wherein the offence hereinafter mentioned was committed, and where the goods, commodi-  
ties, and chattels hereinafter mentioned were seized, an information against you for  
the forfeiture of certain goods, commodities, and chattels; that is to say, a certain large  
quantity, to wit, [twenty gallons of British spirits], contained in diverse packages, to  
wit, [four bottles], and a certain carriage, to wit, [a cart], and certain cattle, to wit,  
[one mule], used in the removal of the said spirits, and also the sum of [100*l.*]; and  
thereby informeth me that, within four calendar months last past, to wit, on the  
[tenth] day of [January], in the year of our Lord [1831], at [Chelmsford], in the  
said county of [Essex], one J. W., being then and there an officer of excise, did seize  
and arrest, as forfeited from you, the said C. D., the said spirits, contained in the  
said packages, and the said carriage and cattle, then and there used in the removal of  
the said spirits; the same spirits, for that you, the said C. D., then and there know-  
ingly had in your custody and possession the said spirits, after the same had been re-  
moved from the place where the same ought to have been charged with the duty payable  
in respect thereof, before either the duty to which the same was liable had been charged  
and paid, or secured to be paid, or such spirits had been lawfully condemned as for-  
feited; the said packages, for that the same then and there contained the said spirits so  
forfeited, as aforesaid; and the said carriage and cattle, for that the same were then  
and there used in the removal thereof, contrary to the form of the statute in that case  
made and provided; whereby, and by force of the statute in that case made and pro-  
vided, the said spirits then and there became forfeited, together with the said packages  
containing the same, and the said carriage and cattle then and there used in the re-  
moval thereof: and you, the said C. D., being the person so offending, have forfeited  
and lost the said sum of [100*l.*], the said A. B., who sues as aforesaid, having elected  
and thereby electing the said penalty of [100*l.*], in lieu and instead of treble the value  
of such spirits; and you will further take notice, that I have appointed that all parties  
shall be heard of and concerning the matter and matters of fact in the said information  
mentioned and alleged, on the [tenth] day of [February] now instant, at [eleven] of  
the clock in the [forenoon] of the said day, at the house of W. R., being an inn and  
public-house known by the sign of the [Bell], at [Chelmsford], in the said county of  
[Essex]; at which time and place you are hereby required to be and appear before  
me, or his majesty's justices of the peace for the said county as shall be then and there  
sent, and have jurisdiction to hear and determine the same, then and there to make  
return of defence in and to the matters contained in the said information; but, though you  
shall therein, the said last-mentioned justices (at the time and place in that behalf be-  
fore mentioned) will proceed to the examination of the matter and matters of fact in  
the said information mentioned and alleged, and thereupon then and there give judg-  
ment and sentence, as in and by the statute in that case made and provided is directed;  
I do hereby authorize and require any officer of excise to serve this summons, and  
to attend at the time and place in that behalf before mentioned, then and there to make  
return of the execution hereof. Given under my hand, at [Chelmsford], in the said  
county of [Essex], this [first] day of [February], in the year of our Lord [1830].

8. Summons for condemnation of British spirits, with packages, &c., and recovery of optional penalty of 100*l.*



## III. Proceedings, &amp;c.

## F. Form of notice of hearing of information to be affixed on the outside of the excise-office next to the place of seizure, when seizure not claimed. (a)

*To all whom it may concern.*

6. Notice of hearing affixed on outside of excise office next to place of seizure.

County of [Essex], } Take notice, that A. B., officer of excise, having seized, on the  
to wit. } [first] day of [January] now instant, at [Chelmsford], in the  
county of [Essex], divers goods, commodities, and chattels, to wit, [twenty gallons of  
British spirits], [three bottles], [one cart], and [one mule], by virtue of a certain act  
of Parliament relating to the revenue of excise, and no person appearing to claim the  
said goods, commodities, and chattels, so seized as aforesaid, and an information having  
this day been exhibited, at [Chelmsford], in the said county of [Essex], before me,  
one of his majesty's justices of the peace for the said county of [Essex], within whose  
jurisdiction such seizure was made, for the condemnation thereof, that two of his ma-  
jesty's justices of the peace for the county of [Essex], within whose jurisdiction such  
seizure was made, and who have jurisdiction to hear and determine the matter of the  
said seizure, will, by virtue of the statute in that case made and provided, on the [17th]  
day of [January] instant, at [eleven] of the clock in the [forenoon] of the said day,  
at the house of W. R., being an inn and public-house known by the sign of the [Bell],  
at [Chelmsford], in the said county of [Essex], proceed to the hearing and adjudging  
of the matter of such seizure, and examine into the cause thereof, and give judgment  
accordingly. Dated at [Chelmsford], in the said county of [Essex], this [eighth] day  
of [January], in the year of our Lord [1830].

## G. Form of summons on information before one justice, for recovery of double the value of duties neglected to be paid. (b)

*To C. D.*

7. Summons for recovery of double the value of duties.

County of [Essex], } You are hereby to take notice, that A. B., officer of excise,  
to wit. } having, on the day of the date of this summons, exhibited to  
and before me, E. F., Esq., one of his majesty's justices of the peace for the county of  
[Essex], at [Chelmsford], in the said county, an information, by order of the commis-  
sioners of excise, against you, for the forfeiture of a certain large sum of money, to  
wit, the sum of [100l.], the same being double the value of certain duties of excise  
charged upon and incurred by you, for that you, being, before and at and after the  
several times, and at the place, in that behalf hereinafter mentioned, a [malster and  
maker of malt], did, within [four months] last past, that is to say, between the [first]  
day of [September] now last past, and the [twentieth] day of [October] then next  
following, to wit, at [Chelmsford], in the said county of [Essex], make divers, that is  
to say, [ten thousand] bushels of malt, chargeable with certain duties of excise, pay-  
able to his said majesty, by the statutes in that case made and provided; and the same  
having been charged upon and incurred by you, you thereby became indebted to his  
said majesty in the sum of [50l. 2s. 8d.]; which (having been demanded), according  
to the directions of the statute in that case made and provided, you ought, before the

(a) See the 7 & 8 Geo. IV. c. 53, s. 66, *ante*, 287. 1st. The officer of excise by whom the seizure was made must cause this notice to be affixed on some conspicuous part of the outside of the office of excise, next or nearest to the place where such seizure was made, during any market-day after the expiration of six days from the day of seizure. And, 2nd, the time appointed in such notice for the hearing of the case must not be less than nine days from the date of such notice, which should be affixed the day it is dated. If it is doubtful which of two market-towns is the next to the place of seizure, it will be prudent to request the justice to sign three notices, and to affix one on the outside

of the excise office in each of such towns, and, making a memorandum thereof on the third, keep it to produce and prove at the hearing when the others were affixed. If there is no such doubt, the justice need only be requested to sign two such notices: one to affix, and one to keep to produce at the hearing, and prove when the other was affixed. If any one at the hearing claims the goods, he must, of course, be heard; and, if he tenders any witnesses, they, as well as the witnesses for the crown, must be examined.

(b) See the 7 & 8 Geo. IV. c. 53, s. 66, *ante*, 287, as to time and mode of service.

day of exhibiting the said information, to have paid and cleared off; but you have omitted and neglected so to do, contrary to the form of the statute in that case made and provided, whereby, and by force of the statute in that case made and provided, you have forfeited double the value of the said duties; that is to say, the said sum of [100l.] I have appointed that all parties shall be heard of and concerning the matter and matters of fact in the said information mentioned and alleged, on the [tenth] day of [January] now instant, at [eleven] of the clock in the [forenoon] of the said day, at the house of W. R., being an inn and public-house known by the sign of the [Bell], at [Chelmsford], in the said county of [Essex]; at which time and place you are hereby required to be and appear before such of his majesty's justices of the peace for the said county as shall be then and there present, and have jurisdiction to hear and determine the same, then and there to make your defence in and to the matters contained in the said information; but, though you fail therein, the said last-mentioned justices (at the time and place in that behalf before mentioned) will proceed to the examination of the matter and matters of fact in the said information mentioned and alleged, and thereupon then and there give judgment or sentence, as in and by the statute in such case made and provided is directed; and I do hereby authorize and require any officer of excise to serve this summons, and to attend at the time and place in that behalf before mentioned, then and there to make a return of the execution hereof. Given under my hand, at [Chelmsford], in the said county of [Essex], this [first] day of [January], in the year of our Lord [1830].

H. Summons or subpoena for the attendance of witnesses, to give evidence before justices of the peace. (a)

To I. K.

County of [Essex], } You are hereby required by me, E. F., Esq., one of his majesty's justices of the peace for the county of [Essex], personally to be and appear, on the [tenth] day of [January] now instant, at [eleven] of the clock in the [forenoon] of the same day, at the house of W. R., being an inn and public-house known by the sign of the [Bell], at [Chelmsford], in the said county of [Essex], before such of his majesty's justices of the peace for the said county of [Essex], having jurisdiction in the matter, as shall be then and there present, and who will then and there hear, adjudge, and determine, a certain information there depending, exhibited, under a certain act of Parliament relating to the revenue of excise, by A. B., officer of excise, who sues, as well for his said majesty as for himself, against C. D., then and there to give evidence, and then and there to testify the truth according to your knowledge of any facts alleged in such information, or touching or relating thereto; but if you fail therein, you, by the statute in that case made and provided, will forfeit [50l.] Dated at [Chelmsford], in the said county of [Essex], this [first] day of [January], in the year of our Lord [1830].

8. Subpoena for attendance of witnesses.

### No. III.—CONVICTIONS.

A. Formal parts of conviction, as given by the 3 Geo. IV. c. 23. (b)

County [or as the case may be] } Be it remembered, that on the day of , in the year of our Lord , at , in the county of , A. B., of , in the county of , labourer, [or as the case may be], personally came before us, C. D. and E. F., two of his majesty's justices of the peace in and for the said county, and informed us, that G. H., of , in the said county of , on the day of , at , in the said county, did here set forth the fact for which the information is laid, contrary to the form of the statute in such case made and provided; whereupon the said G. H., after being duly summoned to answer the said charge, appeared before us, the said jus-

1. Conviction, under 3 Geo. 4, c. 23.

- (a) 7 & 8 Geo. IV. c. 53, s. 74, ante, convictions, see ante, 695; and see other forms, Paley on Convictions, 2d ed., 693, 699, 701, 705, 710.  
(b) As to forms and requisites of

III. Proceedings, &c.

these, on the day of , at , in the said county, and, having heard the charge contained in the said information, declared he was not guilty of the said offence [or, as the case may happen to be, did not appear before us, &c., pursuant to the said summons], [or, did neglect and refuse to make any defence against the said charge]: whereupon we, &c., [or, nevertheless, we, the said justices, did proceed to examine into the truth of the charge contained in the said information, and on the day of aforesaid, at the parish of aforesaid, one credible witness, to wit, A. W., of , in the county of , upon his oath, deposeth and saith [if G. H. be present, say, in the presence and hearing of the said G. H.], that, within three months [or as the case may be] next before the said information was made before us, the said justice, by the said A. B., to wit, on the day of , in the year , the said G. H., at in the said county of [here state the evidence, and as nearly as possible in the words used by the witness, and, if more than one witness be examined, state the evidence given by each; or, if the defendant confess, instead of stating the evidence, say] and the said G. H. acknowledged and voluntarily confessed the same to be true: therefore it manifestly appearing to us, that he, the said G. H., is guilty of the offence charged upon him in the said information, we do hereby convict him of the offence aforesaid, and do declare and adjudge that he, the said G. H., hath forfeited the sum of , of lawful money of Great Britain, for the offence aforesaid, to be distributed [or, paid, as the case may be] according to the form of the statute in that case made and provided. Given under our hands and seals, the day of , in the year of our Lord

C. D. (L. S.)  
E. F. (L. S.)

### III. Proceedings, &c. before Justices, &c.—6thly. Forms, &c.

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At the time and place appointed for the hearing of the several informations mentioned on the other side of this paper, that is to say, on this [tenth] day of [January], at [Chelmsford], in the said county of [Essex], the several persons named in the first column of the scheme or schedule on the other side of this paper, and also in the first column of the hereunder scheme or schedule, do or do not respectively appear, as set forth in the second column of the hereunder scheme or schedule; and their said several and respective offences mentioned in the fourth column of the scheme or schedule on the other side of this paper, and also in the third column of the hereunder scheme or schedule, being respectively confessed, proved, or not proved, as expressed in the third column of the hereunder scheme or schedule; we, justices of the peace for the said county, whose names are hereunto subscribed, do convict, respite, or acquit the said several persons of their said several and respective offences, as stated in the fourth column of the hereunder scheme or schedule. It is therefore now here considered and adjudged by us, the said justices, whose names are hereunto subscribed, that the said several persons so named as above-mentioned (if not acquitted or respited) have, for their said several offences, respectively forfeited the penalties and sums of money mentioned in the fifth column of the hereunder scheme or schedule; and that the goods and chattels mentioned in the fifth column of the scheme or schedule on the other side of this paper, and also in the fifth column of the hereunder scheme or schedule, are, for the reasons in that behalf aforesaid, forfeited; and which said penalties or sums of money, if mitigated, we, the said justices, have now here mitigated and lessened to the several and respective sums mentioned in the seventh column of the hereunder scheme or schedule, and hereunder set opposite to or against the respective names of the said several persons so named as above-mentioned; and we, the said justices, whose names are hereunto subscribed, now here adjudge that the said forfeitures and penalties be distributed as the law directs.

Given under our hands, at [Chelmsford] aforesaid, this said [first] day of [January], [1830.]

FIRST COLUMN.	SECOND COLUMN.	THIRD COLUMN.	FOURTH COLUMN.	FIFTH COLUMN.						SIXTH COLUMN.	SEVENTH COLUMN.
Name of each Defendant.	Whether such Defendant did or did not appear.	Whether each Offence confessed, proved, or not proved.	Whether each Defendant was convicted, acquitted, or respited.	Goods and Chattels forfeited.						Penalties Incurred.	Sum to which each Penalty is reduced by Mitigation.
				Gallons of						£	s. d.
				Brandy.	Ram.	Geneva.	Wine.	Coffee.	Tea.	Salt.	Tobacco.
				Pounds' Weight of						Horses.	

(a) See the observations, ante, p. 709, and form of information on the back of which this is printed, ante, p. 710.

## III. Proceedings, &amp;c.

## No. IV.—WARRANT.

A. Warrant by two justices of the peace, for the sale of goods, &c., condemned. (a)

1. Warrant for sale of goods, &c. condemned.

County of [Essex], }  
to wit. }

To G. H. and I. K., Officers of Excise, or either of them.

An information having been exhibited by A. B., officer of excise, for the condemnation of the following goods, commodities, and chattels, seized and forfeited by virtue of the laws and statutes relating to the revenue of excise, that is to say [enumerate the goods, &c., condemned], and the same having been condemned by two of his majesty's justices of the peace for the said county of [Essex], we, two of his majesty's justices of the peace for the said county of [Essex], do hereby authorize you, or either of you, to sell the said goods, commodities, and chattels, publicly to the best bidder, at such time and place and in such manner as the commissioners of excise shall order and direct, under and subject to such rules, regulations, and provisions, as are by any act or acts of Parliament in that behalf made and directed. Dated at [Chelmsford], in the county of [Essex], this [first] day of [January], in the year of our Lord [1830.]

## No. V.—LEVY WARRANTS.

A. Common levy-warrant, granted by two justices, on a day subsequent to the hearing, against a person not stated to be a trader subject to the excise laws, for a full penalty.

1. Common levy-warrant against a person not stated to be subject to excise laws, for a full penalty.

County of [Essex], }  
to wit. }

To G. H. and I. K., Officers of Excise, or either of them.

We, whose hands are hereunto set, being two of his majesty's justices of the peace for the county of [Essex], do, in his majesty's name, authorize and command you, every or any of you, that upon the goods and chattels of C. D. you do levy the sum of [70l. 4s. 5d.], being a penalty recovered against the said C. D. by A. B., officer of excise, who prosecuted, as well for our sovereign lord the king as for himself, for a certain offence committed by the said C. D. against the laws and statutes of excise; whereof the said C. D. was convicted before and by the judgment of B. F., Esq., and G. H., Clerk, two of his majesty's justices of the peace for the said county of [Essex], on the [tenth] day of [January] last, with all reasonable charges and expenses attending such levy (and which said judgment remains unsatisfied); and for levying thereof, we do hereby authorize and command you, every or any of you, to seize and take the goods and chattels aforesaid, and either to detain and keep the same in the place where the same shall respectively be found, or to remove the same to the next office of excise; and if within [six] days next after such seizure, the said penalty shall not be paid or satisfied, then and in such case, so soon as conveniently may be after the expiration of the said [six] days, to sell and dispose thereof, or of so much thereof as will be sufficient to levy the said penalty of [70l. 4s. 5d.], with all reasonable charges and expenses attending such levy, and to deduct the said penalty, charges, and expenses, out of the money arising by such sale, and to return the overplus, if any, of the said goods and chattels, or any part thereof, or of the money arising from the sale thereof, or of any part thereof, to the proprietor or proprietors of the said goods and chattels, upon which such levy shall have been made, or to the person or persons who shall be legally entitled thereto, and forthwith to pay the said penalty to the collector of excise for the collection called [Rochester] Collection, for the time being, to be by him applied and answered for, according to the statute in such case made and provided. And all constables and headboroughs of the said county are hereby required to be aiding and assisting to you in the due execution hereof; but, in case there cannot be found sufficient to levy the

(a) 7 & 8 Geo. IV. c. 53, s. 100, ante, 300, and s. 86, ante, 295. If goods subject to any duty of either excise or customs are condemned, such duty not having been paid, they are not

to be sold for home consumption at a less price than the amount of the duty to which they are subject. 7 & 8 Geo. IV. c. 53, s. 101, ante, 300.

### III. Proceedings, &c. before Justices, &c.—6thly. Forms, &c.

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said penalty, with all reasonable charges and expenses attending such levy, then and in such case you, by a return of this warrant, are forthwith to certify the same to us, or some other justice or justices of the peace for the said county of [Essex], having jurisdiction therein. Given under our hands, at [Chelmsford], in the said county of [Essex], this [first] day of [January], in the year of our Lord [1830]. (a)

III. Proceedings, &c.

B. Common levy-warrant, granted by two justices, on a day subsequent to the hearing, against a person not stated to be a trader subject to the excise laws, for a mitigated penalty.

County of [Essex], }  
to wit. } To G. H. and I. K., Officers of Excise, or either of them.

2. The like, for a mitigated penalty.

We, whose hands are hereunto set, being two of his majesty's justices of the peace for the county of [Essex], do, in his majesty's name, authorize and command you, every or any of you, that upon the goods and chattels of C. D. you do levy the sum of [70l. 4s. 5d.] (being a sum of money to which a certain penalty incurred by him has been mitigated), recovered against the said C. D. by A. B., officer of excise (who prosecuted, as well for our sovereign lord the king as for himself, for a certain offence committed by the said C. D. against the laws and statutes of excise, whereof the said C. D. was convicted before and by the judgment of E. F., Esq., and G. H., Clerk, two of his majesty's justices of the peace for the said county of [Essex], on the [tenth] day of [January] last), with all reasonable charges and expenses attending such levy (and which said judgment remains unsatisfied); and for levying thereof, we do hereby authorize and command you, every or any of you, to seize and take the goods and chattels aforesaid, and either to detain and keep the same in the place where the same shall respectively be found, or to remove the same to the next office of excise; and if within [six] days next after such seizure, the said sum of [70l. 4s. 5d.] shall not be paid or satisfied, then and in such case, so soon as conveniently may be after the expiration of the said [six] days, to sell and dispose thereof, or of so much thereof as will be sufficient to levy the said sum of [70l. 4s. 5d.], with all reasonable charges and expenses attending such levy, and to deduct the said sum of [70l. 4s. 5d.], and the said charges and expenses, out of the money arising by such sale, and to return the overplus, if any, of the said goods and chattels, or any part thereof, or of the money arising from the sale thereof, or of any part thereof, to the proprietor or proprietors of the said goods and chattels, upon which such levy shall have been made, or to the person or persons who shall be legally entitled thereto, and forthwith to pay the said sum of [70l. 4s. 5d.] to the collector of excise for the collection called [Rochester] Collection, for the time being, to be by him applied and answered for according to the statute in such case made and provided. And all constables and headboroughs of the said county are hereby required to be aiding and assisting to you in the due execution hereof; but, in case there cannot be found sufficient to levy the said sum of [70l. 4s. 5d.], with all reasonable charges and expenses attending such levy, then and in such case you, by a return of this warrant, are forthwith to certify the same to us, or some other justice or justices of the peace for the said county of [Essex], having jurisdiction therein. Given under our hands, at [Chelmsford], in the said county of [Essex], this [first] day of [January], in the year of our Lord [1830]. (a)

C. Special levy-warrant, granted by the convicting justices on the day of hearing, against a trader subject to the excise laws, convicted in a full penalty on an information exhibited within the jurisdiction where the offence was committed, for double duty, or for any other penalty, for an offence against the excise laws.

County of [Essex], }  
to wit. } To G. H. and I. K., Officers of Excise, or either of them.

Whereas, on this day, C. D., being a person carrying on the trade and business of a distiller and maker of malt, the same being a trade and business under and subject to the laws and statutes of excise, hath been duly convicted by and before us, E. F., Esq., and G. H., Clerk, two of his majesty's justices of the peace in and for the county

3. Special levy-warrant against a trader subject to excise laws, convicted in a full penalty, for double duty.

a) In order to execute this warrant of the jurisdiction of the justices granting it, in any other county, shire, division, city, town, or place, it is necessary that a justice of the peace of the said other county, shire, division, city, town, or place, should indorse his name on such warrant, and add, after his signature, "one of his majesty's justices of the peace for the [county] of \_\_\_\_\_," as the case may be; but it is not necessary to prove, in order to justify his indorsing such warrant, the handwriting of the justices granting the same.

A A A

COL. II.

## 111. Proceedings, &amp;c.

of [Essex], by the judgment of us, the said justices, of an offence heretofore committed in the same county, by him, the said C. D., being then a person carrying on the said trade and business, and the same trade and business being then under and subject to the laws and statutes of excise, against a certain act of Parliament relating to the revenue of excise, in the penalty of [70l. 4s. 5d.], incurred by him for the said offence, under and by virtue of the said act, which said penalty was, by the said conviction and judgment of us, the said justices, recovered against the said C. D. by A. B., officer of excise, who prosecuted as well for our sovereign lord the king as for himself in that behalf. Now we, the said justices, do, in his majesty's name, authorize and command you, every or any of you, that, upon all the [malt], and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a [maltster and maker of malt] has been carried on by the said C. D., in the custody or possession of the said C. D., or of any person or persons, to the use of or in trust for the said C. D., and upon all the [malt], and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a [maltster and maker of malt] has been carried on by the said C. D., which were in his custody or possession when the said penalty was incurred, into whose hands soever the same shall have afterwards come, and by what conveyance or title soever the same shall be claimed, and also upon all the goods and chattels of the said C. D., you do levy the said penalty of [70l. 4s. 5d.], so recovered against the said C. D. by the said A. B., as aforesaid, whereof the said C. D. stands convicted before us this day, with all reasonable charges and expenses attending such levy; and for levying thereof, we do hereby authorize and command you, every or any of you, to seize and take the [malt], materials, preparations, vessels, utensils, goods, and chattels aforesaid, and either to detain and keep the same in the place where the same shall respectively be found, or to remove the same to the next office of excise; and if, within [six] days next after such seizure, the said penalty shall not be paid or satisfied, then and in such case, so soon as conveniently may be after the expiration of the said [six] days, to sell and dispose thereof, or of so much thereof as will be sufficient to levy the said penalty of [70l. 4s. 5d.] with all reasonable charges and expenses attending such levy, and to deduct the said penalty, charges, and expenses out of the money arising by such sale, and to return the overplus, if any, of the said [malt], materials, preparations, utensils, vessels, goods, and chattels, or any part thereof, or of the money arising from the sale thereof, or of any part thereof, to the proprietor or proprietors of the said [malt], materials, preparations, utensils, vessels, goods, and chattels respectively, upon which such levy shall have been made, or to the person or persons who shall be legally entitled thereto, and forthwith to pay the said penalty to the collector of excise for the collection called [Rochester] Collection, for the time being, to be by him applied and answered for according to the statute in such case made and provided. And all constables and head-boroughs of the said county are hereby required to be aiding and assisting to you in the due execution hereof; but, in case there cannot be found sufficient to levy the said penalty, with all reasonable charges and expenses attending such levy, then and in such case you, by a return of this warrant, are forthwith to certify the same to us, or some other justice or justices of the peace for the said county of [Essex], having jurisdiction therein. Given under our hands, at [Chelmsford], in the said county of [Essex], this [first] day of [January], in the year of our Lord [1830]. (a)

D. Special levy-warrant, granted by the convicting justices on the day of hearing, against a trader subject to the excise laws, convicted in a mitigated penalty, on an information exhibited within the jurisdiction where the offence was committed, for double duty, or for any other penalty, for an offence against the excise laws.

4. The like, against a trader convicted in a mitigated penalty.

County of [Essex], } To G. H. and I. K., Officers of Excise, or either of them.  
to wit. }

Whereas, on this day, C. D., being a person carrying on the trade and business of a [maltster and maker of malt], the same being a trade and business under and subject to the laws and statutes of excise, hath been duly convicted by and before us, E. F., Esq., and G. H., Clerk, two of his majesty's justices of the peace in and for the county of [Essex], by the judgment of us, the said justices, of an offence heretofore committed in the same county by him, the said C. D., being then a person carrying on the said trade and business, and the same trade and business being then under and subject to the laws and statutes of excise, against a certain act of Parliament relating to the revenue of excise, in the sum of [70l. 4s. 5d.] (being a sum of money to which a certain penalty incurred by him for the said offence, under and by virtue of the said

(a) See note in preceding page.

act, has been by us mitigated), and which said sum of [70l. 4s. 5d.] was, by the said conviction and judgment of us, the said justices, recovered against the said C. D. by A. B., officer of excise, who prosecuted as well for our sovereign lord the king as for himself in that behalf. Now we, the said justices, do, in his majesty's name, authorize and command you, every or any of you, that, upon all the [malt], and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a [maltster and maker of malt] has been carried on by the said C. D., in the custody or possession of the said C. D., or of any person or persons to the use of or in trust for the said C. D., and upon all the [malt], and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a [maltster and maker of malt] has been carried on by the said C. D., which were in his custody or possession when the said penalty was incurred, into whose hands soever the same shall have afterwards come, and by what conveyance or title soever the same shall be claimed, and also upon all the goods and chattels of the said C. D., you do levy the said sum of [70l. 4s. 5d.], so recovered against the said C. D. by the said A. B., as aforesaid, whereof the said C. D. stands convicted before us this day, with all reasonable charges and expenses attending such levy; and for levying thereof, we do hereby authorize and command you, every or any of you, to seize and take the [malt], materials, preparations, vessels, utensils, goods, and chattels aforesaid, and either to detain and keep the same in the place where the same shall respectively be found, or to remove the same to the next office of excise; and if, within [six] days next after such seizure, the said sum of [70l. 4s. 5d.] shall not be paid or satisfied, then and in such case, so soon as conveniently may be after the expiration of the said [six] days, to sell and dispose thereof, or of so much thereof as will be sufficient to levy the said sum of [70l. 4s. 5d.], with all reasonable charges and expenses attending such levy, and to deduct the said last-mentioned sum, and the said charges and expenses, out of the money arising by such sale, and to return the overplus, if any, of the said [malt], materials, preparations, utensils, vessels, goods, and chattels, or any part thereof, or of the money arising from the sale thereof, or of any part thereof, to the proprietor or proprietors of the said [malt], materials, preparations, utensils, vessels, goods, and chattels, respectively, upon which such levy shall have been made, or to the person or persons who shall be legally entitled thereto, and forthwith to pay the said sum of [70l. 4s. 5d.] to the collector of excise for the collection called [Rochester] Collection, for the time being, to be by him applied and answered for, according to the statute in such case made and provided. And all constables and headboroughs of the said county are hereby required to be aiding and assisting to you in the due execution hereof; but, in case there cannot be found sufficient to levy the said sum of [70l. 4s. 5d.], with all reasonable charges and expenses attending such levy, then and in such case you, by a return of this warrant, are forthwith to certify the same to us, or some other justice or justices of the peace for the said county of [Essex], having jurisdiction therein. Given under our hands, at [Chelmsford], in the said county of [Essex], this [first] day of [January], in the year of our Lord [1830.] (a)

III. Proceedings, &c.

No. VI.—RETURNS TO LEVY-WARRANTS.

1. Return to be indorsed on a common levy-warrant for a full or mitigated penalty, when no part of the penalty has been recovered, to one justice, for a body-warrant.

I, G. H., being one of the officers of excise to whom the within warrant is directed, hereby certify to E. F., Esq., one of his majesty's justices of the peace for the county of [Essex], and within whose jurisdiction the within warrant was issued, that I have made diligent search for but cannot find (within the jurisdiction in which the said warrant was so issued) any goods or chattels of the within-named C. D., whereon the within-mentioned penalty, or any part thereof, can or may be levied, with the reasonable charges and expenses attending such levy. Dated this (a) [first] day of [January], 1830].

1. Return indorsed on common levy warrant for a full or mitigated penalty, when no part of penalty has been recovered.

Return to be indorsed on a common levy warrant for a full or mitigated penalty, when part of the penalty has been recovered, to two justices, for a body-warrant for residue.

I, G. H., being one of the officers of excise to whom the within warrant is directed, hereby certify to E. F. and L. M., Esqs., two of his majesty's justices of the peace

2. The like, when part of penalty has been recovered.

(a) See note, ante, p. 719.



## III. Proceedings, &amp;c.

for the county of [Essex], and within whose jurisdiction the within warrant was issued, that, by virtue of the said warrant, I have seized and sold divers goods and chattels of the within-named C. D., and thereon and thereout have levied the sum of [70l. 4s. 5d.] part of the within-mentioned penalty, with the reasonable charges and expenses attending such levy; and I have made diligent search for but cannot find (within the jurisdiction in which the said warrant was so issued) any more or further goods and chattels of the within-named C. D. (beyond the goods and chattels already seized and sold, as aforesaid), whereon the residue of the said penalty, or any part thereof, can or may be levied, with the reasonable charges and expenses attending such levy. Dated this (a) [first] day of [January], [1830].

C. Return to be indorsed on a special levy-warrant for a full or mitigated penalty, when no part of the penalty has been recovered, to one justice, for a body-warrant.

3. Return indorsed on a special levy-warrant for a full or mitigated penalty, when no part of penalty has been recovered.

I, G. H., being one of the officers of excise to whom the within warrant is directed do hereby certify to E. F., Esq., one of his majesty's justices of the peace for the county of [Essex], and within whose jurisdiction the within warrant was issued, that I have made diligent search for but cannot find (within the jurisdiction in which the said warrant was so issued) any such [malt], materials, preparations, utensils, or vessels, as is or are in and by the within warrant mentioned and directed to be levied on, or any goods or chattels, of the within-named C. D., whereon the said penalty, or any part thereof, can or may be levied, with the reasonable charges and expenses attending such levy. Dated this (a) [first] day of [January], [1830].

D. Return to be indorsed on a special levy-warrant for a full or mitigated penalty, when part of the penalty has been recovered, to one justice, for a body-warrant for residue.

4. The like, when part of penalty has been recovered.

I, G. H., being one of the officers of excise to whom the within warrant is directed, do hereby certify to E. F., Esq., one of his majesty's justices of the peace for the county of [Essex], and within whose jurisdiction the within warrant was issued, that, by virtue of the within warrant, I have seized and sold divers quantities of [malt], materials, preparations, vessels, utensils, goods, and chattels, in the within warrant in that behalf mentioned, and thereon and thereout have levied the sum of [70l. 4s. 5d.], part of the within-mentioned penalty, with the reasonable charges and expenses attending such levy; and I have made diligent search for but I cannot find (within the jurisdiction within which the said warrant was so issued) any more or further such [malt], materials, preparations, vessels, or utensils, as is and are in the said warrant in that behalf mentioned, or any more or further goods or chattels of the within-named C. D. (beyond the [malt], materials, preparations, vessels, utensils, goods, and chattels, already seized and sold, as aforesaid), whereon the residue of the said penalty, or any part thereof, can or may be levied, with the reasonable charges and expenses attending such levy. Dated this (a) [first] day of [January], [1830].

## No. VII.—BODY WARRANTS.

A. Body-warrant by one justice for a full or mitigated penalty, after a common levy-warrant, when no part of the penalty has been recovered.

1. Body-warrant by one justice for a full or mitigated penalty, after common levy-warrant, when no part of penalty has been recovered.

County of [Essex], } To G. H. and I. K., Officers of Excise, or either of them, and  
to wit. } to the Gaoler or Keeper of the Common Gaol or House of Correction of, for, and within the County, Shire, Division, City, Town, or Place, where this Warrant shall be executed.

Whereas E. F. and L. M., Esqs., two of his majesty's justices of the peace for the county of [Essex], by their warrant under their hands, made and issued within the said county of [Essex], bearing date the [fifth] day of [February], [1830], did require and command you, the said G. H. and I. K., or either of you, to levy on the goods and chattels of C. D. the sum of [70l. 4s. 5d.], being a mitigated penalty recovered against the said C. D. by A. B., officer of excise, who prosecuted as well for our sovereign lord the king as for himself, for a certain offence committed by the said C. D. against the laws and statutes of excise, whereof the said C. D. was convicted before

(a) This date must always be the day the body-warrant applied for upon this return is dated. the truth of this return. He makes the return at his peril, and, if it is false, is answerable for it.

The officer should not be sworn to

and by the judgment of N. O., [Esq.], and P. Q., [Clerk], two of his majesty's justices of the peace for the said county of [Essex], on the [first] day of [January] last, with all reasonable charges and expenses attending such levy; and whereas you, the said G. H., by a return in writing made on the said warrant under your hand, bearing date this day, have returned to me, R. S., Esq., one of his majesty's justices of the peace for the said county of [Essex], whose hand is hereunto set, that you, the said G. H., have made diligent search for but cannot find (within the jurisdiction in which the said warrant was so issued) any goods or chattels of the said C. D., whereon the said penalty, charges, and expenses, or any part thereof, can or may be levied: now I, the same justice, do, in his majesty's name, authorize, require, and command you, the said G. H. and I. K., or either of you, to take and arrest the said C. D., and forthwith to convey him to the common gaol or house of correction of, for, and within the county, shire, division, city, town, or place where you, or either of you, shall so take and arrest the said C. D., and there to deliver him, together with a duplicate of this warrant, to the gaoler or keeper of such gaol or house of correction, there to remain and be kept by such gaoler or keeper until satisfaction shall be made of the said judgment, or until he, the said C. D., shall be ordered by the commissioner (a) of excise to be liberated or discharged; and all constables and other his majesty's officers are hereby authorized and required to be aiding and assisting to you in the due execution hereof; and the gaoler or keeper of such gaol or house of correction to which you shall so convey the said C. D., is hereby authorized and required there to receive and take into his custody the said C. D., there to remain and be kept by such gaoler or keeper until satisfaction shall be made of the said judgment, or until he, the said C. D., shall be ordered by the commissioner (a) of excise to be liberated or discharged. And for your, or any, or either of your so doing, as is before to you respectively directed, this shall be to you, any, or either of you respectively, a sufficient warrant and authority. Given under my hand, at [Chelmsford], in the said county of [Essex], this [third] day of [March], in the year of our Lord [1830]. (b)

III. Proceedings, &c.

#### B. Body-warrant by two justices for residue of a full or mitigated penalty, after a common levy-warrant.

County of [Essex], } To G. H. and I. K., Officers of Excise, or either of them, and to  
to wit. } the Gaoler or Keeper of the Common Gaol or House of Correction of, for, and within the County, Shire, Division, City, Town, or Place, where this Warrant shall be executed.

2. The like by two justices, for residue of a full or mitigated penalty.

Whereas E. F. and L. M., Esqs., two of his majesty's justices of the peace for the county of [Essex], by their warrant under their hands, made and issued within the said county of [Essex], bearing date the [fifth] day of [February], [1830], did require and command you, the said G. H. and I. K., or either of you, to levy upon the goods and chattels of C. D. the sum of [70l. 4s. 5d.], being a mitigated (c) penalty recovered against the said C. D. by A. B., officer of excise, who prosecuted as well for our sovereign lord the king as for himself, for a certain offence committed by the said C. D. against the laws and statutes of excise, whereof the said C. D. was convicted before and by the judgment of N. O., [Esq.], and P. Q., [Clerk], two of his majesty's justices of the peace for the said county of [Essex], on the [first] day of [January] last, with all reasonable charges and expenses attending such levy; and whereas you, the said G. H., by return in writing made on the said warrant under your hand, bearing date this day, have returned to us, R. S. and T. U., Esqs., two of his majesty's justices of the peace for the county of [Essex], whose hands are hereunto set, that, by virtue of the said warrant, you have seized and sold divers goods and chattels of the said C. D., and thereon and thereout have levied the sum of [24l. 3s. 4d.], part of the said penalty, charges, and expenses; and that you, the said G. H., have made diligent search for but cannot find (within the jurisdiction within which the said warrant was so issued) any more or further goods or chattels of the said C. D., beyond the goods and chattels already seized and sold, as aforesaid, whereon the residue of the said penalty, charges, and expenses, or any part thereof, can be levied: Now we, the said last-mentioned justices, do, in his majesty's name, authorize, require, and command you, the said G. H. and I. K., or either of you, to take and arrest the said C. D., and forthwith to convey him to the common gaol or house of correction of, for, and within the county, shire, division, city, town, or place, where you, or either of you, shall so take and arrest the said C. D., and there to deliver him, together with a duplicate of this warrant, to the gaoler or keeper of such gaol or house of correction, there to remain and be kept

a) If used in England, add an s to word commissioner; if in Scotland or Ireland, insert the words "and assistant commissioners." (b) See note, ante, p. 719. (c) If for a full penalty, leave out the word "mitigated."

### III. Proceedings, &c.

by such gaoler or keeper, until satisfaction shall be made of so much of the said judgment as still remains unsatisfied, and thereby the whole of the said judgment shall be satisfied, or until he, the said C. D., shall be ordered by the commissioner (a) of excise to be liberated or discharged; and all constables and others his majesty's officers are hereby authorized and required to be aiding and assisting to you in the due execution hereof; and the gaoler or keeper of such gaol or house of correction to which you, or either of you, shall so convey the said C. D., is hereby authorized and required there to receive and take into his custody the said C. D., there to remain and be kept by such gaoler or keeper until satisfaction shall be made of so much of the said judgment as still remains unsatisfied, and thereby the whole of the said judgment shall be satisfied, or until he, the said C. D., shall be ordered by the commissioner (a) of excise to be liberated or discharged. And for your, or any or either of your, so doing, as is before to you respectively directed, this shall be to you, any or either of you respectively, a sufficient warrant and authority. Given under our hands, at [Chelmsford], in the said county of [Essex], this [third] day of [March], in the year of our Lord [1830]. (b)

C. Body-warrant granted by one justice for a full or mitigated penalty, after a special levy-warrant, when no part of the penalty has been recovered.

3. Body-warrant by one justice, for a full or mitigated penalty, after special levy-warrant, where no part of penalty has been recovered.

County of [Essex], } To G. H. and I. K., Officers of Excise, or either of them, and  
to wit. } to the Gaoler or Keeper of the Common Gaol or House of Correction of, for, and within the County, Shire, Division, City, Town, or Place, where this Warrant shall be executed.

Whereas, on the [first] day of [January], [1830], at [Chelmsford], in the county of [Essex], C. D., being a person carrying on the trade and business of a [malster and maker of malt], the same being a trade and business under and subject to the laws and statutes of excise, was duly convicted by and before E. P., [Esq.], and L. M., [Clerk], two of his majesty's justices of the peace in and for the said county of [Essex], by the judgment of the said justices, of an offence heretofore committed in the same county by him, the said C. D., being, at the time of the committing of such offence, a person carrying on the said trade and business, and the same trade and business being then under and subject to the laws and statutes of excise, against a certain act of Parliament relating to the revenue of excise, in the mitigated (c) penalty of [70l. 4s. 5d.], incurred by him for the said offence, under and by virtue of the said act, which said penalty was, by the said conviction and judgment of the said justices, recovered against the said C. D. by A. B., officer of excise, who prosecuted as well for our sovereign lord the king as for himself in that behalf; and whereas the said justices, by their warrant under their hands, made and issued within the said county, bearing date the [fifth] day of [February], [1830], did require and command you, the said G. H. and I. K., or either of you, that, upon all the [malt], and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a [malster and maker of malt] had been carried on by the said C. D., in the custody or possession of the said C. D., or of any person or persons, to the use of or in trust for the said C. D., and upon all the [malt], and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a [malster and maker of malt] had been carried on by the said C. D., which were in his custody or possession when the said penalty was incurred, into whose hands soever the same should have afterwards come, and by what conveyance or title soever the same should be claimed, and also upon all the goods and chattels of the said C. D., you, or either of you, should levy the said penalty of [70l. 4s. 5d.], so recovered against the said C. D. by the said A. B., as aforesaid, whereof the said C. D. stood convicted before them, the said justices, as in that behalf aforesaid, with all reasonable charges and expenses attending such levy; and whereas you, the said G. H., by a return in writing, made on the said warrant under your hand, bearing date this day, have certified to me, R. S., Esq., one of his majesty's justices of the peace for the said county of [Essex], whose hand is herewith set, that you, the said G. H., have made diligent search for but cannot find (within the jurisdiction in which the said warrant was so issued) any such [malt], materials, preparations, utensils, or vessels, as are in and by the said warrant mentioned and directed to be levied on, or any goods or chattels of the said C. D., whereon the said penalty, charges, and expenses, or any part thereof, can be levied: Now I, the same justice, do, in his majesty's name, authorize, require, and command you, the said G. H. and I. K., or either of you, to take and arrest the said C. D., and forthwith to convey him to the common gaol or house of correction of, for, and within the county, shire, division, city, town, or place, where you, or either of you,

(a) See note (a), preceding page.

(c) See note (c), preceding page.

(b) See note, ante, p. 719.

shall so take and arrest the said C. D., and there to deliver him, together with a duplicate of this warrant, to the gaoler or keeper of such gaol or house of correction, there to remain and be kept by such gaoler or keeper until satisfaction shall be made of the said judgment, or until he, the said C. D., shall be ordered by the commissioner (a) of excise to be liberated or discharged. And all constables and other his majesty's officers are hereby authorized and required to be aiding and assisting to you in the due execution hereof; and the gaoler or keeper of such gaol or house of correction, to which you shall so convey the said C. D., is hereby authorized and required there to receive and take into his custody the said C. D., there to remain and be kept by such gaoler or keeper until satisfaction shall be made of the said judgment, or until he, the said C. D., shall be ordered by the commissioner (a) of excise to be liberated or discharged. And for your, or any or either of your, so doing, as is before to you respectively directed, this shall be to you, any or either of you respectively, a sufficient warrant and authority. Given under my hand, at [Chelmsford], in the said county of [Essex], this [third] day of [March], in the year of our Lord [1830]. (b)

III. Proceedings, &c.

D. Body-warrant granted by one justice for the residue of a full or mitigated penalty, after a special levy-warrant.

County of [Essex], } To G. H. and I. K., Officers of Excise, or either of them, and  
to wit. } to the Gaoler or Keeper of the Common Gaol or House of Correction of, for, and within the County, Shire, Division, City, Town, or Place, where this Warrant shall be executed.

1. The like, for residue of a full or mitigated penalty, after special levy-warrant.

Whereas, on the [first] day of [January], [1830], at [Chelmsford], in the county of [Essex], C. D., being a person carrying on the trade and business of a [malster and maker of malt], the same being a trade and business under and subject to the laws and statutes of excise, was duly convicted by and before E. F., [Esq.], and L. M., [Clerk], two of his majesty's justices of the peace in and for the said county of [Essex], by the judgment of the said justices, of an offence heretofore committed in the same county by him, the said C. D., being then a person carrying on the said trade and business, and the same trade and business being then under and subject to the laws and statutes of excise, against a certain act of Parliament relating to the revenue of excise, in the mitigated penalty of [70l. 4s. 5d.], incurred by him for the said offence, under and by virtue of the said act, which said penalty was, by the said conviction and judgment of the said justices, recovered against the said C. D. by A. B., officer of excise, who prosecuted as well for our sovereign lord the King, as for himself in that behalf; and whereas the said justices, by their warrant, under their hands, made and issued within the said county, bearing date the first day of March, one thousand eight hundred and twenty-eight, did require and command you the said G. H. and I. K., or either of you, that, upon all the malt, and all the materials, preparations, utensils, and vessels for making thereof, or by which the trade and business of a malster and maker of malt had been carried on by the said C. D., in the custody or possession of the said C. D., or of any person or persons to the use of or in trust for the said C. D., and upon all the malt, and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a malster and maker of malt had been carried on by the said C. D., which were in his custody or possession when the said penalty was incurred, into whose hands soever the same should have afterwards come, and by what conveyance or title soever the same should be claimed; and also upon all the goods and chattels of the said C. D., you or either of you should levy the said penalty of one hundred pounds shillings and pence, so recovered against the said C. D. by the said A. B. as aforesaid, whereof the said C. D. stood convicted before the said justices as in that behalf aforesaid, with all reasonable charges and expenses attending such levy. And whereas you the said G. H., by a return in writing made on the said warrant under your hand, bearing date this day, have certified to me L. M., Esq. one of his Majesty's justices of the peace for the said county of Kent, whose name is herewith set, that, by virtue of the said warrant, you have seized and sold diverse quantities of the malt, materials, preparations, vessels, utensils, goods, and chattels in the said warrant in that behalf mentioned, and thereon and thereout have levied the sum of twenty pounds shillings and pence, part of the said penalty, charges, and expenses; and that you, the said G. H. and I. K., have made diligent search for, but cannot find within the jurisdiction within which the said warrant was so issued, any more further such malt, materials, preparations, vessels or utensils, as are in the said warrant in that behalf mentioned, or any more or further goods and chattels of the said C. D., (beyond the malt, materials, preparations, vessels, utensils, goods, and chattels already seized and sold as aforesaid), whereon the residue of the said penalty, charges, and expenses, or any part thereof can be levied. Now, I, the said last-mentioned justice, do, in his Majesty's name, authorize, require, and command you, the said G. H.

(a) See note (a), ante, p. 723.

(b) See note, ante, p. 719.

## Excise and Customs. II. Of Excise.

## III. Proceedings, &amp;c.

and I. K., or either of you, to take and arrest the said C. D., and forthwith to convey him to the common gaol or house of correction, of, for, and within the county, shire, division, city, town or place, where you, or either of you, shall so take and arrest the said C. D., and there to deliver him, together with a duplicate of this warrant, to the gaoler or keeper of such gaol or house of correction, there to remain and be kept by such gaoler or keeper, until satisfaction shall be made of so much of the said judgment as still remains unsatisfied, and thereby the whole of the said judgment shall be satisfied, or until the said C. D. shall be ordered by the commissioner (a) of excise, to be liberated or discharged. And all constables and other his Majesty's officers, are hereby authorized and required to be aiding and assisting to you in the due execution hereof; and the gaoler or keeper of such gaol or house of correction, to which you or either of you shall so convey the said C. D., is hereby authorized and required there to receive and take into his custody the said C. D., there to remain and be kept by such gaoler or keeper, until satisfaction shall be made of so much of the said judgment as still remains unsatisfied, and thereby the whole of the said judgment shall be satisfied, or until the said C. D. shall be ordered by the commissioner (a) of excise, to be liberated or discharged; and for your, or any or either of your so doing, as is before to you respectively directed, this shall be to you, or any or either of you respectively, a sufficient warrant and authority. Given under my hand at Maidstone, in the county of Kent, this [second] day of [April], in the year of our Lord [1830].

\* In order to execute this warrant out of the jurisdiction of the justice granting it, in any other county, shire, division, city, town, or place, it is necessary that a justice of the peace of such other county, shire, division, city, town, or place, should indorse his name on such warrant, and it will be necessary to add, after his signature, "one of his Majesty's justices of the peace for the county of," [as the case may be], but it is not necessary to prove, in order to justify his indorsing such warrant, the hand-writing of the justice granting the same.

## E. Demand of payment of duty in danger of being lost.

To Mr. William Martin, malster.

Demand by collector of payment of duty in danger of being lost.

The sum of one hundred pounds five shillings and sixpence, having been charged upon and incurred by you, as duties on malt imposed by the statute in that case made and provided, I, William Price, (the collector of excise for Rochester Collection, in whose collection the trade and business of a malster was carried on by you, at the time such duties were charged upon and incurred by you), do hereby demand of you, under order in that behalf, of the commissioners (b) of excise, payment forthwith to me, for his Majesty's use, of the said sum of one hundred pounds, five shillings, and sixpence; and if the same is not forthwith paid and cleared off according to this demand, you will forfeit and lose double the value thereof. Dated this [first] day of [July], [1830].

(To be signed) William Price,  
Collector of Excise for Rochester Collection.

\* This demand may be made either personally of the trader, or be left at his dwelling-house, or on the premises where the duty or duties demanded were charged or incurred.

To Mr. William Martin, malster.

Demand by officer authorized by collector, of payment of duty in danger of being lost.

The sum of one hundred pounds, five shillings, and sixpence, having been charged upon and incurred by you, as duties on malt, imposed by the statute in that case made and provided, I, William Brown, officer of excise, (authorized and directed in that behalf by the collector of excise, in whose collection the trade and business of a malster was carried on by you, at the time such duties were charged upon and incurred by you, and one of the officers of excise in the said collection), do hereby demand of you, (under order in that behalf of the commissioners of excise to the said collector, and by authority and direction of the said collector to me), payment forthwith to me of the said sum of one hundred pounds, five shillings, and sixpence; and if the same is not forthwith paid and cleared off according to this demand, you will forfeit and lose double the value thereof. Dated this [first] day of [August], [1830].

(To be signed) William Brown,  
Officer of Excise.

(a) If used in England, add an "s" to the word "commissioner," and dash up the blank. If used in Scotland or Ireland, insert the words "and assistant commissioners."

(b) If used in Scotland or Ireland, cancel the "s" in the word "commissioners," and insert "and assistant commissioners."

### III. Proceedings, &c. before Justices, &c.—6thly. Forms, &c.

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#### F. Commitment.

To Miles Spry, and to the Keeper of the House of Correction at \_\_\_\_\_, in the County of York.

County of \_\_\_\_\_, } Whereas, Abraham Greaves, of Tadcaster, in the county of  
York, } York, is, and stands convicted this day, before me, Henry Gilby,  
esquire, one of his Majesty's justices of the peace in and for the said county of York,  
for that one G. H., being an officer of excise, did, on the [first] day of [February],  
in the year of our Lord [one thousand eight hundred and twenty-eight], at Tadcaster,  
in the said county of York, discover and find in a certain private and unentered place,  
manufacturing, and in the course of manufacturing, certain goods and commodities,  
for and in respect whereof a duty of excise is imposed, and certain materials and pre-  
parations for manufacturing such goods and commodities, to wit, spirits, wort, and  
wash, made from melasses, and molasses, malt, corn, and grain, and did at the same  
time discover in and about such private and unentered place, the said Abraham  
Greaves, knowingly aiding, assisting, and concerned in the manufacturing such goods  
and commodities, contrary to the form of the statute in that case made and pro-  
vided, whereby he, the said Abraham Greaves, hath forfeited and lost the sum  
of thirty pounds. And whereas the said Abraham Greaves hath refused and neg-  
lected to pay the said sum of thirty pounds into the hands of the said William  
Lord, being such officer of excise as aforesaid, and who conveyed the said Abraham  
Greaves before me, in pursuance of the said statute, charged with the offence aforesaid—  
These are therefore to require you, the said Miles Spry, to convey the said  
Abraham Greaves to the house of correction at \_\_\_\_\_, in the said county of York, and  
to deliver him to the keeper thereof, together with this warrant: and I do hereby  
command you, the said keeper, to receive the said Abraham Greaves into your custody  
in the house of correction, there to remain, and be kept to hard labour for the space  
of three calendar months, to be reckoned from the date hereof, or until (during the  
aid three months) he shall have paid the said sum of thirty pounds; and for so doing,  
his shall be your sufficient warrant. Given under my hand at Tadcaster, in the said  
county of York, the [second] day of [February], in the said year of Lord [1828].

#### III. Proceed- ings, &c.

Commitment of a  
person found on  
or about an unen-  
tered excise manu-  
factory, aiding,  
assisting, and con-  
cerned therein.

#### G. Affidavit to obtain search warrant.

County of Kent, } William Lord, of Maidstone, in the county of Kent, officer of  
to wit, } excise, maketh oath and saith, that he, this deponent, hath cause  
suspect, and doth suspect, that a large quantity of British spirits, the same being  
goods and commodities forfeited under and by virtue of a certain act of Parliament  
relating to the revenue of excise, are deposited or concealed in some place or places,  
or about the house, yards, gardens, or outhouses, thereunto belonging, of William  
Martin, situate at Wrotham, in the county of Kent, for that he, this deponent (a),  
is this morning informed by a person that he has known for some time, that he, (the  
aid person), last night assisted in conveying from a private distillery to the said  
use of the said William Martin, about twenty gallons of British spirits, in three  
casks, and deposited one of such casks in an outhouse in the yard at the back of the  
use, and the other two in the cellar of the said house. And this deponent lastly  
saith, that he believes the said information is true.

Sworn at Maidstone, the [fifth] day of }  
April, [1828], before me }

Affidavit to obtain  
search warrant.

#### H. Search warrant.

County of Kent, } Whereas William Lord, officer of excise, hath this day made  
to wit, } oath before me, one of his Majesty's justices of the peace in and for  
county of Kent, that he hath cause to suspect, and that he doth suspect that (b) a  
large quantity of British spirits, the same being goods and commodities forfeited un-  
der and by virtue of a certain act of Parliament relating to the revenue of excise, are  
deposited and concealed in and about the house of William Martin, and the yards,  
lens, buildings, and outhouses, thereunto belonging, situate at Wrotham in the  
county of Kent, yeoman, setting forth in and by his said oath, the ground of his  
suspicion, and the same appearing to me to be reasonable ground of suspicion, I  
therefore, by virtue of the power and authority to me given, do judge it reasonable,  
do, by this present warrant under my hand, authorize and empower the said  
William Lord, by day or by night, (but if between the hours of eleven of the clock at  
night and five in the morning, then in the presence of a constable or other lawful offi-  
cer of the peace), to enter into every place in and about the said house, yards, gar-

Search warrant.

) Set forth the ground of suspi- he believes the said information is true."  
and, if arising from information, (b) Insert the articles suspected to be  
"and this deponent lastly says, that deposited.

## Excise and Customs. II. Of Excise.

## III. Proceedings, &amp;c.

Memorial or petition, stating that defendants are wholesale grocers, and wholly innocent of the offence, and shewing that it is their practice to let their servants have their goods at wholesale prices, and that one of them, without their knowledge, took some of their liquorice, and sold it to G. H., and made use of one of their tickets.

dens, buildings, and outhouses thereunto belonging, and to seize and carry away all such (a) large quantity of British spirits, and all other goods and commodities so forfeited as aforesaid, that he shall there find deposited and concealed. And all constables and other his Majesty's officers, are hereby authorized and required to be aiding and assisting to him in the execution hereof: and for so doing this shall be to him and every of them a sufficient warrant. Given under my hand this [fifth] day of [April], in the year of our Lord [1828].

To the Honourable the Commissioners of the Revenue of Excise.

The humble Memorial of A. B., C. D., and E. F., of &c., wholesale grocers and tea dealers.

Sheweth,

That your memorialists have, for upwards of sixteen years last past, carried on business as wholesale grocers and tea dealers, in lane aforesaid, in an extensive way and with uniform credit and reputation, and have never been knowingly guilty of any violation of the revenue, or of any other laws, in the course of carrying on their said business.

That notwithstanding the inviolate good conduct of your memorialists in this respect, they were lately, to their great surprise, served with process issuing out of the Court of Exchequer, requiring them to appear to an information to be filed against them in that Court by his Majesty's Attorney-General.

That your memorialists caused an appearance to be entered for them accordingly, and they have taken an office copy of such information, by which it appears that your memorialists are charged in ten several counts, with having "in the year 1815, sold and delivered to one G. H., therein stated to be a licensed brewer of beer, (your memorialists being charged in the said information with knowing him to be so licensed), a quantity of liquorice, contrary to law," for which a penalty or penalties is or are sought to be recovered. And your memorialists are further charged in the said information with having sold and delivered to the said John Mitchell, knowing him to be so licensed, a quantity of molasses, contrary to law, for which further penalties are sought to be recovered.

That your memorialists never knowingly engaged, either directly or indirectly, in any illegal, illicit, or prohibited course of trade, and particularly your memorialists positively state, that they are wholly innocent of all and every the supposed offences, in and by the said information imputed to them.

That your memorialists have always been in the habit of allowing their clerks, warehousemen, and other trade servants, to have and be supplied with the articles in which your memorialists trade and deal, whenever they wished to have the same for the use of themselves and their families, or their immediate friends, at the wholesale price, which practice your memorialists believe to be common to the greater part of wholesale houses in the grocery and tea business, it being generally considered, that where the articles are wanted for the immediate use and consumption of the servant, or of his family, such a privilege is but a reasonable indulgence; and even where they are intended to be resold by the servant to his personal friends, that it tends to promote habits of gainful industry, and tends to the establishment of connexions which eventually enable the individual to engage in retail business, which ultimately conduces to the advantage of the wholesale dealers, his former masters.

That, on being served with the process issued in virtue of this information, your memorialists, knowing that they had never had any such dealings as those imputed to them by this prosecution, made inquiry among the persons who were in their service and employ during the said year, 1815, for the purpose of ascertaining whether any of them had been engaged in such dealings, and had committed the offences in and by the said information mistakenly imputed to your memorialists.

That such inquiry informed your memorialists, that J. K., who, in the year 1815, lived with your memorialists in the character of salesman, had been the perpetrator of the offences mentioned or referred to in the said information, and that he had, in the course of the year 1815, sold 14lbs. of juice, or liquorice, and one half pence of molasses to the said G. H. But, for the complete justification of your memorialists, and the entire satisfaction of your Honors, your memorialists crave leave to state the particulars of the information which they then received respecting those transactions, &c.

That the above mentioned two articles of juice and molasses are the only articles of that description which the said J. K. bought of your memorialists during the period of time mentioned in the said information.

That your memorialists now find, to their great surprise, that the said J. K. was in the habit of occasionally using the printed invoices of your memorialists' warehouse,

(a) Insert the articles suspected to be deposited.

### III. Proceedings &c. before Justices, &c.—6thly. Forms, &c.

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for making out the bills of parcels of goods really belonging to and sold by himself. But your memorialists positively state, that he had no authority whatever from them for doing this, and they were not aware of the practice at the time, it being a violation of the established regulation of their house, and permission for which they have constantly and uniformly refused to all their clerks or servants who ever applied for such a permission; your memorialists beg leave again to repeat, that they were not in any manner privy to the aforesaid dealings and transactions by and between the said J. K. and G. H., nor were they at all apprized of the same, until after the institution of this prosecution; and they never partook, directly or indirectly, of any part of the gains or profits arising therefrom.

That in a penal proceeding like the present, your memorialists humbly submit they ought not to be charged, and that the law will not charge them with the personal default or misconduct of their servants, committed entirely without their knowledge or suspicion. And the truth of this statement is manifested by the annexed affidavit.

Your memorialists are advised and feel confident that, under these circumstances, they have a good and sufficient defence against the said information; but, as they are of course anxious to avoid the expense of defending a Crown prosecution, and are desirous also of avoiding the public imputation of a violation of the law, of which knowing themselves to be innocent, they are unwilling to be publicly accused; and as they feel assured that your Honors act on principles of public justice, and would not continue a prosecution after every appearance or suspicion of guilt has been removed, they were thought it right to submit this statement to your Honors' consideration, and they humbly pray—

That your Honors, under the circumstances aforesaid, will be graciously pleased to direct your solicitor to instruct his Majesty's Attorney-General to enter a noli prosequi on the record of the said information; or that your Honors will grant to our memorialists such other relief in the premises as to your Honors shall seem just.

And your memorialists shall ever pray, &c.

This memorial was accompanied with the following affidavit, made by J. K. himself, the actually guilty party, and by the three defendants. J. K. had been convicted, and had compounded the penalties incurred by him:

In the Exchequer,

Between { His Majesty's Attorney-General, . . . Informant.  
and  
A. B., C. D., and E. F., . . . Defendants.

Affidavit in support of the said memorial.

A. B., C. D., and E. F., of &c., wholesale grocers and tea dealers, the above-named defendants, and J. K., late of &c., but now of &c., grocer, and late salesman in the warehouse of the said defendants, severally make oath and say; and first defendants themselves say, that these defendants have for upwards of sixteen years last past carried on business as wholesale grocers and tea dealers in , aforesaid, in an extensive way, and with uniform credit and reputation, and have never been knowingly guilty of any violation of the revenue, or of any other laws, in the course of carrying their said business. But notwithstanding the inviolate good conduct of the said defendants in this respect, they were lately, to their great surprise, served with process issuing out of the Court of Exchequer, requiring them to appear to an information to be filed against them in that Court, by his Majesty's Attorney-General. Whereupon the said defendants caused an appearance to be entered for them accordingly, and they have taken an office copy of such information, by which it appears that they are charged in ten several counts, with having, in the year 1815, sold and delivered to one G. H., therein stated to be a licensed brewer of beer, the said defendants being charged in the said information with knowing him to be so licensed, a quantity of liquorice contrary to law, for which a penalty or penalties is or are ought to be recovered. And the said defendants are further charged in the said information, with having sold and delivered to the said G. H., knowing him to be so licensed, a quantity of molasses, contrary to law, for which further penalties are sought to be recovered. But the defendants say, that they never knowingly engaged, either directly or indirectly, in any illegal, illicit, or prohibited course of trade, and particularly defendants positively state, that they are wholly innocent of all and every the aforesaid offences, in and by the said information imputed to them. And the said defendants further say, that they have always been in the habit of &c., [stating the substance of the memorial, as to their practice of allowing their servants to have their bills made out at wholesale prices]. And the said defendants further say, that they now find their great surprise, that the said J. K. was in the habit of occasionally using the said invoices of the said defendants' warehouse, for making out the bills of parcels of goods really belonging to and sold by himself. But the said defendants, and also the J. K., positively state, that he had no authority whatever from them for so doing, and they were not aware of the practice at the time, it being a violation of the establish-



## III. Proceedings, &amp;c.

Proceedings thereon.  
Rejection of the petition.

ed regulation at their house, and permission for which they have constantly and uniformly refused to all their clerks or servants who ever applied for such a permission, and all these deponents positively say, that they, the said defendants, were not in any manner privy to the aforesaid dealings and transactions, by and between the said J. K. and G. H., nor were they at all apprized of the same, until after the institution of this prosecution, and they never partook directly or indirectly of any part of the gains or profits arising therefrom.

Sworn, &c.

Notwithstanding this memorial and affidavit, the petition was not attended to, and the following singular letter was returned:—

Messrs. A. B., C. D., and E. F.

The Attorney-General v. Messrs. A. B., C. D., and E. F.

Gentlemen,

I am desired to acquaint you, that the honourable Board of Excise have refused to grant the prayer of your petition for stay of proceedings in your beer prosecution.

This petition makes no offer, and as the Board never cause any prosecution to be instituted unless the defendant has clearly incurred a penalty for some violation of the Excise laws, they never order proceedings to be stayed but on an offer made by the petition to pay either a fine or costs, or both, by way of atonement for the offence and compromise of the prosecution. Your humble servant,

Excise Office, September 1, 1818.

L. M., Officer.

Result.

The information was tried, and, after wasting several hours, a juror was withdrawn. The gentlemen at present having the care of this branch of the Revenue observe a much more candid, liberal, and honourable course of conduct.

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Excommunication. See ante, Vol. I. p. 637.

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## Execution.

What.

**EXECUTION** is the last performance of an act, as of a judgment, &c. It is the obtaining possession of any thing recovered by judgment of law. 1 Inst. 289.

How put in force.

Execution is in general put in force by a judicial writ, grounded on the judgment of the Court from whence it issues. But, in case of life, the Court may command execution to be done, without any writ. 2 Hawk. c. 51, s. 4; Finch, 478.

On a peer.

In fixed and stated judgments, the law makes no distinction between a peer and a commoner, or between a common and ordinary case, and one attended with extraordinary circumstances; for which reason it was adjudged in *Felton's case*, who murdered the Duke of Buckingham, that the Court could not order his hand to be cut off, nor make it part of the sentence that his body should be hanged in chains, but that the body after execution, being at the King's disposal, might be hung in chains, or otherwise ordered as the King should think fit. 2 Hawk. c. 48, s. 2.

Manner of.

As to the manner of an execution, it cannot be lawfully executed by any but the proper officer, the sheriff or his deputy. 2 Hawk. c. 51, s. 6; 2 Hale, 411. The execution must be done pursuant to the judgment. 2 Hale, 411.

The sheriff cannot alter the execution; if he doth, it is felony, and some say murder. 2 Hale, 411; Co. P. C. 211.

Though the King cannot alter the judgment, he may remit a part of it; as, in treason, he may pardon all but the beheading. 2 Hale, 412. Such pardon must be under the great seal. *Id.* Foet. 269.

Infants.

The execution of persons under the age of discretion is usually respited, in order to obtain a pardon. 1 Hawk. c. 1, s. 8.

Coming to life after hanging.

It is clear that if a man, condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. 2 Hawk. c. 51, s. 7.

Person attainted at large.

Where a person attainted hath been at large after his attainder, and afterwards is brought into Court and demanded why execution should not be awarded against him, if he deny that he is the same person, it shall immediately be tried by a jury returned for that purpose. 2 Hawk. c. 51, s. 3;

vide *Ratcliff's case*, *Post*. 40, 41; 1 *Bla. R.* 3, S. C.; but see *Duberley v. Gunning*, *Peake's C. N. P.* 98.

**EXECUTION.**

As to execution of murderers, see title *Homicide*, Vol. III. p. 256; of transportation, see title *Transportation*, Vol. V. As to Pardons, see title *Pardon*, Vol. V.

Execution of deed.

As to proof of execution of a deed, &c. see *ante*, p. 56, 58.

**Exemplification of Record, &c., Proof by**, see *ante*, p. 42.

**Exigent, Process of**, see *post*, *Process*, Vol. V.

**Exile.** See *Transportation*, Vol. V.

**Ex Officio, Proof of Matter ex officio** noticed by the Courts, *ante*, p. 22;—*Informations ex officio*, see *Information*, Vol. III. p. 366.

**Expenses, &c.** see *Costs*, Vol. I.; *Fees*, Vol. II.

**Exporting Tools, &c., Laws as to**, repealed by 5 Geo. IV. c. 97;—*as to Exportation in General*, see *Export*, Vol. II.

## **Extortion.**

[T is said that extortion, in a large sense, signifies any oppression under colour of right; but that, in a strict sense, it signifies the taking of money, by any officer, by colour of his office, either where none at all is due, or not much is due, or where it is not yet due. 1 *Hawk. c.* 68, s. 1; *Co. Lit.* 58. b.; *per Dallas, J.*, 3 B. & B. 145.]

What.

As to threats to extort, see title *Threats*, Vol. V.

Extortion was, and still continues, a high misdemeanor at common law, and punishable by fine and imprisonment; *Co. Lit.* 368. b.; and, therefore, an indictment at common law lies against a judge for taking a fee for his judgment, an officer for receiving more than the usual fee, a ferryman for taking more than is due to him by prescription, or a sheriff for refusing to execute process till his fees are paid him. *Com. Dig. Extortion*, (A).

A misdemeanor at common law.

As to extortion by coroners, see *ante*, Vol. I. p. 884, 886.

Coroners.

As to extortion by innkeepers, see *ante*, Vol. I. p. 95, 105.

Innkeepers.

As to extortion by toll-gate keepers, see title *Highways*, Vol. III. p. 143. And by stat. 3 Edw. 1, c. 26, (which is only in affirmance of the common law), "No sheriff, nor other the King's officer, shall take any reward do his office, but shall be paid of that which they take of the King; and that so doth, shall yield twice as much, and shall be punished at the King's pleasure."

Tollkeepers.

By stat. 3 Edw. 1, c. 26.

[No sheriff nor other the King's officer]—Under these words, the law beginning with the sheriffs, are understood escheators, coroners, bailiffs, gaolers, and other inferior officers of the King, whose offices were instituted before the making of this act, which do any way concern the administration of justice, or the common good of the subject, or for the King's service. 2 *Inst.* 209.

Who may be guilty of.

Also the justices of the peace, whose office was instituted after this act, bound by their oath of office to take nothing for their office of justice of peace to be done, but of the King, and fees accustomed, and costs limited by statute.

## EXTORTION.

And generally, no public officer shall take any other fees or rewards for doing any thing relating to his office, than some statute in force gives him, or else as hath been anciently and accustomably taken; and if he do otherwise, he is guilty of extortion. *Dalt. c. 41*; and see 1 *Russ. 222*.

But where a person was appointed collector of certain duties under 43 Geo. III. c. 99, by the proper constituted authorities, and considered himself, and was considered by those authorities to be such collector, but whose appointment was informally made, it was decided that he could not be indicted at common law for the receipt of duties by colour and pretence of being collector of such duties, though the money were fraudulently collected and misapplied by him, because he was in fact appointed collector, and in that character received the money. *R. v. Dobson and another, 7 East, 218*.

A collector of post horse duty demanded of A. a sum of money, alleging that A. had let out horses for hire, without payment of the duty. A. denied that he had done so, and gave the collector a promissory note for 5*l.*, the amount of which, after it became due, was paid by A. to the collector, who handed it over to his principal, the farmer of the post horse duties. Held, that this was extortion in the collector, and that his having paid the money over to his principal made no difference. *R. v. Higgins, 4 C. & P. 247*.

A sheriff is not liable to be indicted for the extortion of his officer; *Sawderson v. Baker, 3 Wils. 316*; but he may be sued for it. *Woodgate v. Knatchbull, 2 T. R. 148*.

There are no accessaries in extortion. 1 *Str. 75*.

*Shall take any reward*—Therefore, by this statute, they can at this day take no more for doing their office than hath been since allowed to them by authority of Parliament. 2 *Inst. 210*.

All prescriptions which have been contrary to this statute, and to the common law, in affirmance of which it is made, have been always holden to be void. 1 *Hawk. c. 68, s. 2*.

It is equally extortion, where a greater fee is exacted than what is legally due; as where money is exacted as a fee, where none whatever is payable. 2 *Salk. 680*; 1 *Hawk. c. 68, s. 1*.

It has been resolved, that a promise to pay them money for doing of a thing, which the law will not suffer them to take any thing for, is merely void. 1 *Hawk. c. 68, s. 2*; 2 *Burr. 924*; 1 *Bl. Rep. 204*.

*To do his office*—It is not said, that he shall take no reward generally, but no reward to do his office: thus the fee of 20*d.*, called bar fee, time out of mind taken by the sheriff of every prisoner that is acquitted, is not against this statute; for it is not taken for doing his office. 2 *Inst. 210*; but see title *Gaols, post, 1039*.

But there seems to be no necessity for this distinction; for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees for the labour and attendance of their officers; the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses, while they are restrained to known and stated fees, settled by the discretion of the courts, which will not suffer them to be exceeded, without a proper resentment. 1 *Hawk. c. 68, s. 3*; 2 *Inst. 210, 211*.

But, in the ecclesiastical court, a person was libelled against for fees, and, upon motion, a prohibition was granted, for that it was holden that no court had a power to establish fees; the judge of a court may think them reasonable, but that is not binding; but if, on a *quantum meruit*, a jury think them reasonable, then they become established fees. 1 *Salk. 333*; *Hardr. 351*.

The fees in sessions, for traversing, trying, or discharging indictments, discharging recognizances, and the like, do vary according to the different customs in different places. *Dalt. c. 41*.

*Shall yield twice as much*—At the common law this offence is severely punishable at the King's suit by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And this statute doth add a greater penalty than the common law did give: for

Accessaries.  
What may be  
taken.

For what.

Punishment and  
penalty.

hereby the plaintiff shall recover his double damages. 2 *Inst.* 210; 1 *Hawk.* c. 68, s. 5.

EXTORTION.

And by 31 *Eliz.* c. 5, s. 4, actions on informations for extortion may be laid in any county. It has been said, this section applies to indictments. 1 *Hawk.* c. 68, s. 6, *sed quære*.

Venue.  
31 *Eliz.* c. 5.

*At the King's pleasure*—That is, by the King's justices, before whom the cause depends. 2 *Inst.* 210; 1 *Stra.* 75.

Before whom tried.

*Indictment*—Several defendants may be jointly indicted when no fee was due. 2 *Ld. Raym.* 1248; 3 *Len.* 268; *Com. Dig. Extortion*, (C.); 1 *Stra.* 175. As to the venue, see *supra*. The time of the offence must be alleged. 4 *Mod.* 101, 103. The indictment must state a sum which the defendant received, and it will not be sufficient to aver that he did receive a gift or reward, without specifying value, 4 *Burr.* 2471; 2 *Leach*, 794, though it is not material to prove the exact sum as laid in the indictment. 1 *Ld. Raym.* 149; 6 *T. R.* 267. So, in an information, though several sums and specific persons are stated to have been the objects of the defendant's extortion, if it conclude with a general charge, of which he is found guilty, that, under colour of his said office, he did illegally cause his agents to receive and demand of several other persons several other sums of money, under pretence of weighing and examining their several weights and measures, the whole will be vitiated and judgment will be arrested. 2 *Stra.* 999. If the indictment charge that the defendant, as bailiff of a hundred, under colour of his office, took a sum of money, without shewing more particulars by what pretence it was taken, it will be good at least after verdict; for, perhaps, he might claim it generally as being due to him as bailiff, in which case, the demand could not be otherwise stated. 1 *Sid.* 91. Where nothing is all was due, that fact ought to be averred, and where any thing was due, the sum which might have been lawfully taken must be expressed. 3 *Leon.* 58; *Com. Dig. Extortion*, (C). The Court will not quash an indictment for extortion upon motion, though it appear to be defective, but leave the party to demur. 5 *Mod.* 13.

Indictment.

(No. 1).

Commencement as *ante*, p. 11, form (No. 2).]—on &c., at &c., in the said county, then a [constable] unlawfully, corruptly, and by pretext and colour of his said office, by extortion did extort and receive of and from one C. D., then in the custody of the said A. B., the sum of five shillings, as and for a fee due to him the said A. B. such [constable]. And you, the said keeper, &c. [Conclude as *ante*, p. 11, form (No. 2).]

Commitment of a constable for extortion.

(No. 2).

County of } THE jurors for our lord the King upon their oath present, that  
— } A. O., late of , in the said county, [yeoman], on the day of , in  
year of the reign of , was taken up on suspicion of having committed a cer-  
felony, by , constable of , in the said county, by virtue of a warrant directed  
to the said , under the hand and seal of Sir William Dalton, knight, then and yet  
of the justices of our sovereign lord the King assigned to keep the peace in the  
county, and was on the same day in the year aforesaid committed by him, the  
Sir William Dalton, to A. G., keeper of the gaol of our said sovereign lord the  
at , in the said county, under the custody of him the said A. G. to be safely  
upon suspicion of the felony aforesaid, and the said A. O. was detained in that  
under the custody of the said A. G. from the time that he was committed to the  
prison for one month from thence next ensuing, upon suspicion of the said felony;  
theless the said A. G. being such keeper as aforesaid, in nowise regarding the  
in that case made, and the penalty therein contained, did on the day of  
at aforesaid, in the said county, demand and receive pounds of lawful  
y of Great Britain of and from the said A. O. for ease and favour in the said  
for the said time, in contempt of our said sovereign lord the King, and against  
orm of the statute aforesaid, and against the peace of our said sovereign lord the  
his crown and dignity.

Indictment for ex-  
tortion in a  
gaoler.

(No. 3).

County of } THE jurors for our lord the King upon their oath present, that C. D.  
— } late of in the said county, [yeoman], being bailiff of the hundred of

Indictment for ex-  
tortion by a  
bailiff.

*in the said county, on the day of , in the year of the reign of , at , in the said county, by pretext and colour of his said office, did unjustly and by extortion take and extort five shillings of one A. I. of , in the said county, [yeoman], one of the freeholders qualified to serve upon juries in the said county, to excuse the said A. I. from attending or appearing at the assizes that were then next to be holden in and for the said county, when in fact the said A. I. was not returned by the sheriff of the said county in any panel of jurors, and also when indeed no such sum of money was due to the said C. D. for his fee for excusing the attendance or appearance of the said A. I. at the assizes aforesaid; to the evil example of other offenders, to the great damage of him the said A. I., and against the peace of our said lord the King, his crown and dignity.*

**Factor.** See *Agent*, Vol. I.;—as to *their Pledging Property*, see *post*, *Larceny*, Vol. III. p. 560.

**Fairs.** As to *Larceny in*, see *Larceny*, Vol. III.;—*Selling Beer, &c. in*, see *Alehouses*, Vol. I. p. 68, 71;—*Nuisances by*, see *Nuisance*, Vol. III.;—*Holding on Sundays*, see *Lord's Day*, Vol. III. p. 658;—*Sale of Horses at*, see *Horses*, Vol. III. p. 264, 265.

**False Imprisonment.** See *Assault*, Vol. I.; *Arrest*, Vol. I.

**False News.** See *Conspiracy*, Vol. I. p. 784; *Engrossing*, Vol. II.; *Libel*, Vol. III.

**False Personating.** See *Personating*, Vol. V.;—*Personating Bail*, *ante*, p. 309;—*Personating Pensioners*, Vol. III. p. 790;—*Personating Seamen*, Vol. V. p. 329, 345.

**False Pretences.** See *Cheat*, Vol. I.

## Fast Days.

BY the 2 & 3 Edw. VI. c. 19, for the encouragement of the fisheries, and the increase of cattle, and stat. 5 Eliz. c. 5, intituled *An Act touching politic constitutions for the maintenance of the navy*, and by stat. 35 Eliz. c. 7, certain restrictions were imposed with regard to eating on certain fast days; but these statutes have long since fallen into disuse, and may be deemed obsolete. See further, title *Lord's Day*, *post*, Vol. III.

**Fees.** See *Costs*, *Extortion*. See also the various titles of offices throughout the work; as, *Clerk of the Peace*, *Coroner*, *Constable*, *ante*; *Gaol*, *post*, 1039, &c.

## Felo de Se.

AS to this offence in general, and what amounts to, see title *Homicide*, Vol. III. p. 257, 258.

As to the forfeiture in case of, see title *Forfeiture*.

The 4 Geo. IV. c. 52 relates to the interment of the remains of any person found *felo de se*. See the act, title *Homicide*, Vol. III. p. 257, 258.

## Felony, &c.

- I. *Felony*, 735.
- II. *Misprision of Felony*, 736.
- III. *Theftbote, or Compounding*, 736.
- IV. *Rewards for apprehending Felons*, 736. See *Rewards*, Vol. V.

### I. *Felony*.

**FELONY** is supposed by some to come from the Saxon *fel*, which signifieth fierce or cruel; of which the verb *fell* signifieth to throw down or demolish, and the substantive of that name is used to signify a mountain rough and uncultivated. But the same word, with a little variation, runneth through most of the European languages, and signifieth, more generally, an offence at large; and the Saxon word *fellan* signifieth to offend, and *fellnissa*, an offence or failure; and although *felony*, as it is now become a technical term, signifieth, in a more restrained sense, an offence of a high nature, yet it is not limited to *capital* offences only, but still retaineth somewhat of this larger acceptation; for petit larceny is felony, although it is not capital.

Definition of.

According to Sir *Henry Spelman's* observation, it signifies such an offence or which, during the feudal institution, a man should lose or forfeit his estate; which he derives of two northern words, *fee*, which signifies the fief, and, beneficiary estate, and *lon*, which signifies price or value.

Upon the whole, the only adequate definition of felony seems to be this, viz. "an offence which occasions a total forfeiture of either lands or goods, both, at the common law, and to which capital or *other* punishment may be superadded, according to the degree of guilt." 4 *Bl.Com.* 94-5.

The idea of felony is, however, so generally connected with that of capital punishment, that it seems hard to separate them; and to this usage the interpretations of law now conform. For if a statute makes any new offence *felony*, the law implies it shall be punished with death, (viz. by hanging), well as by forfeiture. See 1 *Hawk. c.* 41, s. 4; 2 *Id. c.* 48.

Statute enacting a felony.

Where a statute declares that the offender shall, under the particular circumstances, be deemed to have *feloniously* committed any act, it makes the offence a *felony*, and imposes all the common and ordinary consequences ending a felony. 3 *M. & S.* 556. And though a statute make the doing an act *felonious*, yet, if a subsequent act make it *penal* only, the latter is considered as a virtual repeal of the former. 1 *Hawk. c.* 40, s. 5.

All *felonies* are several and cannot be joint, so that a pardon of one felon not discharge another; but the felony of one man may be dependent on that of another, and the pardon of the one, by a necessary consequence, run to the benefit of the other, as in cases of Principal and Accessary,

Felony by several.

See title *Accessory*, Vol. I.

It would swell this title unnecessarily, and to an inconvenient length, to go down every thing which may be comprehended under the word *felony*; therefore, for the consideration of the several particular kinds of felonies, the reader is referred to their respective titles; as for instance, *Burglary*, *Coin*, *Jury*, *Homicide*, *Rape*, *Robbery*, and many others; and, especially, the relating to stolen goods of all kinds belongs to title *Larceny*.

Reference to felonies.

As the method of bringing a felon to justice, from the first commission of felony to his condemnation and execution, is treated of under the several titles of *Arraignment*, *Arrest*, *Attainder*, *Bail*, *Commitment*, *Confession*, *Sentence*, *Examination*, *Execution*, *Forfeiture*, *Gaol*, *Hue and Cry*, *Indictment*, *Judgment*, *Jurors*, *Process*, *Trial*. And the course and whole process of trying an offender is treated of under titles *Sessions*, *Trial*, Vol. V.

Mode of apprehending and prosecuting a felon.

## FELONY.

The method of confining offenders to hard labour in penitentiary houses, or in vessels upon navigable rivers, instead of transportation, is treated of under the title *Transportation*, Vol. V.

As to Arresting Felons, see title *Arrest*, Vol. I.

As to the Expenses of Commitment, see title *Commitment*, Vol. I. p. 763.

As to the Expenses of Prosecutions, and the Fees payable by Defendants, see *Costs*, Vol. I.

As to the Rewards in apprehending Felons, see title *Rewards*, Vol. V.

## II. Mispriison of Felony.

What is.

MISPRISON of felony (from the French word *mespris*, a neglect or contempt), is the concealing of a felony which a man knows, but never consented to; for, if he consented, he is either a principal or accessory in the felony, and consequently guilty of mispriison of felony, and more. 3 *Inst.* 36; 1 *Hale*, 374.

For it is said that every felony includes mispriison of felony, and may be proceeded against as a mispriison only, if the King please. 1 *Hawk.* c. 59, s. 1.

Punishment for.

The punishment of mispriison of felony in a common person, is fine and imprisonment; in an officer, as sheriff or bailiff of liberties, imprisonment for a year, and ransom at the King's pleasure, by the statute of Edw. I. c. 9.

If any person will save himself from the crime of mispriison, he must discover the offence to a magistrate with all speed that he can. 3 *Inst.* 140.

Mispriison in a larger sense is used to signify very considerable misdemeanor, which hath not a certain name given to it in the law.

## III. Theftbote.

What is.

THEFTBOTE (from the Saxon words *theft* and *bote*, boot or amends) is, where one not only knows of a felony, but takes his goods again, or other amends, not to prosecute. 1 *Hawk.* c. 59, s. 5; 1 *Russ.* 210.

But the bare taking of one's own goods again, which have been stolen, is no offence, unless some favour be shewn to the thief. 1 *Hawk.* c. 59, s. 7.

Punishment for.

This offence is very nearly allied to felony, and is said to have been anciently punished as such; but at this day it is punishable only with ransom and imprisonment, unless it were accompanied with some degree of maintenance given to the felon, which makes the party an accessory after the fact.

## IV. Rewards for Apprehending Felons.

Rewards.

THE law on this subject has in prior editions been collected here. It is considered best to place it under the more appropriate title *Rewards*, Vol. V. and see that title. The act now in force relating thereto is the 7 Geo. IV. c. 64, s. 28, 29, 30, which enactment makes a material alteration in the previous law collected in this part of prior editions of this work.

## Forms, in Felonies.

Two forms of proceedings for a felony, viz. an information and warrant of apprehension for stealing goods were here inserted in prior editions. They will be found in title *Arresting*, Vol. III. See the various titles of Felonies throughout the work for the forms in general relative thereto.

**Feme Covert**, Evidence by, *ante*, p. 66; *See* **Wife**, Vol. V.

**Fences and Fens**, Destroying, *see* **Malicious Injuries to Property**, Vol. III. p. 740.

**Ferry**. Indictment lies against Ferryman, for Extortion, *ante*, Extortion, Vol. II.—*See* **Highway**, Vol. III.; **Bridge**, Vol. I.

**Fetters**. *See* **Arraignment**, Vol. I. p. 253; **Gaol**, Vol. II.

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## Fighting.

(*See* **Assay**, **Assault**, Vol. I.; **Riot**, Vol. V.)

**PRIZE-FIGHTING**, like any other fighting, is illegal, and a breach of the peace. No consent can make it legal; and all the country being present would not make it less an offence; and, in general, prize-fights are unlawful assemblies, and every one going to them is guilty of an offence, and indictable accordingly. *See* *R. v. Billingham*, 1 *M. & R. M. C.* 127. "My advice to magistrates and constables is, in cases where they have information of a fight, to secure the combatants beforehand, and take them to a magistrate, who ought to compel them to enter into securities to keep the peace till the next assizes or sessions, and if they will not enter into such security, to commit them to prison. In this way the mischief would be prevented and the fights put a stop to." *Per Bayley, Id.* It is usual to require a surety for the peace between the two combatants and all other persons.

As to Death by Fighting, *see* title **Homicide**, Vol. III. p. 247, 248; **Duelling**, Vol. I.

As to Fighting and Quarrelling in Churches, *see* title **Church**, Vol. I. p. 635, 636.

As to Amicable Contests, *see* title **Assault**, Vol. I. p. 271.

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**Finding of Grand Jury**. *See* **Sessions**, Vol. V. p. 459, 465; **Jury**, Vol. III. p. 435.

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## Fine, Punishment by (a).

**Punishment by fine.**

**A FINE** is the lowest species of punishment which can be inflicted. 11 *Harg. St. Tr.* 292.

**For what.**

It differs from an amercement, inasmuch as the latter, though ordered by the Court, is affeered or fixed by the jury, and the former is determined on by the judges, and forms a part of their sentence. 8 *Rep.* 40.

**Who may fine.**

As to when a party may be fined see the different titles of offences throughout this work. It is only for the smaller species of offences that a party can be fined, as for misdemeanors, &c.

**Presence of defendant.**

Courts of record only can in general fine and imprison, and such a Court may fine for an offence committed in Court in their view, or by the confession of a party recorded in Court. 1 *Lil. Ab.* 621. Such a Court might fine for a contempt. 1 *Rol. Ab.* 219; 8 *Rep.* 38; 9 *Rep.* 60; 6 *T. R.* 530. Some Courts may fine but not imprison, as the court leet. Some may imprison but not fine, as the constables at the petty sessions, for any affray made in disturbance of the Court. 11 *Rep.* 44; 1 *Rol. Rep.* 74. Some Courts cannot fine or imprison, but may amerce, as the county court, hundred, &c. 11 *Rep.* 43 *b.* Some Courts can neither fine, imprison, nor amerce, as ecclesiastical Courts, held before the ordinary, archdeacon, &c., or their commissaries, and such who proceed according to the canon or civil law. 11 *Rep.* 44 *a.* Acts of Parliament sometimes give powers to Courts, though not of record, to fine.

**Who to have.**

A defendant need not be personally present in Court where a judgment of fine only is pronounced against him, if, in such case, a clerk in court will undertake to pay the fine, and the Court think fit to dispense with his attendance. 1 *Salk.* 55; 2 *Hawk. c.* 48, *s.* 17; *Com. Dig. Indictment*, (N).

**Amount of fine.**

All fines and amercements are debts of record, and belong to the King the instant judgment is given. 3 *Salk.* 32; 2 *B. & A.* 613. But some part of a fine (usually a third) may be given to the prosecutor for the injuries he has sustained. Such part is given by the Court of King's Bench, they having the King's privy seal for that purpose. 1 *Keb.* 487; 2 *Hawk. c.* 25, *s.* 3; *Bac. Ab. Indictment*, (A).

The amount of the fine ought, in no case, to be excessive. See 9 *Hen. III. c.* 14.

**Mitigation of.**

It seems, that whenever fine and ransom are mentioned in a statute, the latter imports a sum three times the amount of the former. 2 *Dyer*, 232 *a.*; 4 *Bla. Com.* 380; *sed vide Co. Lit.* 127. When an act of Parliament directs a fine at the will of the King, this is always understood to mean at the discretion of the judges, and they fix it at their pleasure within constitutional boundaries. 3 *Salk.* 33.

**Feme covert.**

But where a statute specifies the sum to be forfeited, the Court have no power to mitigate it after conviction. 3 *Salk.* 33. Nor have the King's Bench, in any case, authority to lessen a fine imposed by an inferior tribunal; but, in both these cases, redress may be obtained; in the former case, in the Court of Exchequer, *Id.*, or sometimes at sessions; and in the latter, by petition to the lords of the treasury. 8 *T. R.* 618, *n.* It is said, however, to be the constant practice of the Court of King's Bench, to intimate a design of mitigating the fine to the King, if the offender will pay the prosecutor's costs, and make satisfaction for his damages. 2 *Hawk. c.* 25, *s.* 3; *Bac. Abr. Indictment*, (A). And that Court is in possession of a writ of privy seal, issued at the commencement of every reign, warranting them in applying the money or part of it in defraying the prosecutor's expenses.

On a motion to mitigate the fine the defendant should appear in person. 1 *Ventr.* 209; 3 *Salk.* 33.

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(a) See in general, *Toml. Law Dict.* pairing, &c. highways, see *post*, Vol. ut. "Fine;" 1 *Chit. C. L.* 808-9; *Com. III. p.* 71, 73, 77; fines for not repairing bridges, *ante*, Vol. I. p. 505, 510. *Dig. "Fines."* As to fines for not re-

When a married woman is convicted of a misdemeanor, some other punishment will be imposed in lieu of a fine, because, in contemplation of law, she can have nothing with which she may pay it. *R. T. Hard* 279.

If the King is willing to remit the fine, the attorney-general must acknowledge satisfaction by an entry to that effect on the record. *Bunb.* 40; *Trem. P. C.* 303; see 2 *M. & S.* 201.<sup>1</sup>

**FINE, PUNISHMENT BY.**

## **Fines and Forfeitures, Levying and Estreating of.**

- I. *Levying and Estreating of, in General*, 739.
- II. *Levying of, when imposed or taken before Justices of the Peace, and at Quarter Sessions*, 742.

### **I. Levying and Estreating of, in General.**

WHEN a fine is imposed by the Court of King's Bench, process may issue directly out of that Court to levy it. Such process is usually a *levari facias*. It may be issued directly, notwithstanding the judgment be both fine and imprisonment. *R. v. Woolfe*, 1 *Chit. Rep.* 428; 2 *B. & A.* 609, *S. C.* A *capias pro fine* may also be awarded. 1 *Salk.* 56.

Levying fine by Court of King's Bench.

The Court will not give the sheriff directions how he shall dispose of property remaining in his hands, which has been seized in execution towards the payment of a fine imposed upon a defendant convicted of a blasphemous libel; but if the sheriff has made an improper return, it may be quashed. *R. v. Carlile*, 1 *D. & R.* 474.

The payment of an amercement may be enforced by *distringas* or action of debt. 2 *New. Ab.* 502.

Levying amercement.

When a fine is imposed by the Court of King's Bench, it may be paid to any of its accredited officers, from whence it usually passes to the privy purse, without being brought into the Exchequer. 1 *M. C. & Y.* 534, 535. A payment to the King's coroner will suffice. *R. v. Shackell*, *Id.* 514.

Payment of fine.

The party is sufficiently discharged by the payment of the fine to any officer empowered to receive it, and is not bound to obtain a *quietus* from the Exchequer. *Id.*

When a person has entered into a recognizance to keep the peace, which becomes forfeited by his committing any breach of the peace, if it was acknowledged before a justice out of sessions, a writ of *certiorari* must be obtained to remove it into the Crown Office. This writ is obtained on laying an affidavit of the circumstances before a judge at chambers, who will grant *fiat* for the writ to issue; when the writ has been served and the recognizance is returned, a writ of *scire facias* is sued out at the Crown Office, stating the recognizance and suggesting the breach of it. This is delivered to the sheriff of the county in which the defendant resides, and he gives notice of it to the defendant, who must enter an appearance at the Crown Office, and plead any matter in defence; and on this issue is joined, and that issue tried in the same way as any other issue joined in the Crown Office, except that no proclamation is made at the trial, there being no crime to be tried. If the jury find the recognizance has been forfeited, they find a verdict for the crown, and judgment is entered up, and a *fi. fa.* or *ca. sa.* issued out of the Crown Office for the amount of the recognizance; but if to these facts there be a return of *nihil* or *non est*, or if the prosecutor take no steps the judgment so signed, the recognizance is estreated into the Exchequer by the master of the Crown Office, in the same way as a recognizance for-

Enforcing recognizance to keep the peace.

LEVYING AND  
ESTREATING IN  
GENERAL.

## Estreat.

Amercing for not  
returning estreat.Practice as to es-  
treata.Enforcing pay-  
ment.Process for levy-  
ing.Fines, &c. before  
justices of peace.When estreats to  
be returned.

feited by the non-appearance of a party to receive judgment; and process issues from the Exchequer. 2 C. & P. 11, n., and *R. v. Widdin, Id.*

An estreat, as we have already seen, (*ante*, title *Estreat*, Vol. II.) is a true copy or note of some original writing or record, and especially of fines, amercements, and forfeitures, imposed in the rolls of a court, to be levied by the bailiff or proper officer.

By stat. 3 Geo. I. c. 15, s. 12, clerks of assize, &c. may be amerced for not returning their estreats, by the barons of the Exchequer.

All estreats of fines, recognizances, amercements, and other forfeitures, (other than fines, recognizances, and forfeitures, forfeited before justices of the peace, and at quarter sessions, *post*, 742), are now regularly transmitted from all jurisdictions wherein they are imposed, into the treasurer's remembrancer's office in the Exchequer, which estreats, after examination of them by the third sworn clerk in office, in order to see that they are correctly taken, and after a short entry made thereof by him (for which service no fee is paid) are delivered by him to the clerk of the foreign estreats, or his deputy, who subscribes the entry of estreats, thereby charging himself with the receipt of them for the purpose of their being by him produced at the apposal of the sheriff, before the foreign apposer, who has a counterpart delivered to him by the sheriff, to the end that he may charge the said sheriff with such fines as are paid in court at the time of conviction, or otherwise; (see 1 M.C. & Y. 536, 537); and the remainder of such fines and forfeitures not so taken in charge, are sent out by the clerk of the estreats in the summons of the green wax (which is a *levari facias*, and in the nature of a *feri facias*), to the sheriffs of the respective counties, on the seal day after the return of the estreat into the Exchequer. This writ is returned in the following Easter term, and then the same officer issues a second summons to the sheriffs on the seal day after the following Trinity term. In the Michaelmas or Hilary term following, upon the return of the second process, the sheriffs are apposed before the foreign apposer, and those fines which are returned *nil*, are handed over through the clerk of the *nil* to the Pipe Office, and entered on the great roll, and become debts of record; land schedules from the great roll are sent from thence to the office of the lord treasurer's remembrancer, who, by his officers, orders the writ of extent to issue. *In re Foreign Apposer*, 2 Y. & J. 564.

It is the duty of the clerk of the estreats, as a matter of course, when he finds a fine estreated as *unpaid*, without further examination, or exercising any discretion whatever, to issue process for its recovery. See *R. v. Shackell*, 1 M.C. & Y. 523, 524; and see further as to the duty of the clerk of estreats, 7 Hen. IV. c. 3. *In re Foreign Apposer*, 2 Y. & J. 564. Such process is by *feri facias*, *capias*, and *extent*. When it appears that the fine has been paid, then the process should be, if any, against the officer who received it, in order that he may account for it, and not against the defendant. 1 M.C. & Y. 514.

By stat. 22 & 23 Car. II. c. 22, s. 10, where any fine or forfeiture shall be paid to any sheriff, clerk of assize, clerk of the peace, or other officer, and be certified and estreated into the Exchequer, the process or summons of green wax shall go forth to the sheriff, against the officer or person to whom such fine or forfeiture is paid, for levying the same, &c.

Though fines and recognizances forfeited before justices of the peace, or at the quarter sessions, should not now be estreated into the Exchequer, in consequence of the provisions contained in the recent acts of 3 Geo. IV. c. 46, *post*, 742; and 4 Geo. IV. c. 37, *post*, 747; yet, if they be so estreated, that Court has jurisdiction over them, *semb.* 13 Price's Rep. 302, n.

From the earliest period, down to the statute 22 & 23 Car. II. c. 22, the practice was not to estreat fines and forfeitures into the Court of Exchequer, which were imposed by the Court of King's Bench, until they were paid. The duty imposed by that statute upon the officer of the Court of King's Bench is to estreat, not merely such fines as are paid, but also all fines that are not paid.

Where fines on defendants convicted on indictments or criminal informations are set in Hilary or Easter Term, and not paid before the end of the

following Hilary Term, the King's coroner, or other proper officer, is bound, by the 22 & 23 Car. II. c. 22, to estreat them into the Exchequer, as fines imposed and not received on the last day of the ensuing Trinity or Hilary term respectively; and if any such fine be subsequently paid to the first officer, it is his duty, under the statute, to make a second estreat of it into the Exchequer, as of a fine received on the last day of the succeeding Trinity or Hilary Term, as the case may be, and a previous application to discharge the first estreat in the whole or in part is unnecessary. *R. v. Shackell*, 1 M. Cl. & Y. 514, 523.

By stat. 4 & 5 Wm. III. c. 24, s. 5, all clerks of assize, &c., upon delivery of their estreats, are to take the following oath before one of the barons of the Exchequer (a):

"YOU shall swear, that these estreats, now by you delivered, are truly and carefully made up and examined, and that all fines, issues, amercements, recognizances, and forfeitures, which were set, lost, imposed, or forfeited, and in right and due course of law ought to be estreated in the Court of Exchequer, are, to the best of your knowledge and understanding, therein contained; and that in the same estreats are also contained and expressed all such fines as have been paid into the Court, from which the said estreats are made, without any wilful or fraudulent discharge, omission, misnomer, or defect whatsoever. So help you God."

When the estreats come into the aforesaid office, the parties concerned have an opportunity of traversing the King's right, in which case they employ one of the sworn clerks in the office as their attorney, and another of the sworn clerks is retained on the part of the crown in support of its right, who carry on the pleadings in this office according to the course of the common law, and the right is either determined by the Court on demurrer, or after issue joined by a jury, and the pleadings and judgments thereon are entered on record by sworn clerks on rolls, intituled, the *memoranda* of each year. 2 *Man. Exch. Pract. App.* 253.

The parties may also apply in a summary way for the favour of the Court of Exchequer, which is empowered, under a writ of privy seal, issued at the commencement of every reign, to compound or discharge any fines, issues, amercements, and recognizances, according to the custom of each case. 2 *Man. Exch. Pract. App.* 253; see also the 33 Hen. VIII. c. 39.

Also, by stat. 4 Geo. III. c. 10, this authority of the Exchequer is enlarged; and after reciting, that in order to relieve ignorant people, especially poor persons, whose recognizances, as parties or witnesses, have, by reason of their inattention, been estreated, it is enacted, that it shall be lawful for the barons of his Majesty's Court of Exchequer, upon affidavit and petition to be presented to them by or on the behalf of the person or persons imprisoned, or liable to be imprisoned, on the forfeiture of any such recognizances, to discharge such person or persons, by order from the said barons, without any *quietus* to be sued out for that purpose; for which order no more than 1*l.* 1*s.* shall be taken by the officer appointed to give out the same; but no discharge shall be given on such petitions, where any debt is due to the Crown, other than by recognizances so prayed to be discharged; nor in any cases of defrauding his Majesty's revenue by contraband trade, or assaulting his Majesty's officers of the customs or excise, in the execution of their duty, or any person or persons lawfully assisting them therein. This act has not been frequently brought into notice; it has been considered as giving the Court greater power than it before had. See *R. v. Cartman*, 1 *Price*, 637, where an estreat of a forfeited recognizance on a serious offence was discharged under the act. The usual documents to found an application for this discharge are a *constat*, petition, certificate, and affidavit, verifying the statements in the petition. See further, as to discharging, mitigating, and compounding fines and forfeited recognizances, 1 *Price*, *Exch. Pract.* c. 13.

The Court will not discharge the estreated recognizance of a surety of

#### LEVYING AND ESTREATING IN GENERAL.

Oath to be taken.

Form of oath.

Traversing King's  
right to fine.

Compounding and  
discharging fines,  
&c. by Court of  
Exchequer.

For discharging  
estreated recogni-  
zances.

(a) When it may, and how it should, be taken by commission, see *post*, 746, *etc.* This provision of Wm. III. is still in force, notwithstanding the 3 Geo. IV. c. 46. 1 *M. & R. M. C.* 347; 2 *Y. & J.* 142, S. C.

LEVYING AND  
ESTREATING IN  
GENERAL.

another for the performance of an order of sessions, where, in consequence of the non-performance of the condition, the act of the principal has subjected a parish to expense, upon motion made on the ground of the poverty of the party only, unless the parish officers will consent to the application. Nor will the Court in any case grant a rule requiring the *parish officers* to shew cause why a party making such an application should not be discharged. *In re Smith's Recognizance*, 13 Price, 3.

Infancy is no ground for discharging a forfeited recognizance to appear at the assizes to prosecute a felony. *In re Williams*, 13 Price, 673.

II. Levying &c. of Fines and Forfeitures imposed before  
Justices and at Sessions.

Fines and forfeitures before justices, and at sessions.

THE provisions of the 22 & 23 Car. II. c. 22, which relate to fines, issues, and amercements, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, imposed and adjudged at any quarter sessions of the peace, and of the 4 & 5 W. & M. c. 24, which make the same perpetual, are now repealed by the 3 Geo. IV. c. 46; and proceedings to be adopted in future, for enforcing the payment of fines and forfeited recognizances, before justices or the court of general or quarter sessions, are directed by that act, and by stat. 4 Geo. IV. c. 37, passed for amending it.

These new provisions have, it seems, effected a complete change in the law and practice in respect to *recognizances forfeited at sessions*; and it seems now the duty of sessions not to estreat the forfeited recognizances into the Exchequer, as formerly, but to issue process thereon immediately themselves, in order that the amount may be forthwith levied; and the clerks of the peace have no longer any authority to send the estreat into the Exchequer: though, if indeed the estreat be sent into that Court, it has jurisdiction over it. See 13 Price, *Exch. Rep.* 301-2, n.

By the stat. 3 Geo. IV. c. 46, s. 1, after reciting, 'Whereas an act was passed in the twenty-second and twenty-third years of his late Majesty king Charles the Second, intituled *An Act for the better and more certain recovery of fines and forfeitures due to his Majesty*, which act was made perpetual by an act passed in the fourth and fifth years of the reign of their late Majesties William and Mary, intituled *An Act for reviving, continuing, and explaining several laws therein mentioned, which are expired and near expiring*: And whereas an act was passed in the forty-first year of his late Majesty George the Third, intituled *An Act for better payment of fines and forfeitures imposed by justices out of sessions in England*:' And whereas great delays occur in the return of fines, issues, amerciaments, forfeited recognizances, sum and sums of money paid or to be paid in lieu or satisfaction of them or any of them, by or before any justices of the peace, or at any general or quarter sessions of the peace in that part of the united kingdom called England: And whereas such delays impede the due administration of justice, as well as the recovery of the fines and forfeitures due to the crown thereupon; and it is therefore expedient that further provision should be made for the speedy and regular return of all such fines, issues, amerciaments, forfeited recognizances, and sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them,' it is enacted, "That, from and after the 29th day of September, 1822, so much of the aforesaid act passed in the twenty-second and twenty-third years of the reign of his late Majesty king Charles the Second, as relates to fines, issues, and amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, imposed and adjudged at any quarter sessions of the peace; and also, that such part (a) of the aforesaid act of their late Majesties William and Mary, as makes perpetual the aforesaid provisions contained in the said act passed in the twenty-second and twenty-third year of the reign of his

3 Geo. 4, c. 46.

22 & 23 Car. 2, c. 22.

4 & 5 W. & M. c. 24.

41 Geo. 3, c. 85.

So much of 22 & 23 Car. 2, c. 22,

as relates to fines, &c.

4 & 5 W. & M. c. 24, s. 4.

(a) That the whole of this act is not repealed, see 1 M. & R. M. C. 347, ante, 741, post, 746, n. (b).

late Majesty king Charles the Second; and likewise so much of the said act passed in the forty-first year of the reign of his late Majesty king George the Third, as relates to the annual payment of all fines, forfeitures, and penalties, or such parts thereof as shall be due to the King, imposed and received by any justice out of sessions, and not made payable to any body or bodies corporate, or any commissioners of any public board, or any other person or persons, into the hands of the sheriff, previous to the Michaelmas sessions; and also so much of the said act of the forty-first year of the reign of his said late Majesty king George the Third, as requires such justices, previous to the Michaelmas sessions yearly, to transmit to the clerk of the peace or town clerk where such fine was imposed, an account in writing of all such fines, shall be and are hereby repealed."

Sect. 2. "That, from and after the 29th day of September, 1822, all fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, (save and except the same shall, by virtue of any act or acts of Parliament made or to be made, be otherwise directed to be levied, recovered, appropriated, or disposed of), which already are or hereafter shall be set, imposed, lost, or forfeited by or before any justice or justices of the peace, in that part of the united kingdom called England, shall be and are hereby required to be certified by the justice or justices of the peace by or before whom any such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, shall be set, imposed, lost, or forfeited to the clerk of the peace of the county, or town clerk of the city, borough, or place, in writing, containing the names and residences, trade, profession, or calling of the parties, the amount of the sum forfeited by each respectively, and the cause of each forfeiture, signed by such justice or justices of the peace, on or before the ensuing general or quarter sessions of such county, city, borough, or place respectively; and such clerk of the peace, or town clerk, shall copy on a roll such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, together with all fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, imposed or forfeited at such court of general or quarter sessions, and shall, within such time as shall be fixed and determined by such Court, not exceeding twenty-one days after the adjournment of such Court, send a copy of such roll, with a writ of *distingas* and *capias*, or *feri facias* and *capias*, according to the form and effect in the schedule marked (A) (b), annexed to this act, to the sheriff of such county, or the sheriff, bailiff, or officer of such city, borough, or place having execution of process therein respectively, as the case may be, which shall give the authority to such sheriff of such county, or the sheriff, bailiff, or officer, as the case may be, for proceeding to the immediate levying and recovering of such fines, issues, amerciaments, forfeited recognizances, sum or sums of money to be paid in lieu or satisfaction of them or any of them, on the goods and chattels of such several persons, or for taking into custody the bodies of such persons, in case sufficient goods and chattels shall not be found whereon distress can be made for recovery thereof; and every person so taken shall be lodged in the common gaol, until the next general or quarter sessions of the peace, there to abide the judgment of the said Court (c)."

Sect. 3 enacts, "That the clerk of the peace or town clerk shall, before he shall deliver the roll to such sheriff, bailiff, or officer, containing the fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, and is hereby required to make oath before any justice of the peace for the county, riding, city, borough, or place for which such clerk of the peace or town clerk shall sit; which oath shall be indorsed on the back of the writ, or of the said roll annexed thereto, such clerk of the peace or town clerk stating therein all such fines, issues, amerciaments, forfeited recognizances, sum or sums of

LEVYING &c.  
OF FINES &c.41 Geo. 3, c. 85,  
U. K. & I.

3 Geo. 4, c. 46.

Repealed.

Statements of  
fines, &c. to be  
certified to clerk  
of the peace by the  
justice by whom  
such fine, &c. is  
imposed (a).Clerk of the peace  
to copy on a roll  
such fines, &c., at  
quarter sessions,  
and send a copy of  
such roll, with  
writ of *distingas*,  
&c., to the sheriff,  
&c., according to  
form in schedule  
(A).Sheriff, &c. may  
proceed thereon.Clerk of the peace  
or town clerk to  
make oath as to all  
fines, &c. inserted  
in the roll and paid.(a) See further 4 Geo. IV. c. 37, s. 1, *ibid.*, 747.(b) See form *post*, 746.

(c) See the further provisions of the

4 Geo. IV. c. 37, *post*, 747, as to sheriffs keeping the writs, &c. and how the levy is to be made where the party resides in another county.

LEVYING &c.  
OF FINES &c.3 Geo. 4, c. 46.  
Form of oath.

money, which shall have been paid or otherwise accounted for; and such oath shall be made in the form following:—

"I, , make oath, That this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances, and forfeitures, which were set, lost, imposed, or forfeited, and in right and due course of law ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll, and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in Court or otherwise, without any wilful or fraudulent discharge, omission, misnomer, or defect whatever. So help me God."

Notice to sureties according to form in schedule (B).

Sect. 4 enacts "That each and every justice of the peace before whom any recognizance shall be entered into or taken, shall and is hereby required to give, or cause to be given, at the time of entering into such recognizance, to the person or persons, surety or sureties so entering into the same, and to each of them, a written or printed paper or notice, in the form or to the effect stated in the schedule marked (B) (a), to this act annexed, adapting the same to the particular circumstances of the case; and each and every such justice shall, in such recognizance, state and particularly specify not only the profession, art, mystery, or trade of every person so entering into such recognizance, together with their Christian name and names and surnames, but also the parish, township, or place of his or her residence; and in case such residence shall be in any city, town, or borough, shall also state and particularly specify the name of the street and number of the house (if any) in which such person shall reside, and also whether owner or tenant thereof, or lodger therein."

What recognizance to specify.

Appeal to quarter sessions against fines, &c. security.

Sect. 5 provides and enacts, "That if any person, on whose goods and chattels such sheriff, bailiff, or officer, shall be authorized to levy any such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, shall give security (b) to the said sheriff, bailiff, or officer, for his appearance at the next general or quarter sessions, then and there to abide the decision of the Court, and also to pay such forfeited recognizance, or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses (c) as shall be ordered and adjudged by the Court, it shall be lawful for such sheriff, bailiff, or officer, and he is hereby authorized and required, to discharge such person so giving such security out of custody: provided also, that in case such party so giving security shall not appear in pursuance of his undertaking, it shall be lawful for the Court forthwith to issue a writ of *distingas* and *capias*, or *feri facias* and *capias*, against the surety or sureties of the person so bound as aforesaid."

Proviso for non-appearance.

Quarter sessions to determine such appeals.

Sect. 6 enacts, "That the court of general or quarter sessions, before whom any person so committed to gaol or bound to appear shall be brought, is hereby authorized and required to inquire into the circumstances of the case, and shall, at its discretion, be empowered to order the discharge of the whole of the forfeited recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, or any part thereof (d); and such order shall be made in the form or to the effect of the schedule marked (C) to this act an-

Order made, form in Schedule (C).

(a) Form, *post*, 747.

(b) If the party be desirous of appealing to the sessions for relief against the forfeited recognizance, he should give the security here pointed out, and not pay the money to the sheriff or allow him to levy on his goods, for the clause does not extend to cases where such payment or levy is made, but only to those where the sheriff has taken the body or security. *Haynes v. Hayton*, 7 B. & C. 293; 2 C. & P. 621, S. C. The above section has been considered as very inaccurately worded. See *per Bayley, J.*, 7 B. & C. 298.

It is questionable whether on such a levy the sheriff is entitled to poundage. *Id.*

(c) Costs may be awarded under this provision. 7 B. & C. 300.

(d) The sessions have no other jurisdiction than that given by this act; and the power given them is confined to cases in which a party brought before the sessions has been committed to gaol, or been bound to appear under a security given, according to the 5th section. It does not extend to cases where a party pays the money in order to prevent a sale by the sheriff or otherwise. *Haynes v. Hayton*, 7 B. & C. 293; 2 C. & P. 621, S. C. Therefore, where a party whose recognizance had become forfeited for not appearing to an indictment, and

nexed (a), and shall be signed by the clerk of the peace, which said order shall be a discharge to such sheriff, bailiff, or officer, on the passing of his accounts at the Exchequer, or before any auditor or other proper officer duly authorized to pass the same; and in all cases where the party shall have been lodged in the common gaol by such sheriff, bailiff, or other officer, the justices of the peace so assembled are hereby empowered either to remand such party to the custody of the sheriff, bailiff, or other officer, or, upon the release of such party from the whole of such forfeited recognizance, to order such party to be discharged from custody, and such order shall be a full and sufficient discharge to the said sheriff, bailiff, or officer, on the passing of his accounts at the Exchequer, or before any auditor or other proper officer duly authorized to pass the same; and it shall and may be lawful to and for the said court of general or quarter sessions to award such costs, charges, and expenses to be paid by either party to the other, as to the said court shall seem just and reasonable."

Sect. 9 provides and enacts, "That none of the proceedings under this act shall be liable to or charged with any stamp duty."

Sect. 10 enacts, "That the clerk of the peace and other officers shall be entitled to their usual and legal fees on the discharge of any forfeited recognizance, and the said clerk of the peace to an allowance of 6d. for every one hundred words, for all copies of the roll sent to the said lords commissioners of the treasury; and in case any such sheriff, bailiff, officer, or clerk of the peace shall refuse or neglect to do and perform any duty, act, or thing imposed or required upon or from such sheriff or clerk, bailiff or officer, in manner by this act directed, then, and in every such case, such sheriff, bailiff, or officer, or clerk so refusing or neglecting, shall forfeit and pay the sum of 50*l.*, to be recovered by any person or persons who will sue for the same, together with full costs of suit, by action of debt or on the case, in any of his Majesty's Courts of record at Westminster, wherein no essoin, protection, wager of law, or any more than one imparlance shall be allowed."

Sect. 11 provides and enacts, "That nothing in this act contained shall extend or be construed to extend so as to prevent or interfere with the appropriation of any such fines, issues, amerciaments, forfeited recognizances, sum or sums of money, when so paid or accounted for into the said Court of Exchequer by any such sheriff, bailiff, or officer, but the same shall and may be applied, disposed of, and appropriated in such and the like manner as such fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid in lieu or satisfaction of them or any of them, paid into the Exchequer, were applied, disposed of, and appropriated before the passing of this act."

Sect. 12 provides and enacts, "That it shall be lawful for the lords commissioners of his Majesty's treasury to make such compensation as they may think fit, for the loss of any legal fees occasioned to the officers thereof, or to the officers of the Court of the duchy of Lancaster, by this act."

Sect. 13 provides and enacts, "That nothing in this act contained shall extend or be in any ways prejudicial to the rights, liberties, or privileges of the king's most excellent Majesty, his heirs and successors, in right of his duchy or county palatine of Lancaster; but that the same rights and privileges shall be enjoyed and used in all respects, and to all intents and

LEVYING &c.  
OF FINES &c.

3 Geo. 4, c. 46.

If party in custody, sessions may remand or release him.

Costs.

No stamp duty.

Allowance to sheriff and clerk of the peace on sums levied.

Sheriff, &c. neglecting, penalty, 50*l.*

Proviso for the usual mode of appropriating fines.

Compensations to officers.

Proviso for rights, &c. of his Majesty in duchy of Lancaster.

against whom process had issued, paid the sheriff the sum in the recognizance, in order to prevent a sale of his goods; and the justices at sessions afterwards, by order, mitigated the recognizance to a small sum, and directed the sheriff to discharge the residue from the recognizance: it was held that such order was void, and that the party was not entitled to recover from the sheriff the sum which the justices had ordered to be discharged. *Id.*

Since this provision, it seems now to be the duty of sessions not to estreat a

recognizance forfeited at quarter sessions into the Exchequer as formerly, but to issue process thereon themselves immediately, in order that the amount may be forthwith levied; and the clerks of the peace have no longer any authority to send the estreat into the Exchequer, *semb.* 13 *Price*, *Ex.* 301, 302, *n.* It seems, however, there can be no doubt that whenever a recognizance becomes once estreated into the Exchequer, that Court has jurisdiction over it. *Id.*

(a) See form *post*, 747.



LEVYING &c.  
OF FINES &c.

3 Geo. 4, c. 46.

Clerks of the peace,  
&c., to deliver into  
Court of Exchequer  
yearly a certificate  
of fines, &c., paid (a).  
\* Sic.Proviso for bodies  
corporate, &c.\* Sic.  
Proviso for city of  
London.

Schedule (A).

purposes whatsoever, in the same manner and form as they were before the passing of this act; any thing herein contained to the contrary notwithstanding."

Sect. 14 provides and enacts, "That all and every the clerk and clerks of the peace, and all town clerks, within that part of the united kingdom called England, do and shall, on or before the second Monday after the morrow of All Souls yearly in every year, make and deliver into the Court of Exchequer a true and perfect duplicate on<sup>a</sup> certificate (b) of all such fines, issues, amerciaments, forfeited recognizances, and sum or sums of money, and other forfeitures whatsoever paid in lieu or satisfaction of them or any of them, as shall be contained in the several rolls or copies which shall be so sent out to the sheriff for the purpose of levying as aforesaid, and which shall have been set, lost, imposed, or forfeited, in any of the said sessions of the peace which shall be held before Michaelmas in each year, to the intent that the sheriffs, on their appraisals in the said Court of Exchequer, may be charged in their accounts with the monies levied and received by him or them respectively upon such writs or otherwise, and that all parties entitled to any such fines, recognizances, or other forfeitures, or any portion or portions thereof, may be at liberty to claim the same before the foreign apposer of the said Court of Exchequer, according to the ancient course and practice of the said Court."

Sect. 15 provides and enacts, "That nothing in this act contained shall in any sort extend or be construed to extend to the prejudicing the rights and privileges of any bodies politic or corporate, or their successors, or of any lord or lords of any manor, liberty, or franchise whatsoever; any thing herein<sup>a</sup> to the contrary thereof in anywise notwithstanding."

Sect. 16 provides and enacts, "That nothing in this act contained shall extend to or be in any ways prejudicial to the rights, customs, privileges, liberties, charter or charters of the city of London; but that the said city may enjoy the same accordingly, as they formerly have enjoyed the same, in all respects and to all intents and purposes whatsoever, in the same and in as full and ample a manner as they before this act had enjoyed the same; any thing herein contained to the contrary thereof in anywise notwithstanding."

*WILLIAM the Fourth, by the grace of God of the united kingdom of Great Britain and Ireland, King, defender of the faith;*

*To the sheriff, or bailiff, or officer [as the case may be] for the county of , [or, city, borough, or place, as the case may be] greeting.*

*YOU are hereby required and commanded, as you regard yourself and all yours, that you omit not by reason of any liberty in your county, city, [borough, or, place, as the case may be], but that you enter the same, and of all the goods and chattels, lands and tenements of all and singular the persons in the several extracts of this writ annexed, you cause to be levied all and singular the debts and sums of money upon them in the same extracts severally imposed and charged, so that the money may be ready for payment at the next general or quarter sessions of the peace, to be paid over in such manner as any two or more of the lords commissioners of his Majesty's treasury may direct; and if any of the said several debts cannot be levied by reason of no goods or chattels being to be found belonging to the parties, then in all cases that you take the bodies of the parties refusing to pay the aforesaid debts, and lodge them in the gaol [of the county, city, &c.], there to await the decision of the justices*

(a) See further 4 Geo. IV. c. 37, s. 5, *post*, 749.

(b) This must be delivered in by the clerk of the peace on oath, in pursuance of the 4 & 5 Wm. & M. c. 24, *ante*, 741, which, in this respect, is unrepealed. *Ex parte Hodgson*, 1 M. & R. M. C. 346; 2 Y. & J. 142. On non-compliance with the above provision, the clerk of the peace might be amerced. The returns are made from Michaelmas to Michaelmas, and the oath must cover that period. It must be

taken either in open Court, before a baron of the Court of Exchequer, or by commission. When it is taken by commission, the clerk of the peace furnishes the names of three or more persons, to whom, upon a baron's warrant, a commission issues to administer the oath, which must be taken before two or more of the commissioners. 1 M. & R. M. C. 351, n.

See form of the oath, *ante*, 741. The same should be adopted. 1 M. & R. M. C. 350.

## II.] *Levying &c. of, when imposed before Justices, &c.*

747

assembled at the next general or quarter sessions, unless the parties shall have given sufficient security for their appearance at such sessions, for which you will be held answerable, and have you there then this writ. Witness , keeper of the rolls of the county, at , in the county of , the day of , in the year of our reign.

LEVYING &c.  
OF FINES &c.  
3 Geo. 4, c. 46.

C. P.,  
Clerk of the peace.

County of —, } TAKE notice, that you , of , are bound in the sum to wit. } of pounds, and your sureties , in the sums of pounds each, to appear at the quarter or general sessions of the peace for the county of , to be holden at , on the day of next, and unless you personally make your appearance accordingly, the recognizances entered into by yourself and securities will be forthwith levied on you and your bail. Dated this day of , one thousand eight hundred and thirty . J. P., S. T.

Schedule (B).

Justices of the peace.

To the sheriff, [bailiff, or officer, as the case may be] of the county, [city, borough, or place, as the case may be] of . Schedule (C).

WHEREAS hath appeared before the justices assembled at the general or quarter sessions [as the case may be] held at the , on the day of , and has forfeited the sum of , [here describe the nature of the fine or forfeiture], and having made it appear to the satisfaction of the justices so assembled, that he should be relieved from the payment of the said sum of , [or, if the penalty is mitigated, state from what part thereof], you are therefore hereby required to discharge the said sum of from the estreat roll delivered to you after the quarter sessions held at , for which discharge this warrant shall be your authority, and shall exonerate you from the said charge on the final passing of your accounts at the Exchequer, or before any other officer duly authorized to pass such account.

By order of the Court.

By the 4 Geo. IV. c. 37, s. 1, (which is an exposition of the 3 Geo. IV. c. 46), after reciting stat. 3 Geo. IV. c. 46, it is enacted, "That it shall be lawful for the justices assembled at any general or quarter sessions of the peace, and they are hereby authorized and required, at the following or any subsequent general or quarter sessions held after the return of the writ and roll issued from any preceding general or quarter sessions, at the opening of the Court, to insert or cause to be inserted in any following roll, all such fines, issues, amerciaments, forfeited recognizances, sum or sums of money to be paid in lieu or satisfaction of them, or any of them, which have not been duly levied or recovered or properly accounted for by the sheriff, bailiff, or other officer, or have not been discharged on appeal before the general or quarter sessions, or by sign manual, warrant, or authority of any three or more of the commissioners of his Majesty's treasury of the united kingdom of Great Britain and Ireland, and so to continue such process from sessions to sessions, till it shall be duly ascertained, to the satisfaction of the said commissioners of his Majesty's treasury, that the party in default has not any goods or chattels, lands or tenements, in the county, division, riding, city, town or place, on which a levy can be made, nor in any other county, division, riding, city, town or place in Great Britain, and that he is not to be found, or that his body cannot be lodged in any of his Majesty's jails; provided always, that the said sheriff, bailiff, or other officer to whom the writ of *distringas* and *capias*, or *ferri facias*, or other writ deemed necessary by the justices at any such general or quarter sessions, to meet the exigency of the case, shall be sent by order of the said court, shall appear and detain in his possession the writ or writs so directed to him, and the roll or rolls attached to such writ or writs, delivering to the said court general or quarter sessions a copy of such roll or rolls, on the first day of sitting of the said court, and also a copy of any former roll or rolls, where the fines, issues, amerciaments, forfeited recognizances,\* sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, shall not have been delivered; and such original writ and roll, or writs and rolls, shall continue in force and effect, and shall be sufficient authority, without any further writ or roll; and such sheriff, bailiff, or other officer, is hereby authorized and required, on quitting his office, to deliver over to his

4 Geo. 4, c. 37.  
Justices in sessions may insert in following rolls all such fines, &c., as have not been levied or accounted for by the sheriff, &c. or that have not been discharged.

Sheriff to detain original writs, which shall continue in force, and be authority to act upon.

\* Sic.

Sheriff, on quitting office, to deliver over to his successor.

LEVYING &c.  
OF FINES &c.

4 Geo. 4, c. 37.  
sor all rolls and  
writs, particularis-  
ing fines, &c;

to be examined,  
and examination  
recorded.

Where party sub-  
ject to fines, &c.  
resides in another  
county, or has re-  
moved, sheriff may  
issue his warrant  
to sheriff acting for  
place where de-  
faulted resides, or  
where his goods are  
found, requiring  
him to execute the  
writ.

\* Sic.

Returns thereon.

Sheriff, &c. to  
render an account  
yearly of all per-  
sons incurring  
fines, &c.

\* Sic.

\* Sic.  
Causes of non-pay-  
ment to be stated.  
\* Sic.

Account to be  
transmitted to the  
treasury.

successor all rolls and writs in his possession, particularizing any fines, issues, amerciaments, forfeited recognizances, sum or sums of money paid or to be paid in lieu or satisfaction of them, or any of them, in order that the sheriff, bailiff, or other officer coming into office, may use every means in his power for recovering the sums so unpaid, and not charged to his predecessor on the passing of his accounts at the Exchequer, or before any auditor or auditors, or other person duly authorized to pass the same, the officer or officers intrusted with the execution of the process in any county, division, riding, city, town, or place, being first duly and diligently examined on oath by the court, at the delivery of the roll, on the first day of each general or quarter sessions, and in case such examination should not then take place, then on the subsequent day; and every such examination shall be duly recorded by the clerk of the peace or town clerk, or other proper officer, in order that such sheriff, bailiff, or other officer, may be chargeable with all sums not satisfactorily accounted for on the final passing of his accounts."

Sect 2 repeals sects. 7 and 8 of stat. 3 Geo. IV. c. 46.

Sect. 3. "In all cases where the party incurring or subject to any fine, issue, amerciamment, forfeited recognizance,\* sum or sums of money to be paid in lieu or satisfaction of them or any of them, shall reside or shall have fled or removed from or out of the jurisdiction of the sheriff, bailiff, or other officer, in which any such fine, issue, amerciamment, forfeited recognizance, sum or sums of money to be paid in lieu or satisfaction of them, or any of them, shall have been incurred, imposed, or forfeited, or become due, it shall be lawful for such sheriff, bailiff, or other officer, and he is hereby authorized and required to issue his warrant, together with a copy of the writ, directed to the sheriff, bailiff, or other officer acting for the county, riding, city, borough, or place in which such person shall then reside or be, or in which any goods or chattels or other property shall be found, requiring such sheriff, bailiff, or other officer to execute such writ, and every such last-mentioned sheriff, bailiff, or other officer is hereby authorized and required to act in all respects under such warrant, in the same manner as if the original writ had been delivered to him by order of the court of the general or quarter sessions of the county, riding, city, borough, or place for which such sheriff, bailiff, or other officer shall act; and the said sheriff, bailiff, or other officer is hereby required, within thirty days after the receipt of such warrant, to return to the sheriff, bailiff, or other officer, from whom he shall have received the same, what he shall have done in the execution of such process, and whether the party shall have given good and sufficient security to appeal at the ensuing general or quarter sessions to be held for the county, riding, city, borough, or place from which the writ issued; and, in case a levy shall have been made, to pay over all monies received in pursuance of the warrant to the sheriff, bailiff, or other officer from whom he shall have received the same."

Sect. 4. "Every sheriff, bailiff, or other officer acting for any county, division, riding, city, borough, or place, shall, and he is hereby required, to make up or cause to be made up annually, and immediately after the expiration of the year for which he shall act, or after the usual period for making up his account, in case he shall act under any grant, appointment, or other authority, for a longer period than one year, an account in writing, containing the names and residences of all persons incurring fines, issues, amerciamments, forfeited recognizances,\* sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, which he has been authorized or required to levy, by virtue of any writ or writs issued to him, or to any predecessor in office; and in case any fine, issue, amerciamment, forfeited recognizance,\* sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, shall not have been levied or paid, the causes of non-payment shall be fully and particularly stated; and such account such sheriff, bailiff, or other officer is hereby required to transmit, within thirty days from the expiration of the year for which such account ought to be made up, to the commissioners of his Majesty's treasury, or at or within such other period as such sheriff, bailiff, or other officer shall be

required by the said commissioners of his Majesty's treasury, or any three or more of them, in order that such account may be duly examined, checked, and inspected, under the direction of the said commissioners of his Majesty's treasury, or any three or more of them; and when so examined and approved, such account shall be transmitted to the proper officer in the Court of Exchequer, or to the auditor or other officer duly authorized to pass such account."

Sect. 5. "Every clerk of the peace, and town clerk, or other proper officer, is hereby required, within twenty days from the opening of the court of general or quarter sessions, to send to the commissioners of his Majesty's treasury, a copy or an extract of the roll or rolls delivered by the sheriff, bailiff, or other officer, on the first day of the opening of such court of general or quarter sessions, in such form as shall be required by the said commissioners of his Majesty's treasury, also the causes of discharge in case any person shall have been relieved on appeal to the said court of general or quarter sessions, and the answer given by any sheriff, bailiff, or other officer to such court, where any fine, issue, amercement, forfeited recognizance, \* sum or sums of money paid or to be paid in lieu or satisfaction of them or any of them, has not been received by such sheriff, bailiff, or other officer duly authorized to receive the same."

LEVYING &c.  
OF FINES &c.

4 Geo. 4, c. 37.

Clerks of the peace, &c., to send to the treasury within twenty days from opening of quarter sessions, copy of rolls delivered by sheriff.

\* Sic.

## Fire.

AS to the offence of arson, see title *Burning*, Vol. I.

By the 6 Ann. c. 31, intituled "*An Act for the better preventing mischiefs that may happen by fire*," sect. 3, it is enacted, "That if any menial or other servant or servants, through negligence or carelessness, shall fire or cause to be fired any dwelling-house or outhouse or houses, such servant or servants being thereof lawfully convicted, by the oath of one or more credible witnesses, made before two or more of her Majesty's justices of the peace, shall forfeit and pay the sum of 100*l.* unto the churchwardens of such parish where such fire shall happen, to \* distributed amongst the sufferers by such fire, in such proportions as to the said churchwardens shall seem just; and, in case of default or refusal to pay the same immediately after such conviction, the same being lawfully demanded by the said churchwardens, that then and in such case, such servant or servants shall, by warrant under the hand of two or more of her Majesty's justices of the peace, be committed to some workhouse, or house of correction, as the said justices shall think fit, for the space of eighteen months, there to be kept to hard labour."

Sect. 6. "That no action, suit, or process whatsoever shall be had, maintained, or prosecuted against any person in whose house or chamber any fire hall, from and after the said first day of May, accidentally begin, or any recompense be made by such person for any damage suffered or occasioned thereby; any law, usage, or custom to the contrary notwithstanding. And if any action shall be brought for any thing done in pursuance of this act, the defendant may plead the general issue, and give this act in evidence; and in case the plaintiff become nonsuit, or discontinue his action or suit, or if a verdict ass against him, the defendant shall recover treble costs."

Sect. 7. "That nothing in this act contained shall extend to defeat or make void any contract or agreement made between landlord and tenant."

The 14 Geo. III. c. 78, s. 84, subjects any servant negligently setting fire to a house or outhouse in the *weekly bills of mortality*, &c., on conviction before two justices, to forfeit 100*l.*, or to be imprisoned for eighteen months in the house of correction.

6 Ann. c. 31. Servants who through negligence fire any house, &c., to forfeit 100*l.* or be sent to the workhouse for eighteen months.

\* Sic.

No action to be prosecuted against any person in whose house, &c., any fire accidentally begins, &c.

This section made perpetual by 10 Ann. c. 14, s. 1.

14 Geo. 3, c. 78.

## Fire Arms.

[53 Geo. III. c. 115; 55 Geo. III. c. 59.]

**AS** to training to use of, and seizing arms, see title *Riot*, Vol. V.

As to setting spring guns, see title *Spring Guns*, Vol. V.

See the 1 Wm. IV. c. 44, regulating for one year the importation of arms, gunpowder, and ammunition into Ireland, and the making, receiving, selling, and keeping of arms, gunpowder, and ammunition in Ireland. *Post*, title *Gunpowder*.

The 53 Geo. III. c. 115, enacts, that barrels of fire arms are not to be used, unless the same are duly proved, and imposes a penalty on persons using or selling barrels not duly proved.

55 Geo. 3, c. 59.  
Using in progressive stages of manufacture of fire arms, barrels not duly proved.

But these provisions are also contained in the 55 Geo. III. c. 59, which treats more extensively on this subject. By Sect. 1, it is enacted, "That every person who shall use or begin to use, or cause or procure to be used, or to be begun to be used, either by ribbing, break-off fitting, rough-stocking, or other process, in any progressive state of manufacture in the making, manufacturing, or finishing of any gun, fowling-piece, blunderbuss, pistol, or other description of fire-arms, usually called small arms, any barrel which shall not have been duly proved, and marked as proved at the proof-house of the company of gun-makers of the city of London, or at the proof-house established under the provisions of the said recited act, (so long as such respective proof-houses shall be maintained for proving and marking the barrels of fire arms), or some proof-house belonging to his Majesty, or other proof-house to be established as a public proof-house, (and which public proof-house his Majesty is hereby authorized and empowered to establish under such regulations, as to the care and management thereof, as his Majesty shall think fit), shall respectively forfeit for each and every barrel so used or begun to be used, or caused or procured to be used, or to be begun to be used, any sum not exceeding 20*l.*, to be recovered and applied as hereinafter mentioned."

Penalty.

Barrels of fire arms sent direct from manufacturers to proof-houses.

Sect. 2. "Every barrel for the making of, or proper or applicable for the making of any gun, fowling-piece, blunderbuss, pistol, or any other description of fire arms, usually called small arms, shall be sent immediately from the manufacturers themselves to the proof-house of the company of gun-makers of the city of London, or to the proof-house established under the provisions of the said recited act, (so long as such respective proof-houses shall be maintained for the proving and marking the barrels of fire arms), or some other proof-house established by law, before the same shall be delivered, or caused or procured or permitted to be delivered or sent for sale, or under pretence of sale, or be removed, consigned, or transmitted, or caused or procured to be removed, consigned, or transmitted for sale, or under pretence of sale, to any person whatsoever; and from and after the passing of this act, every person who shall deliver or send, or cause or procure to be delivered or sent for sale, or under pretence of sale, or who shall remove, consign, or transmit, or cause or procure to be removed, consigned, or transmitted for sale, or under pretence of sale, any barrel for the making of, or proper or applicable for the making of any gun, fowling-piece, blunderbuss, pistol, or any other description of fire arms usually called small arms, from the place where the same shall have been manufactured, which shall not have been first duly sent to the proof-house of the said company of gun-makers of the city of London, or the said proof-house at Birmingham, or some other proof-house established by law, to be proved and marked under the provisions of the said recited act, shall forfeit for each and every barrel so sent, or caused or procured to be sent for sale, or under pretence of sale, or removed, consigned, or transmitted, or caused or procured to be removed, consigned, or transmitted for sale, or under pretence of sale, any sum not exceeding 20*l.*, to be recovered and applied as hereinafter mentioned."

Delivering, &c., for sale, except through a proof-house.

Penalty.

## Fire Arms.

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Sect. 3. " Every person who shall take or receive, or cause or procure to be taken or received, or permit or suffer to be received on his behalf any barrel, for the purpose of making or manufacturing, or proper or applicable for the making or manufacturing of any gun, fowling-piece, blunderbuss, pistol, or other description of fire arms usually called small arms, directly or indirectly from the manufacturer thereof, or from any other person on his behalf, except from or through some one or other of such proof-houses as aforesaid, or unless the same shall have been first duly proved and marked as proved at the proof-house of the company of gunmakers of the city of London, or the proof-house established under the provisions of the said recited act (so long as such respective proof-houses shall be maintained for proving and marking the barrels of fire arms) or some other proof-house owing to his Majesty, or other public proof-house established as a public proof-house by law, shall forfeit for each and every barrel so received, or sold or procured to be received for the purpose, or proper or applicable for the purpose aforesaid, any sum not exceeding 20*l.*, to be recovered and paid as hereinafter mentioned."

Sect. 4. " And whereas a proof-house has for a long time past been established and provided for proving the barrels of fire arms, in or near the city of London, under the management and control of the company of gun-makers of the city of London, under and by virtue of a charter heretofore granted to the said company; it is enacted, " That all barrels for the making or proper or applicable for the making or manufacturing of guns, fowling-pieces, blunderbusses, pistols, and other description of fire arms usually called small arms, which shall hereafter be taken to the proof-house of the company of gun-makers of the city of London for proof, shall be proved by the proof-master for the time being, with powder of equal quality to the powder which is now used by the honourable board of ordnance, and according to, or not under the scale or table of proof mentioned and set forth in the said recited act; and the person having the charge, care, and management of the proof-house of the said company of gun-makers of the city of London, shall receive all barrels sent, consigned, or transmitted to the proof-house for proof, and prove the same, and cause all such barrels, which have been proved, and (if found to be proof) marked, to be delivered to the persons for whom such barrels are directed, upon payment of the charges as shall have been incurred in respect of the carriage and of such barrels at the proof-house, and of the said company's charges for proving the same, and of the keeping of the same for proof, and hereof to the person for whom the same are intended or shall be delivered to after proof; and in case any barrel so sent to the proof-house to be proved shall not be received and proved thereat according to law, or shall be delivered or parted with, or permitted to be delivered or parted with, or to be taken away, which shall not have been so proved (if found to be proof) marked with the marks and according to the provisions of the said company of gun-makers of the city of London for proof, then, and in every such case, the person so having the charge, and management of such proof-house for the time being, shall cause each and every barrel which shall not be received and proved in the proof-house mentioned, and for each and every barrel which shall be so parted with, or permitted to be delivered or parted with or which shall not have been so proved, and (if found to be proof) proved as aforesaid, the sum of 10*s.*, to be recovered and applied as mentioned."

Nothing in this act contained shall extend or be construed to extend to the united kingdom called Scotland, or to that part of the same called Ireland, (except as to the forging marks, as in this act mentioned), or to the proving of any barrels used in the manufacturing of pistols, or other fire arms, for the use of his Majesty's forces, or of the East India Company, or to any barrels of the description mentioned; *videlicet*, any barrels in the forged ground, finished in the state of manufacture, which shall be made or consist of stub

### FIRE ARMS.

55 Geo. 3, c. 59.

Receiving barrels of fire arms for purpose of making guns, &c. not having passed proof-house and been proved.

Penalty.

Charter to gun-makers.

Proof-master of company of gun-makers of city of London to receive, &c. barrels of guns, &c.

Barrels not proved, &c.

Penalty.

Not to extend to Scotland or Ireland, or to arms made for his Majesty or East India Company, or certain barrels specified.

FIRE ARMS.  
53 Geo. 3, c. 50.

Forging, &c., proof  
marks, or selling,  
&c., barrels with  
forged marks.

Penalty.

Proof marks put  
on barrels not  
proved.

Penalty.

38 Geo. 3, c. 115 s. 7,  
in part repealed.

Prices for proving  
barrels.

Offences and pe-

or twisted stub iron, or other barrels usually termed best barrels; (which said last-mentioned barrels may be, and are hereby allowed to be sent, bought, or received for the purposes aforesaid, in any number not exceeding the number of twenty, without being subject to any of the penalties of the said recited act or this act, except that such barrels shall be liable to the penalty for using barrels not duly proved and marked); and nothing in this act contained is to exempt or be construed to exempt such last-mentioned barrels from being proved and marked as required by the said recited act and this act."

Sect. 6. "Every person who shall, in any part of the united kingdom, forge or counterfeit, or cause or procure to be forged or counterfeited, or assist or join in forging or counterfeiting, any mark or stamp used or which may be used at any proof-house for proving and marking barrels in pursuance of the said recited act, or shall wilfully or knowingly sell or offer for sale, or use in the making or manufacturing of any gun, fowling-piece, blunderbuss, pistol, or other description of fire arms as aforesaid, any barrel finished, welded, or forged, or in any other progressive state of manufacture, whereon shall be any mark or stamp which shall be forged or counterfeited in imitation of or to resemble any mark or stamp so used or to be used at any such proof-house, shall respectively forfeit and pay for each and every such barrel whereon any such forged or counterfeit mark shall be, any sum not exceeding 20*l.*, to be recovered and applied as hereinafter mentioned."

Sect. 7. "That from and after the passing of this act, if any proof-master or assistant proof-master, appointed or to be appointed under the said recited act, or any other person or persons, shall, in any part of the united kingdom, put, place, or strike, or cause or procure to be put, placed, or struck, or shall willingly act or assist in the putting, placing, or striking any mark or stamp used, or which may be used at any proof-house, for proving and marking barrels in pursuance of the said recited act or this act, upon any barrel finished, welded, or forged, or in any other progressive state of manufacture, for the making of, or proper or applicable for the making of any gun, fowling piece, blunderbuss, pistol, or other description of fire arms usually called small arms, which shall not have been duly proved at the proof-house established and maintained under the provisions of the said recited act (so long as such proof-house shall be maintained for proving and marking the barrels of fire arms), every person so offending shall forfeit for each and every barrel on which he, she, or they, shall put, place, or strike, or cause or procure to be put, placed, or struck, or shall willingly act or assist in the putting, placing, or striking, any such mark or stamp as aforesaid, any sum not exceeding 20*l.* to be recovered and applied as hereinafter mentioned."

Sect. 8 repeals the regulation in stat. 53 Geo. III. c. 115, respecting the price of proving barrels.

Sect. 9. "That, from and after the passing of this act, it shall and may be lawful for the said company to fix and regulate, from time to time, the sums to be paid for such proofs, so as that no higher sum shall in any case be demanded, taken, or received, for any barrel which shall be proved at such proof-house, and marked as proved under the said recited act or this act, than is hereinafter mentioned and set forth; that is to say—

"First, For any common birding, Spanish, Dutch, Carolina musket, carbine, or other barrel, not being made of twisted or stub iron, nor above the calibre of six-eighths and an half, any sum not exceeding 6*d.* for each and every barrel.

"Secondly, For every pair of plain iron or brass holster or saddle pistol barrels, any sum not exceeding 6*d.* for each pair.

"Thirdly, For every barrel made of twisted or stub iron, any sum not exceeding 9*d.* for each and every barrel; and for every pair of stub or twisted pistol barrels, any sum not exceeding 9*d.* for each pair; And,

"Fourthly, For any barrel above the calibre of six-eighths and an half, any sum not exceeding 1*s.* for each and every barrel; any thing in the said recited act contained to the contrary in anywise notwithstanding."

Sect. 10. "That any and all offence and offences against this act shall and

may be heard and determined in a summary way, by or before any two of his Majesty's justices of the peace for the county, riding, division, city, town, liberty or place, where any such offence or offences shall be committed; and the conviction for the same may be had and made upon the oath or oaths of one or more credible witness or witnesses; and the amount of the forfeiture or penalty for any and every such offence or offences, shall be fixed and determined by such justices, not exceeding the sums hereinbefore mentioned; and one half thereof shall be paid and payable to the informer, and the other half thereof to the overseers of the poor of the parish or place where such offence shall be committed; and such justices may award and direct to be paid by any party, such costs as they shall judge reasonable; and in case any such forfeiture or forfeitures, or penalty or penalties and costs, shall not be forthwith paid pursuant to such conviction, and the person so convicted shall not signify his intention to appeal against such conviction, and forthwith enter into recognizance before such justices, himself in the penalty of a sum equal to double the amount of the penalty fixed as aforesaid, with two sufficient sureties in the penalty of a sum equal to the amount of the penalty fixed as aforesaid, each of lawful money of Great Britain, with condition to personally appear and prosecute such appeal at the next general quarter or general sessions of the peace, to be holden for the county, riding, division, city, town, liberty, or place, where such offence or offences shall have been charged to have been committed, such justices shall, by warrant under their hands, cause the same penalties and costs to be levied by distress and sale of the offender's goods and chattels, together with the costs and charges attending such distress and sale; and in case no sufficient distress can be had, such justices shall, by warrant under their hands, commit the offender to the common gaol or house of correction within their jurisdiction, there to remain without bail or mainprize for any time not exceeding six calendar months."

**FIRE ARMS.**  
55 Geo. 3. c. 59.  
penalties, how heard,  
levied, &c.

sect. 11. "That the said respective companies of gun-makers, their officers, servants, or agents, shall not, nor shall any of them be subject or liable to any prosecution or information by virtue of this act or the said recited act for any offence or offences against this act, unless such prosecution shall be commenced, or information given, within six calendar months next after the offence or offences committed."

Limitation of prosecutions.

sect. 12. "That the justices, before whom any person or persons shall be convicted of any offence or offences against this act, may cause any such conviction to be drawn up on parchment or paper, in the form or to the effect following; that is to say—

Form of conviction.

— } *BE it remembered, that, on the*      *day of*      *in the year of our Lord*  
t. } *is convicted before us* [naming the justices] *of his Majesty's*  
s. } *of the peace for the county of*      *[or, riding, city, liberty, division, town, or*  
s. } *for that the said* [here state the offence] *contrary to the statute made in*  
s. } *the thirty-third year of the reign of king George the Third, intituled "An Act to in-*  
s. } *crease proper and careful manufacturing of fire arms in England, and for making*  
s. } *provision for proving the barrels of such fire arms," and contrary to the provisions of*  
s. } *passed in the fifty-fifth year of the same reign, intituled "An Act," [here*  
s. } *the title of this act]: And we, the said justices, do hereby adjudge and de-*  
s. } *clare the said*      *for the said offence to forfeit and pay the sum of*      *of lawful*  
s. } *of Great Britain; and do order one*      *thereof to be forthwith paid by him*  
s. } *to*      *[the informer], and the other*      *thereof to the overseers of the*  
s. } *the parish of* [where the offence was committed]: *And we the said justices*  
s. } *award and direct the said*      *forthwith to pay to*      *the sum of*      *for costs.*  
s. } *Under our hands the day and year above written.*

every such conviction shall be transmitted by such justices to the next quarter sessions, or general quarter sessions of the peace, to be holden for the county, riding, division, city, town, liberty, or place, wherein such conviction was had, to be filed and kept amongst the records of the said general sessions, or general quarter sessions."

Conviction filed.

13. "That if any person convicted of any offence or offences punishable by this act, shall think himself or herself aggrieved by the judgment of

Appeal.



FIRE ARMS.  
55 Geo. 3, c. 59.

Costs.  
Final.

Imprisonment.

Appeal.

Notice.

Recognizance.

Costs.

Final judgment.

Distress.

Imprisonment.

Limitation of  
actions.

General issue.

the justices before whom he or she shall have been convicted, such person shall have liberty to appeal from every such conviction to the next court of general sessions, or general quarter sessions of the peace, which shall be held for the county, riding, division, city, town, liberty, or place, wherein such offence was committed; and the justices in or at the said next court of general sessions or general quarter sessions, are hereby authorized and required to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable to be paid to either party; which decision shall be final; and if upon hearing the said appeal, the judgment of the justices before whom the appellant shall have been convicted shall be confirmed, such appellant shall forthwith pay the forfeitures or penalty mentioned in such conviction, and the costs awarded to be paid by such appellant; and in default of payment thereof, such appellant shall immediately be committed by the said court to the common gaol or house of correction of the county, riding, division, city, town, liberty, or place, where any such offence may have been committed, there to remain for any time not exceeding six calendar months, unless such penalty and costs shall be sooner paid."

Sect. 14. "If any person or persons shall feel himself or themselves aggrieved by any of the acts, orders, or proceedings of the said trustees, guardians, and wardens, or either of them, in pursuance of this act, such person or persons may appeal to the justices of the peace at the next general quarter sessions of the peace, to be holden for the said county of Warwick, such appellant (if there be sufficient time after the cause of such complaint shall have arisen,) first giving or causing to be given eight days' notice at least in writing of his or their intention of bringing such appeal, and of the matter thereof, to the clerk or treasurer of the said trustees, and within four days after such notice, (if required), entering into recognizance before some justice of the peace for the said county, with two sufficient sureties, conditioned to try such appeal, and abide the order thereon, and to pay such costs as shall be awarded by the justices at such quarter sessions; and for want of sufficient time for giving such notice previous to the first quarter sessions after the cause of such complaint shall have happened, then such appeal, after such notice, and under such recognizance, may be made at the second general quarter sessions of the peace to be holden for the said county; and the justices at such first or second sessions shall hear and finally determine the cause and matter of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper; and the determination of such quarter sessions shall be final, binding, and conclusive to all intents and purposes; and the said justices at such sessions may also, by their order or warrant, levy such costs so awarded, by distress and sale of the goods and chattels of the person or persons who shall neglect or refuse to pay the same, and, for want of sufficient distress, commit such person or persons to the common gaol or house of correction for the said county, there to remain for any time not exceeding three calendar months, or until payment of such costs."

Sect. 15. "That no action or suit shall be commenced against any person or persons, for any thing done in pursuance of this act, and the said recited act, until after thirty days' notice in writing shall be thereof given to the guardians, trustees, and wardens of the gun-barrel proof-house of the town of Birmingham, nominated and appointed by, or to be chosen and elected under and by virtue of the said recited act, or their solicitor for the time being, or to the master or warden of the company of gun-makers of the city of London for the time being, or after sufficient satisfaction made or tendered, or after six calendar months next after the fact committed, for which such action or actions, suit or suits shall be so brought; and all such actions or suits shall be laid and tried in the county, city, or place, where the cause of action shall arise, and not elsewhere; and the defendant or defendants in such action or actions, suit or suits, and every of them, may plead the general issue, and give this act and the said recited act, and the special matter, in evidence, at any trial or trials which shall be had there-

1, and that the matter or thing for or on which such action or actions, or suits, shall be brought, was done in pursuance and by the authority of this act, and the said recited act; and if the said matter or thing shall appear to have been so done, or if it shall appear that such action or suit was brought before thirty days' notice was given, as before directed, or that no satisfaction was made or tendered or paid into court as aforesaid, any such action or suit shall not be commenced within the time before that purpose limited, or shall be laid in any other county, city, or place as aforesaid, then the jury shall find for the defendant or defendants therein; and if a verdict shall be found for such defendant or defendants, the plaintiff or plaintiffs in such action or actions, suit or suits, shall not be nonsuited, or suffer a discontinuance of such action or actions, suit or suits, or if, upon a demurrer or demurrers in such action or actions, suit or suits, judgment shall be given for the defendant or defendants therein; and in either of the cases aforesaid, such defendant or defendants shall pay treble costs, and shall have such remedy and remedies for recovering the same, as any defendant or defendants may have for the recovery of his, or their costs in other cases by law."

FIRE ARMS.

55 Geo. 3, c. 56.

Treble costs.

t. 16. "That, from and after the passing of this act, the accounts of the proof-house (a), and of all sums of money to be paid, laid out, and expended in the conduct and management thereof, and carrying on the same, of all sums to be paid in respect of any interest or principal of any sums received and expended under the said recited act or this act, in the building, completing, and establishing the same, and of all sums to be received under the provisions of the said act and this act, shall once in each year be audited by some justice of the peace acting at Birmingham, or within seven miles thereof."

Proof-house accounts audited.

t. 17. "That so much and such parts of the said recited act as enacts that the lord lieutenants of the respective counties of Warwick, Worcester, Stafford, and the persons serving in Parliament for the said counties respectively for the time being, and," other persons named, "and their successors, to be chosen in manner thereinafter directed, should be a body corporate, and called or known by the name of 'The guardians, trustees, and wardens of the gun-barrel proof-house of the town of Birmingham,' for the purpose of proving, or causing to be proved, in the manner directed by the said recited act, all barrels for guns, fowling pieces, muskets, carbusses, pistols, and every other description of fire arms which shall be brought to the proof-house at Birmingham, to be proved according to the provisions of the said recited act, shall be, and the same is hereby repealed; and, from and after the passing of this act, the lord lieutenants of the respective counties of Warwick, Worcester, and Stafford, and the persons serving in Parliament for the said counties respectively for the time being, and," other persons named, "the high and low bailiff for the town of Birmingham, and all acting magistrates residing within seven miles of the town of Birmingham, and their successors, to be chosen in manner directed by the said recited act, shall be and they are hereby declared to be a body corporate, and shall be called or known by the name of 'The guardians, trustees, and wardens of the gun-barrel proof-house, of the town of Birmingham,' for the purpose of proving, or causing to be proved, in the manner directed by the said recited act, all barrels for guns, fowling pieces, muskets, carbusses, pistols, and every other description of fire arms, which shall be brought to the proof-house at Birmingham, to be proved according to the provisions of the said recited act."

55 Geo. 3, c. 115, s. 4, in part repealed.

Company of guardians, &c. of gun-barrel proof-house of Birmingham incorporated.

18, declares the act to be a public one.

Public act.

(a) "i. e. at Birmingham, &c."

## Fireworks.

No person whatsoever shall make, sell, &c., squibs, rockets, serpents, &c., or cases, moulds, &c. for making such squibs.

THE 9 & 10 Wm. III. c. 7, s. 1, enacts, "That, from and after the five and twentieth day of March, 1698, it shall not be lawful for any person or persons, of what age, sex, degree, or quality soever, to make or cause to be made, or to sell or utter, or offer or expose to sale, any squibs, rockets, serpents, or other fireworks, or any cases, moulds, or other implements for the making any such squibs, serpents, rockets, or other fireworks, or for any person or persons to permit or suffer any squibs, serpents, rockets, or other fireworks to be cast, thrown, or fired from, out of, or in, his, her, or their house or houses, lodgings, or habitations, or from, out of, or in, any part or place thereto belonging or adjoining, into any public street, highway, road, or passage, or for any person or persons, of what degree, quality, or age soever, to throw, cast, or fire, or to be aiding or assisting in the throwing, casting, or firing of any squibs, serpents, rockets, or other fireworks, in or into any public street, house, shop, river, highway, road, or passage, and that every such offence shall be, and is hereby adjudged to be, a common nuisance."

Penalty on persons throwing or firing squibs, &c.;

Sect. 2. "That if any person or persons, of what age, sex, degree, or quality soever, from and after the said five and twentieth day of March, shall make or cause to be made, or shall sell, give, or utter, or offer or expose to sale, any squibs, rockets, serpents, or other fireworks, or any cases, moulds, or other implements for the making of any such squibs, rockets, serpents, or other fireworks, that then every such person or persons so offending, and being thereof convicted before one or more justice or justices of the peace of the county, limit, division, corporation, liberty, or chief magistrate of the place where such offence shall be committed, either by the confession of the party or parties so offending, or the oath of two witnesses, (which oath the said justice or justices of peace, or chief magistrate, is and are hereby empowered and required to administer), shall, for every such offence, forfeit the sum of 5*l.*; and if any person or persons whatsoever from and after the said five and twentieth day of March, shall permit or suffer any squibs, serpents, rockets, or other fireworks to be cast, thrown, or fired from, out of, or in, his, her, or their house or houses, shops, dwelling, lodging, or habitation, or from, out of, or in any part thereof, or place thereto belonging or adjoining, into any public street, highway, road, or passage, or any other house or place whatsoever, that then every such person or persons so as aforesaid last offending, and being thereof as aforesaid convicted, shall, for every such offence, forfeit the sum of 20*s.*: the said several forfeitures to be levied by distress and sale of the goods and chattels of every such offender, by warrant under the hand and seal of the said justice or justices of the peace, or chief magistrate before whom such conviction or convictions shall be as aforesaid made; the one half of the said forfeitures to be to the use of the poor of the parish where every such offence shall be committed, and the other half to the use of him or them who shall prosecute, and cause such offender or offenders to be as aforesaid convicted."

or suffering them, &c., to be thrown or fired from their houses.

Forfeitures, how to be levied and applied.

Offender not paying forfeiture, to be committed to the house of correction;

Sect. 3. "That if any person or persons, of what age, sex, degree, or quality soever, from and after the said five and twentieth day of March, shall throw, cast, or fire, or be aiding or assisting in the throwing, casting, or firing of any squibs, rockets, serpents, or other fireworks, in or into any public street, house, shop, river, highway, road, or passage, that then every person so offending, and being thereof as aforesaid convicted, shall, for every such offence, forfeit the sum of 20*s.* to the uses aforesaid; and if the person or persons so as aforesaid last offending, shall not immediately (upon his, her, or their being thereof as aforesaid convicted), pay to the said justice or justices of the peace, or chief magistrate before whom such conviction shall be as aforesaid made, the said forfeiture or forfeitures, for the uses aforesaid, that then every such justice or justices of the peace, or chief magistrate, is and are hereby empowered and required, by warrant

his or their hands and seals, to commit every such person or person as aforesaid last offending, to the house of correction within the year, division, limit, corporation, or liberty where such offence as is last mentioned shall be committed, there to remain, to be set and kept to hard labour, without bail or mainprize, for any time not exceeding one month, such offender as is last mentioned shall sooner pay such forfeiture or fines to the said justice or justices of the peace, or chief magistrate."

where a squib was wantonly thrown among the stands at a fair, and, being removed from off that on which it alighted, it occasioned the loss of the finger of a bystander, it was holden by *De Grey, C. J., and Nares and J.,* against *Blackstone, J.,* that all that was done subsequent to the throwing was a continuation of the first force and first act, which continued till the squib was spent by bursting; and that trespass, not an accident, was the proper remedy. *Scott v. Shepherd, 2 Black. Rep. 892.* In the case of *King v. Ford, 1 Stark. N. P. C. 421,* it was held, that a master, who permits an infant pupil under his care to make use of fireworks, is responsible in an action for the mischief which ensues.

121st section of the 3 Geo. IV. c. 126 enacts, that If any person or persons shall make, or assist in making, any fire or fires commonly called bonfires, or set fire to or wantonly let off or throw any squib, rocket, serpent, or rework whatsoever, within eighty feet of the centre of such [turnpike] every person so offending shall, for each and every such offence, forfeit and pay any sum not exceeding 40s., over and above the damages occasioned thereby. See *post Highways, Vol. III. p. 202.*

**FIREWORKS.**  
9 & 10 Wm. 3, c. 7.

and kept to hard labour.

Decisions.

Making bonfires, &c.

Penalty.

(No. 1).

Forfeiture as usual, as *ante, Conviction, Vol. I. p. 850.*—that *C. D., late Joyman,* on &c., at &c., did sell to one *R. F.* [or, "expose to sale;" see the act, *ante, p. 756,*] certain fireworks, to wit, one hundred squibs, one serpent, one hundred rockets, and one hundred other fireworks, against the statute in such case made and provided; whereby, and by force of the said statute in such case made and provided, for his said offence, the said *C. D.* hath forfeited the sum of five pounds; wherefore, the said *A. B.* prayeth the judgment of me, the said Justice, that he may have one moiety of the said forfeiture of five pounds, and that he may have the other moiety of the said forfeiture of five pounds.

Information on 9 & 10 Wm. 3, c. 7, s. 2, for selling fireworks.

This conviction may be readily framed from the above form, and the general form of conviction, *ante, Conviction, Vol. I. p. 851.*

Conviction thereon.

(No. 2).

Forfeiture as usual, as *ante, Conviction, Vol. I. p. 850.*—that *C. D., late Joyman,* on &c., at &c., in the public street and highway, did throw, cast, and fire certain fireworks, to wit, one hundred squibs, one serpent, one hundred rockets, and one hundred other fireworks, against the statute in such case made and provided; whereby, and by force of the said statute, the said *C. D.* for his said offence hath forfeited the sum of twenty shillings; wherefore, &c. [Conclude as in preceding form].

Information on same act for casting and throwing squibs and other fireworks.

(No. 3).

Forfeiture as usual, as *ante, Conviction, Vol. I. p. 850.*—that *C. D., late Joyman,* on &c., at &c., did permit and suffer certain fireworks, to wit, one hundred squibs, one hundred serpents, one hundred rockets, and one hundred other fireworks, to be cast, thrown, and fired out of and from the dwelling-house of the said *C. D.* situate, into a certain public street there, called — street, contrary to the statute in such case made and provided; whereby, and by force of the said statute, the said *C. D.* hath forfeited the sum of twenty shillings; wherefore, &c. [Conclude as in the form *supra, (No. 1).]*

Information on same act for suffering fireworks to be thrown from houses into the street.

## Fish and Fisheries<sup>(a)</sup>.

THERE are some acts relating to this subject, of which, being of less general concern, it is thought sufficient to insert only the titles<sup>(b)</sup>; viz.—

30 Car. 2, c. 9.

4 Ann. c. 21.

9 Ann. c. 26.

30 Geo. 2, c. 21.

18 Geo. 3, c. 33.

Other acts.

1. An act for the preservation of fish in the river of Severn.
2. An act for the increase and better preservation of salmon and other fish in the rivers within the counties of Southampton and Wilts. In which some alterations are made by the 1 Geo. I. st. 2, c. 18.
3. An act for the better preservation and improvement of the fishery within the river of Thames, and for regulating and governing the company of fishermen of the said river.
4. An act for the more effectual preservation and improvement of the spawn and fry of fish in the river of Thames and waters of Medway, and for the better regulating the fishery thereof.
5. An act for the better preservation of fish, and regulating the fisheries in the rivers Severn and Verniew.
6. The fisheries in the arm of the sea between the county of Cumberland and the counties of Dumfries and Wigton, and the stewartry of Kircudbright, are regulated by the 44 Geo. III. c. 45.
7. Those in the river Tweed and its streams are regulated by the 14 Geo. III. c. 27; 15 Geo. III. c. 46; 37 Geo. III. c. 48; and 47 Geo. III. c. 29.
8. Those in the county of Caermarthen, and the county of the borough of Caermarthen, are regulated by the 45 Geo. III. c. 33.
9. And those in Milford Harbour, in Pembrokeshire, are regulated by the 46 Geo. III. c. 19.

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What follows seems best reducible under these heads:

### I. *Criminal Proceedings and Penalties for Injuries to Private Fisheries*, 759.

- (1) *In General*, 759.
- (2) *Trespassing in Ponds*, 759.
- (3) *Taking or Destroying Fish, Seizing Nets, &c.* 759.
- (4) *Destroying and Putting Noxious Things into Ponds*, 766.

[3 Ed. I. c. 20; 7 & 8 Geo. IV. c. 29, s. 34, 35, 66; 7 & 8 Geo. IV. c. 30, s. 15].

### II. *Rules concerning the Size, and Preserving the Breed of Fish*, 767.

[13 Ed. I. st. 1, c. 47; 13 Ric. II. st. 1, c. 19; 17 Ric. II. c. 9; 2 Hen. VI. c. 15; 1 Eliz. c. 17; 1 Geo. I. st. 2, c. 18; 33 Geo. II. c. 27; 43 Geo. III. c. lxi.; 45 Geo. III. c. xxxiii.; 58 Geo. III. c. 43].

### III. *Of the Herring and other Fisheries*, 776.

[28 Geo. II. c. 14; 26 Geo. III. c. 81; 27 Geo. III. c. 10; 48 Geo. III. c. 110; 50 Geo. III. c. 108; 55 Geo. III. c. 94; 1 & 2 Geo. IV. c. 79; 5 Geo. IV. c. 64; 7 Geo. IV. c. 34; 1 Wm. IV. c. 54].

### IV. *Of the Oyster Fisheries*, 781.

[7 & 8 Geo. IV. c. 29, s. 36].

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(a) See in general, *Chit. Game Laws*, 239 to 325.

(b) See these acts more fully noticed in *Chit. Game Laws*, 259 to 265.

*Rules concerning Fishing in or near the Sea, 781.*

FISH AND  
FISHERIES.

[3 Jac. I. c. 12; 1 Geo. I. st. 2, c. 18; 9 Geo. I. c. 33; 33 Geo. II. c. 27; 42 Geo. III. c. 22].

*Importing Fish, 783.*

[6 Geo. IV. c. 105].

*Forms, see List of, post, 783.*

## **riminal Proceedings and Penalties for Injuries to Private Fisheries.**

### **(1) In General.**

not intended here to enter into any treatise on the private rights of als to fisheries, as they have little or no concern with magistrates officers in their official capacity (a). The reader is referred to tity's Treatise on the Game Laws, 267 to 307; Schultes on Aquatic

Rights to private fisheries.

All that will be here noticed will relate to the Criminal Proceed- Penalties for Injuries to Private Fisheries.

dictment can be supported at common law for stealing fish, unless dead or confined, and may serve for food; therefore, it cannot be d for stealing fish in a river or open pond, although a person may exclusive right to take them; but it may be supported for stealing ned in a trunk or net, or as it should seem in any other inclosed ich is private property, as a pond, and where they may be taken at of the owner at any time. 2 *East's P. C.* 607; *Chitty's Game Laws*, ; 1 *Hawk. c.* 33, s. 39; 3 *Inst.* 109.

Punishments at common law.

### **(2) Trespassing in Ponds.**

Ed. I. c. 20, enacts, that if any trespassers in ponds be thereof at- the suit of the party, great and large amends shall be awarded ac- o the trespass, and they shall have three years' imprisonment, and l make fine at the King's pleasure, (if they have whereof), and l find good surety that after they shall not commit the like tress- l if they have not whereof to make fine, after three years' im- at they shall find like surety; and if they cannot find like surety abjure the realm. And if none sue within the year and day, the ll have the suit.

Trespassing in ponds.

are trespassers in ponds, who endeavour to take fish therein. 2 *Inst.* d see further as to this statute, *Id.*

Hen. VIII. c. 4, s. 4, is now superseded.

### **3) Taking or Destroying Fish, Seizing Nets, &c.**

t. 7 & 8 Geo. IV. c. 29, s. 34, enacts, "That if any person shall / and wilfully take or destroy any fish in any water, which shall gh or be in any land adjoining or belonging to the dwelling house rson being the owner of such water, or having a right of fishery very such offender shall be guilty of a misdemeanor, and, being thereof, shall be punished accordingly; and if any person shall / and wilfully take or destroy, or attempt to take or destroy, any y water not being such as aforesaid, but which shall be private or in which there shall be any private right of fishery, every such being convicted thereof before a justice of the peace, shall forfeit

Taking or destroy- ing fish from water belonging to dwell- ing-house, a mis- demeanor.

In any private fishery elsewhere.

man may erect a fish pond of profit for the increase of victuals. 2 ence, because it is a matter *Inst.* 199.

**TAKING OR  
DESTROYING  
FISH, &c.**

7 & 8 Geo. 4, c. 29.

Summary conviction.

Angling.

Summary conviction.

Boundaries of  
parishes.

Nets and rods, &c.,  
may be seized.

Proviso as to  
angling.

General clauses of  
7 & 8 Geo. 4, c. 29.

Construction of  
act.

Fish need not be  
bred, kept, or  
preserved.

and pay, over and above the value of the fish taken or destroyed, (if any), such sum of money, not exceeding 5*l.*, as to the justice shall seem meet: provided always, that nothing hereinbefore contained shall extend to any person angling in the day-time; but if any person shall by angling in the day-time unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any such water as first mentioned, he shall, on conviction before a justice of the peace, forfeit (a) and pay any sum not exceeding 5*l.*; and if in any such water as last mentioned, he shall, on the like conviction, forfeit and pay any sum not exceeding 2*l.*, as to the justice shall seem meet; and if the boundary of any parish, township, or vill shall happen to be in or by the side of any such water as is hereinbefore mentioned, it shall be sufficient to prove that the offence was committed either in the parish, township, or vill named in the indictment or information, or in any parish, township, or vill adjoining thereto."

The stat. 7 & 8 Geo. IV. c. 27, repeals the stat. 31 Hen. VIII. c. 2, (which relates to fishing in ponds), and the statutes 5 Eliz. c. 21, 5 Geo. III. c. 14, and also so much of the stat 4 W. & M. c. 23, as relates to fish, and the whole of the stat. 22 & 23 Car. II. c. 25, (except sections 1, 2, 3.)

The 35th section of the 7 & 8 Geo. IV. c. 29, also enacts, "That if any person shall at any time be found fishing, against the provisions of this act, it shall be lawful for the owner of the ground, water, or fishery, where such offender shall be so found, his servants, or any person authorized by him, to demand from such offender any rods, lines, hooks, nets, or other implements for taking or destroying fish, which shall then be in his possession, and in case such offender shall not immediately deliver up the same, to seize and take the same from him for the use of such owner: provided always, that any person angling in the day-time against the provisions of this act, from whom any implements used by *anglers* shall be taken, or by whom the same shall be delivered up as aforesaid, shall, by the taking or delivering thereof, be exempted from the payment of any damages or penalty for such angling."

The 5th section of the stat. 4 W. & M. c. 23, which was nearly similar to the above enactment, is now repealed by the stat. 7 & 8 Geo. IV. c. 27, so far as it "relates to pigeons and fish, and to persons wrongfully fishing, and to all instruments and engines for destroying or taking fish."

The general clauses of the 7 & 8 Geo. IV. c. 29, affecting all the provisions of that act, will be found at large, title *Larceny*, Vol. III., 550 to 556.

The 63rd section contains a provision for the apprehension of offenders except only those guilty of the offence of angling, *post*, Vol. III. p. 551.

The 64th and the following sections regulate the proceedings in respect of summary convictions, *post*, Vol. III. p. 552, 553.

The 66th section relates to the application of forfeitures and penalties on summary convictions. See the section, *post*, 763, 764, n.

The 71st section gives a general form of conviction, *post*, Vol. III. p. 554.

The 61st section as to cases of *felony*, makes principals in the second degree and accessories before the fact, punishable in the same manner as principals in the first degree and accessories after the fact, except receivers, who are, on conviction, liable to be imprisoned for any term not exceeding two years; and abettors in *misdemeanors* are liable to be indicted and punished as principal offenders, *post*, Vol. III. p. 551.

The 62nd section makes abettors in offences punishable on summary conviction, punishable as principals, *post*, Vol. III. p. 551.

The above enactment of the 7 & 8 Geo. IV. c. 29, s. 34, is, in its wording, very different from that of the prior statutes, relative to the offence of taking or destroying fish.

Thus the 5 Geo. III. c. 14, s. 1, in order to render it an indictable offence to enter into an inclosed park or garden, &c. to destroy fish, required

(a) See the 35th section of the act, this penalty, if he give up his tackle, or *infra*, which exempts the angler from the same be taken from him.

## Taking or Destroying Fish, &c.

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the fish should be "*bred, kept, or preserved*" therein(a); but these not being in the new statute, this fact is no longer requisite.

In the same section of the 5 Geo. III. in making it an indictable offence to take fish, confined such offence to the taking in waters running in peculiar places, such as an inclosed park, &c. or garden, &c. adjacent, &c.; whereas the 7 & 8 Geo. IV. extends it to the taking, &c., of "any water running through or being in any land adjoining or being to the dwelling-house," &c.

In the 3rd section of the same act of 5 Geo. III. imposed a penalty for the use of the owner only, on persons found guilty, on summary conviction, of taking or destroying fish in water "*being in an inclosed which was private property*;" (b) and it was necessary, to support a conviction under that act, to state and prove that the offence was committed in inclosed ground, being private property. *R. v. Sadler*, 2 Chit. Rep. 301; *Lisle v. Brown*, 1 Marsh. 127; 5 Taunt. 440, S. C. (d); *Wickes v. Buck*, 2 Bing. 483. But this is not so under the new act.

The first section of the 5 Geo. III. c. 14, also has the words "*without the consent of the owner*," which are not in the new statute. Now, under the new statute, it was, it should seem, necessary not only to state in the indictment, but also prove, that the act was without the consent of the owner. *v. Mallinson*, 2 Burr. 679; *R. v. Rodgers*, 2 Campb. 654. This, it is decided, is not necessary under the statute 7 & 8 Geo. IV. c. 29; at all events, though it might be necessary to adduce some evidence to negative the owner's consent, the owner need not be called for the purpose; his non-consent may be inferred from other circumstances, or proved by his agents. *Jent, R. v. Chamberlain*, R. & M. C. C. 155, so decided on the 5 Geo. IV. c. 14.

The 22 & 23 Car. II. c. 25, s. 7 (e), enacted that persons stealing

### TAKING OR DESTROYING FISH, &c.

Place of taking  
the fish.

Consent of owner  
of fishery.

stat. 5 Geo. III. c. 14, s. 1, it enacted—If any person shall enter any park or paddock fenced in or into any garden, orchard, or inclosure, or belonging to any dwelling, in or through which park, &c. any river or stream of water shall run or be; or wherein shall be any river, stream, pond, pool, moat, or other water; and by any means whatsoever shall steal, take, destroy any fish, *bred, kept, or preserved*, in any such river, &c. without the consent of the owner: or shall be assisting therein as afore-said, shall receive or buy any such fish, being the same to be so stolen as aforesaid; and being convicted within six calendar months after such offence or offences have been committed, before any justices of gaol delivery for the county wherein any such park or paddock, orchard, or yard, shall be; or on such indictment, be by verdict or confession convicted of such offence, the person or persons so convicted shall be transported for seven

years, or be liable to imprisonment under this act, against any person, *R. & M. C. C. 205*, in an inclosed park and taking fish, *bred, kept, and preserved* there, in any water running through the park

—It appeared that the park was walled round, except where the river entered and passed out, and that there were fences to keep in the deer, that there was nothing to keep in the fish, that they were not known to breed there, that nothing was done to stock the river, but that persons were never suffered to angle in the park without leave. It was held that this was not a place where fish were to be considered as "*bred, kept, or preserved*," within the meaning of this act, and therefore the conviction was wrong.

(b) See the words of the section, *post*, 762, n.

(c) See this case, *post*, 765.

(d) In this case it was decided, that a stream of water running by the side of a piece of ground, and forming part of the inclosure of the ground, is not a stream "in inclosed ground," within the meaning of the 3rd section of the 5 Geo. III.: though it appeared that the ground was inclosed on every other side of it, and that the ground on the opposite side of the stream was likewise inclosed, though the property of a different person.

(e) This statute, after reciting, that whereas divers idle, disorderly, and mean persons betake themselves to the stealing, taking, and killing of fish out of ponds, pools, moats, stews, and other several

5 Geo. 3, c. 14, s. 1.



**Fish and Fisheries.**

[I. (3).]

fish "*without the consent of the owner,*" should, on conviction, make compensation to him for the same, and forfeit a sum not exceeding 10s. for the use of the poor. The 5 Geo. III. c. 14, s. 3 (a), gave a penalty of 5*l.* to the owner only of the fishery, for stealing his fish out of an inclosed ground not being a park, &c. This latter provision did not contain the words *without the consent of the owner.*

In the case of *R. v. Mallinson, 2 Burr. 679*, a conviction on the statute of Car. for *taking and killing fish*, not setting forth (amongst other particulars) that the defendant had not the licence or *consent of the owner*, was adjudged to be bad. For, by the Court, the offence provided against by the act is *stealing fish*, taking it without the consent of the owner. The jurisdiction given to the justice is over every such offender in stealing, taking, and killing. And it has been holden, that it must appear upon a conviction under this third clause of the 5 Geo. III. that there was a complaint by the owner, and that the fishing was without the owner's consent. *R. v. Corden, 4 Burr.*

waters and rivers, to the great damage of the owners thereof; enacted, that if any person shall use any net whatsoever, or any angle, hair, noose, troll, or spear; or shall lay any wears, pots, nets, fish hooks, or other engines; or shall take any fish by any means or device whatsoever, or be aiding thereunto in any river, stew, pond, moat, or other water as aforesaid, *without the consent of the lord or owner of the water*, and be thereof convicted by confession, or oath of one witness, before one justice, in one month after the offence; every such offender in stealing, taking, or killing fish shall, for every such offence, give to the party injured such recompence for his damages, and in such time as the justice shall appoint, not exceeding treble damages; and moreover shall pay down to the overseers for the use of the poor such sum, not exceeding 10*s.*, as the justice shall think meet: in default of payment, to be levied by distress and sale, rendering the overplus, if any; for want of distress, to be committed to the house of correction not exceeding one month, unless he enter into bond with one surety to the party injured, not exceeding 10*l.*, never to offend in like manner.

5 Geo. 3, c. 14, s.  
3, 4, 5.

(a) By the 5 Geo. III. c. 14, s. 3, it was enacted—"In case any person or persons shall, after the 1st of June, 1765, take, kill, or destroy, or attempt to take, kill, or destroy, any fish, in any river or stream, pond, pool, or other water (not being in any park or paddock, or in any garden, orchard or yard, adjoining or belonging to any dwelling-house, *but shall be in any other inclosed ground which shall be private property*), every such person, being lawfully convicted thereof by the oath of one or more credible witness or witnesses, shall forfeit and pay for every such offence the sum of 5*l.* to the owner or owners of the fishery of such river or stream of water, or of such pond, pool, moat, or other

water; and it shall and may be lawful to and for any one or more of his Majesty's justices of the peace in the county, division, riding, or place where such last-mentioned offence or offences shall be committed, upon complaint made to him or them upon oath, against any person or persons, for any such last-mentioned offence or offences, to issue his or their warrant or warrants, to bring the person or persons so complained of before him or them; and if the person or persons so complained of shall be convicted of any of the said offences last mentioned, before such justice or justices, or any other of his Majesty's justices of the same county, division, riding, or place aforesaid, by the oath or oaths of one or more credible witness or witnesses, which oath such justice or justices are hereby authorized to administer, or by his or their own confession, then and in such case the party so convicted shall, immediately after such conviction, pay the said penalty of 5*l.* hereby before imposed for the offence or offences aforesaid, to such justice or justices before whom he shall be so convicted, for the use of such person or persons as the same is hereby appointed to be forfeited and paid unto; and, in default thereof, shall be committed by such justice or justices to the house of correction, for any time not exceeding six months, unless the money forfeited shall be sooner paid."

Sect. 4. Or such owner of the fishery may bring an action for the penalty (within six calendar months after the offence), in any of the Courts of record at Westminster.

Sect. 5. Provided that nothing in this act shall extend to subject any person to the penalties thereof, who shall fish, take, or kill, and carry away any fish in any river or stream of water, pond, pool, or other water, wherein such person shall have a just right or claim to take, kill, or carry away any such fish.

And, in a more recent case, it was clearly holden, that, in a conviction, 5 Geo. III. c. 14, s. 3, it must be distinctly stated in the indictment, and in the evidence, that the proceeding was at the instance of the owner of the fishery. *R. v. Daman*, 2 B. & A. 378; 1 Chit. Rep. 147, S. C. (a). It is to be observed, that the wording of the late act 7 & 8 Geo. IV. c. 34, is materially different in these respects from these prior enactments: the stat. Car. II. and Geo. III., for it wholly omits the words "*with the consent of the owner*," and does not state that the penalty is to be levied *on the owner only*, or empower him to bring an action for it. Consequently it is submitted, that it would not be now necessary, in a conviction under the late act 7 & 8 Geo. IV. c. 29, s. 34, to state or prove that the wrongful act was done *with the consent of the owner of the fishery*, or that the conviction was at the instance (b). It would be presumed the owner did not consent,

in this case, the defendant had appeared before three justices of the peace for the county of Southampton, under the late act 7 & 8 Geo. IV. c. 14, s. 3, of destroying, with intent, fish in inclosed grounds, being the property of the defendant. The conviction stated—"Be it remembered, that, on the 18th day of May, 1818, at &c., Sir Henry Fane, at the instance and on the behalf of the Honourable Anne Fane, lady of the manor of Avon Tyrrisaid county, came in his private capacity before us, and gave us to be informed, that he was the owner of the said fishery, and that he had removed into the said fishery, by *certiorari*, and a rule obtained to quash it. Chitty arrested the conviction, and Casport of it. Per Bayley, J. In a conviction, nothing is required, either by intendment; and therefore we must, on every occasion, look only to the words of the conviction, and the act of Parliament. The act of 7 & 8 Geo. IV. c. 29, s. 34, is the more effectual preservation, and it directs that the offence, for every offence, 5l. of the fishery. The forfeiture to the owner of the fishery, &c., and the act gives him a right to bring the penalty either by action. In the latter case, the owner must be in his name; and therefore, it follows,

by necessary intendment, that it must appear on the face of the proceedings, either that the penalty is sued for in his name, or at his instance. And it is not sufficient that this fact should be stated by the justice in the conviction, but it must be also embodied in the information, and established by the proof. In this case, the magistrates state in the conviction, that Sir Henry Fane, at the instance and on the behalf of the Honourable Anne Fane, lady of the manor, &c. appeared before them. Now it does not appear upon what authority that fact is stated, and there is nothing proceeding from the party which leads to that conclusion. Then, in the information it is stated, that Sir H. Fane, on the behalf of A. Fane, prays the judgment; but it is not stated that he does it at her instance, and there is a material distinction between the two phrases. For the latter necessarily implies a previous communication, which the former does not. Then comes the appearance of the defendant, and his plea of not guilty, after hearing the information read. Now, as the information is wholly silent as to the person at whose instance the charge is made, the defendant is unapprised of that circumstance; and it is to be observed, that if that fact had formed part of the information, the plea of not guilty would have put it in issue, and made it necessary for the prosecutor to prove it. I am, therefore, of opinion, that the act of Parliament requires the information to be in the name, or at the instance of the party grieved, and that that must appear both in the information and in the evidence stated in the conviction. And that not having been done in this case, this conviction must be quashed.

(b) It will be observed, the 66th section of the 7 & 8 Geo. IV. c. 29, does not, like the prior acts, in every event give compensation to the owner; and he will not be entitled to it, if he be examined as a witness in support of the offence, or be not known. The general form of conviction also given by the 71st

TAKING OR  
DESTROYING  
FISH, &c.

Claim of right.

Other points as to  
indictment and  
conviction.

and it would be for the defendant to prove the contrary, by calling the owner himself, or otherwise. Indeed, it is not to be conceived how any *third* person could in proof of the offence swear positively to the negative fact of the owner *not* having consented, and if the owner were bound to prove it, he could not possibly obtain compensation as the party aggrieved, the 66th section of the 7 & 8 Geo. IV. c. 29, taking that compensation away from him, if he be examined as a witness in proof of the offence.

It should seem that a person who fishes in a fishery belonging to another, but to which he has a claim, for the purpose of giving occasion to an action in order to try the right, is not liable to the penalty. See *Kimmersley v. Orpe*, *Dougl.* 517, decided on the 3rd section of the 5 Geo. III. c. 14, *ante*, 762, *n.*; at all events, however, the party claiming the right must have some *fair and plausible colour of title* to the fishery. See *ante*, Vol. I. 832, 833.

A conviction before a justice of the peace under the above act of 7 & 8 Geo. IV. must, like all others, shew the offence to have been committed within the jurisdiction of the convicting justice. Where a conviction on the 5 Geo. III. c. 14, s. 3, for fishing without the consent of the owner, in part of a certain stream "which runneth between B. in the parish of A., in the county of W., and C. in the same parish and county," was quashed, because it did not appear that the intermediate course of the stream between the two *termini*, in which the offence was alleged to be committed, was in the county of W.; and the Court said, they would not presume that the place where the offence was committed, was within the jurisdiction of the convicting magistrate, but it must expressly so appear; and that it did not follow that the intermediate course of the stream was in the same county with the two *termini* mentioned, the fact being often otherwise. *R. v. Edwards*, 1 *East*, 278; see *ante*, p. 760, as to streams constituting boundaries of parishes, &c.

The means used to take the fish need not be stated in the indictment or conviction. *R. v. Carradice*, *R. & R. C. C.* 206.

Though the indictment should state the offender *feloniously* to have taken the fish, that averment would be immaterial, as the word *feloniously* would be rejected as surplusage. *Id.*

It seems necessary to specify in an indictment or conviction, that a certain number of fish were taken. *Rex v. Marshal*, 2 *Keb.* 594. An indictment or conviction for taking *divers fish*, without specifying some number, would be bad. See *Id.*; *Paley on Convictions*, 82; and see *R. v. Daman*, 1

7 & 8 Geo. 4, c. 29,  
s. 66.

sect. of the act is as if it were founded at the instance of a third person, and not the owner. The following is the enactment of that act, as to the application of forfeitures: Sect. 66. 'And with regard to the application of all forfeitures and penalties upon summary convictions under this act,' it is enacted "That every sum of money, which shall be forfeited for the value of any property stolen or taken, or for the amount of any injury done, (such value or amount to be assessed in each case by the convicting justice), shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence; and in that case, or where the party aggrieved is unknown, such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice of the peace, whether in addition to such value or amount, or otherwise, shall be paid to some one of the overseers of the

poor, or to some other officer, (as the justice may direct), of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division, in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate: provided always, that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury, in every such case no further sum shall be paid to the party aggrieved than that which shall be forfeited by one of such offenders only; and the corresponding sum or sums forfeited by the other offender or offenders shall be applied in the same manner as any penalty imposed by a justice of the peace is heretofore directed to be applied."

## Taking or Destroying Fish, &c.

765

TAKING OR  
DESTROYING  
FISH, &c.

150; where the point was raised, but not decided. See the annotations collected there in note (f). It need not be stated to be the goods and chattels of the owner. *case, 2 East's P. C. 611 (a)*. Information or conviction must not state the offence in the affirmative will be bad. *R. v. Sadler, Cas. temp. Lord Mansfield, 2 Chit. Rep.*

several persons be guilty of one joint act of unlawful fishing,

his case, the indictment, on 11 Geo. 3. c. 14, s. 1, charged John [redacted] unlawfully entering a garden, adjoining and belonging to a house, in which was a ceremony for keeping fish, and with consent, with a certain net, taking out of the said pond, quantity of live gold and silver goods and chattels of the said [redacted] in the form of the statute. It appeared that the pond, the fish were taken, adjoining, and was about twenty feet high, and ten in breadth; that other fish were kept in it, usually fished for with a line. It was objected, that the pond were *fera natura*, and not the property of any person, as they were laid to indictment. In answer to objection was taken on the part of the defendant, that this was not an indictable felony, but only for a misdemeanor, the statute, [which, it is to be observed, uses the word *steal*], though the offence directed was transportation. Term, 1781, all the judges held the indictment good, the case brought within stat. 5 Geo. 3. The allegation that the fish and chattels of any person were taken, therefore, that part of the indictment was surplusage. But if the defendant had been at common law for the offence, it is the opinion of some, that the indictment described what sort of a felony it might appear on the indictment that taking fish out of a pond was felony. The defendant, in this case, was charged under the 3rd section of the 5 Geo. 3. c. 14, in a penalty of 5*l.*, for an offence against the provisions of this section. In setting forth the offence, he proceeded as follows:—*re, to wit: Be it remembered, that at &c., W. Sims, of &c., do Sir John Wrottesley, Bart. give me, &c., and giveth me to &c., that on &c., at &c., one [redacted] labourer, did kill, take, and attempt to kill, take, and destroy in a river or stream, common to the [redacted] Smestall, in the parish of [redacted], in the county aforesaid,*

*without the consent of the said Sir J. W., Bart., he the said Sir J. W. being then the owner of the fishery within the river or stream aforesaid, in the parish of Womborne, aforesaid, in the county aforesaid, the same not being in any park or paddock, or in any garden or orchard, or yard adjoining or belonging to any dwelling-house; whereupon afterwards, to wit, on the 13th July, in the year aforesaid, at &c., aforesaid, he the said J. S., being by virtue of my warrant brought before me, the justice aforesaid, to answer to the said charge contained in the said information, and having heard the same, he the said J. S. is asked by me the said justice, if he can say any thing for himself why he should not be convicted of the premises charged upon him as aforesaid; and because he the said J. S. doth not say any thing in his own defence, touching or concerning the premises, and doth not pretend to have any just right or claim to take, kill, or destroy any fish within the river or stream aforesaid, but doth of his own accord freely and voluntarily acknowledge and confess all and singular the said premises to be true; and because all and singular the premises being heard, and fully understood by me the said justice, it manifestly appears unto me, that he the said J. S. is guilty of the offence aforesaid so laid to his charge; it is therefore adjudged by me, the said justice, that he the said J. S. is guilty of the offence aforesaid, and that he be, and he is hereby convicted by me the justice aforesaid, of the premises, according to the form of the statute in that case made and provided; and I, the justice aforesaid, do award and adjudge, that, for the premises aforesaid, he the said J. S. hath forfeited the sum of 5*l.* of lawful money of Great Britain, to be paid as the statute aforesaid doth direct. In witness, &c."*  
—*Bower*, on a former day, had obtained a rule to shew cause why the conviction should not be quashed, for two objections, viz. that it was wrong in stating the offence in the alternative, that the defendant did kill, &c. or attempt to kill, &c. and that it did not state the offence to have been committed in an inclosed ground. He now moved to make the rule absolute; and on the first objection urged, that it was a well-founded general rule, that

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FISH, &c.

Several offenders.

against the statute 7 & 8 Geo. IV., such as in using one net, it should seem, that each would be subject to the penalty of 5*l.* above the value of the fish taken; but, under the 66th section, *ante*, p. 764, n. (b), a payment by one of such value would relieve the others therefrom. Where several persons are so jointly liable, it should seem, that only one conviction, with an award of several penalties against each, and not several convictions, should be made. *Paley's Conv.* 160; *R. v. Drake*, 2 *Show.* 489; 1 *Chit. Rep.* 150, *n.* See further *post*, *Game*, and *ante*, Vol. I. p. 818.

(4) Destroying, and Putting Noxious Materials into Ponds, &c.

Breaking down or  
destroying fish-  
ponds, &c.;

or putting noxious  
materials into  
same;  
or destroying mill-  
ponds;

a misdemeanor.

Seven years' trans-  
portation or im-  
prisonment.

Observations and  
decisions.

The stat. 7 & 8 Geo. IV. c. 30, s. 15, enacts, "That if any person shall unlawfully and maliciously break down or otherwise destroy the dam of any fishpond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein, or shall unlawfully and maliciously break down or otherwise destroy the dam of any millpond, every such offender shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years; and, if a male, to be once, twice, or thrice publicly or privately whipped, (if the Court shall so think fit), in addition to such imprisonment."

The stat. 7 & 8 Geo. IV. c. 27, repeals the prior acts relative to this offence, *viz.* the stat. 5 Eliz. c. 21; the 9 Geo. I. c. 22; and the stat. 4 Geo. IV. c. 54; except as to threatening letters.

The general clauses affecting this, and all the provisions of the 7 & 8 Geo. IV. c. 30, will be found *post*, title *Malicious Injuries to Property*, Vol. III. p. 722 to 727.

The provision in the above act as to putting noxious materials into fish ponds, &c., and breaking down the dams of mill ponds, is not to be found in prior acts.

The statute of 7 & 8 Geo. IV. c. 30, in some respects differs importantly from the prior act 9 Geo. I. c. 22; this offence, under the stat. 9 Geo. I. c. 22, must have been proved to have been committed from *malice to the owner* of the water; and therefore, where it appeared, that the defendant had broken down the mound of a fish pond, in order to steal the fish, the judges held that it was not an offence within the statute. *R. v. Ross*, 2 *East's P.C.* 1067; *R. & R.* 10, S. C. (a). But this is not required by the 7 & 8 Geo. IV.

In all legal proceedings charging a party with an injury or crime, the nature of such injury or crime must be so described, that the defendant may know what he is called upon to answer; that the jury (or, in this instance, that the justice) may appear to be warranted in their conclusion of "guilty" or "not guilty," upon the premises delivered to them; and that the court or judge may see such a definite injury or crime, that they may apply the remedy or the punishment which the law prescribes. For this he cited 2 *Cowp.* 682-3; 1 *Ld. Raym.* 171. On the second objection, he contended, that, to bring an offence within the meaning of the 5 Geo. III. it should be committed within some "inclosed ground;" and that the conviction, being deficient in this

statement, it was bad.—The Court admitting the validity of these objections, the conviction was quashed. See also the cases in 3 *T. R.* 159; *Doug.* 278.

(a) In this case Thomas Ross was indicted on 9 Geo. I. c. 22, for unlawfully, maliciously, and feloniously breaking down the head and mound of two fish ponds in a place called Bosworth Park, belonging to Sir Wolston Dixie, Bart. "whereby the fish therein were lost and destroyed." It was proved that a part of the head or mound of one of the ponds had been cut down to a considerable depth by two persons, of whom the prisoner was one, so as to leave but little water in the pond, and that the fish were gone. But it appeared to have been the object of the offenders to steal the fish, and not

this act the offence must be proved to have been done maliciously; but if from malice to the owner, or otherwise, is immaterial: and it is sufficient if it be done with intent to take or destroy the fish, or so as thereby to cause the loss or destruction of them.

DESTROYING,  
&c. PONDS, &c.

### Rules of a general Nature concerning the Size, and Preserving the Breed of Fish (a).

stat. 1 Geo. I. st. 2, c. 18, s. 14, enacts, If any person shall lay or set any net, engine, or other device, or wilfully do or cause any thing to be done in the Severn, Dee, Wye, Teame, Were, Tees, Ribble, Mersey, Mer, Ouze, Swaile, Calder, Wharf, Eure, Darwent, or Trent, whereby any salmon or fry of salmon, or any kepper or shedder salmon, or any salmon less than eighteen inches or more from the eye to the extent of the middle fin, shall be taken and killed, or destroyed; or shall make, erect, or set any bank, dam, hedge, or stank, or net, cross the same, whereby the passage of salmon may be taken, or hindered from passing up to spawn; or between July 31st, and November 12th, (except in the Ribble, where they may be taken between January 1st, and September 15th), take, kill, or wilfully hurt any salmon of any kind or size, in any of the said rivers, or shall, after November 12th, yearly, fish there for salmon with any net or mesh less than two and half inches in the mesh; he shall, on conviction, in any of the said rivers, be liable to imprisonment, or view, confession, or oath of one witness, and the fish so taken, and the nets, engines, and devices used in the same; half the said sum to the informer, and half to the poor; to be paid by distress, rendering the overplus; for want of distress, to be committed to the house of correction, or other county gaol or prison, not less than three months, nor less than one, there to be kept to hard labour, or such other corporal punishment as the justice shall think fit; the justice shall order the nets, engines, and devices to be cut or destroyed in his presence, and shall cause the banks, dams, hedges, or stanks, to be shed and removed at the charge of the offender, to be levied in any of the said rivers.

Salmon in particular rivers.

escape through the breach in the dam, for the weeds were much on the pond, manifestly in favour of the fish; and the two persons were seen with sacks, which, there being no sufficient to prove, were taken, and there was no evidence that any of the fish had escaped cut, or that it was the occasion or destruction any other way, rendering it more easy to break the greatest part of the dam off.—*Chambre, B.*, at first instance, thought, that though the prisoner had been indicted for a breach under stat. 5 Geo. III. c. 14, proved did not support the charge of the felony, conceiving that stat. c. 22, was meant to apply of malicious mischief, and not of the king of the mound was the use of the loss and destruction, and not merely ancillary to them by other means; neglecting any case upon the

construction of this clause, he left the evidence of the facts to the jury, who found the prisoner guilty, and he respited judgment in order to take the opinion of the judges upon the question of law.—In Trinity Term, 1800, the judges, on conference, held the conviction wrong, as the clause against breaking the heads, &c. of ponds does not extend to cases where the object of the party was to steal the fish; which is guarded against by another clause; and that even if the offence proved had been originally within the Black Act, it was virtually taken out of it by the subsequent statute of 5 Geo. III. c. 14.

Perhaps, (observes Mr. East), stat. 5 Eliz., which was not adverted to upon that occasion, may also be thought to meet the case so far as concerns the act of cutting the dam with intent to steal the fish.

(a) As to the law relative to public fisheries in general, see *Chit. Game Laws*, 239 to 266.

SIZE, &c. OF  
FISH.

1 Geo. 1, st. 2, c. 18.

Salmon sent to  
London to weigh  
six pounds

Salmon spawn  
and smelts.

43 Geo. 3, c. lxi.  
With respect to  
the rivers Teign,  
Dart, and Plym.

Power for legal  
owners, &c., to  
take salmon, &c.,  
with legal nets at  
certain times.

For restraining  
persons taking  
salmon, &c., or  
pursuing or injur-  
ing the same.

*Note*—It is not said who shall have the fish; so that it seemeth that they are forfeited to the King.

And by sect. 15, no salmon shall be sent to fishmongers or their agents in London, under six pounds' weight; on pain that the sender, buyer, or seller, on the like conviction, shall forfeit 5*l*. and the fish; half the penalty and fish to the informer, and half to the poor; the said sum to be levied by distress; for want of sufficient distress, to be committed to the house of correction, or other county gaol or prison, there to be kept to hard labour for three months, if not paid in the mean time.

By sect. 17, persons aggrieved may appeal to the next sessions.

By stat. 13 Edw. I. st. 1, c. 47, it is enacted, That no salmon shall be taken in the Humber, Ouze, Trent, Donee, Arre, Derwent, Wharfe, Nid, Yore, Swale, Tese, Tine, Eden, or any other water wherein salmon are taken, between September 8th and November 11th. Nor shall any young salmon be taken at mill-pools (nor in other places, 13 Rich. II. st. 1, c. 19), from the midst of April, until the nativity of St. John baptist, on pain of having the nets and engines burnt for the first offence; for the second, imprisonment for a quarter of a year; for the third, a whole year; and as the trespass increaseth, so shall the punishment. And overseers shall be assigned to inquire hereof. That is, under the great seal, and by authority of Parliament. 2 *Inst.* 477.

And stat. 43 Geo. III. c. lxi. s. 1, after reciting, Whereas the periods limited by the said acts of 13 Edw. I. and 13 Rich. II. are not suited to the fisheries for salmon, salmon peal, or salmon kind, or bouges, otherwise sea trout, or to the protection of the spawn or fry of salmon in the rivers commonly called the Teign, Dart, or Plym, in the county of Devon, and have been found very prejudicial to the owners and proprietors of the fisheries in such rivers, and to the public; and whereas it is necessary that provision should be made for the better preservation of salmon, and the spawn, fry, or young brood of salmon, salmon peal, salmon kind, and bouges or sea trout, in the said rivers Teign, Dart, and Plym, and in the several rivulets or streams of water communicating therewith; enacts, That it shall be lawful for the respective owners and proprietors, and persons legally entitled to fish in the said rivers or waters called the Dart, Teign, and Plym, in the said county, or in any of the streams of water or rivulets communicating therewith, and their respective servants and agents at any time in the year between the 4th of March and the 4th of December, within the Teign, and the several rivulets or streams communicating therewith, with legal and proper nets, or hooks and lines, to take, kill, or destroy any salmon, salmon peal, or salmon kind, and to offer to sale any such fish so taken between the said periods within the Teign and the several rivulets or streams communicating therewith; and also at any time between the 15th of February, and the 15th of November within the said rivers Dart and Plym, and the several rivulets or streams communicating therewith, with legal and proper nets, &c., to take, &c., any such salmon, &c., within the said Dart and Plym, and the several rivulets or streams communicating therewith, and to offer the same to sale when so taken between the said last-mentioned periods, within the said last-mentioned river and waters; and that all such fish shall be considered to be in season, and proper to be killed.

But sect. 2 provides, that no such owner or other person, nor any of his servants or agents, nor any other person, shall at any time within the Teign, or any of the waters communicating therewith, on or between the 4th of December, 1803, and the 4th of March, 1804, or at any time or times in any subsequent year on or between the 4th of December and the 4th of March following; and that no such proprietor or other person, nor any of his servants or agents, nor any other person, shall at any time within the said rivers Dart and Plym, or either of them, or any of the waters communicating therewith respectively, on or between the 15th of November, 1803, and the 15th of February, 1804, or at any time or times in any subsequent year on or between the 15th of November and the 15th of February follow-

ing, take, kill, or destroy, pursue, hurt, or injure, or attempt, or endeavour, or seek to take, kill, or destroy, or to pursue, hurt, or injure any salmon, salmon peal, or salmon kind, or any of the spawn, brood, or fry of salmon, or any kepper or shedder salmon, by any means whatsoever; nor shall any person offer to sale, or dispose of any of the said fish so taken in the said rivers and waters within the periods last aforesaid; and that no person shall at any time hereafter, either within such periods or otherwise within any or either of the said several rivers or waters communicating therewith, pursue, take, kill, or destroy, or seek, or endeavour to take, kill, or destroy, pursue, hurt, or injure any of such fish by means of any engine commonly called a spear, or with any other engine or device of that nature; nor shall any person offer any of such fish for sale if the same shall be so taken as aforesaid.

Sect. 3. No bouges, otherwise called sea trout, shall be taken within the said rivers, or any of the waters communicating therewith, between the 29th of September and the 2nd of February following in any year; and none of the fish hereinbefore mentioned, of whatever kind, shall at any time be pursued, taken, killed, or destroyed, or attempted so to be, or to be otherwise hurt or injured, within any of the said rivers, or the said waters, on a Sunday.

Sect. 4. And after the passing of this act, every person who shall pursue, take, kill, or destroy, or endeavour or attempt to pursue, take, kill, or destroy, or be aiding or assisting in the pursuing, taking, killing, or destroying any salmon or other such fish as aforesaid, or spawn, brood, or fry, aforesaid, in any or either of the said rivers, or within any of the several waters communicating therewith, or with either of them; or shall sell or expose to sale any such salmon, or other such fish taken contrary to this act, or between the periods before specified in relation to any such fish as aforesaid, and who shall be thereof convicted before any justice for the said county, either upon view or by confession, or by the oath of one witness, or of any such owner or proprietor, or of other such person legally entitled to fish as aforesaid, or of his agents or servants, shall, for the first offence, forfeit any sum, to be ascertained by such justice, not less than 40s. nor more than 5*l.*, together with such fish, and all the nets, and other instruments used or kept for the purpose of committing any such offence, and for the second offence shall forfeit not less than 40s. nor more than 10*l.*, to be ascertained as aforesaid, together with all such fish, nets, and other instruments as aforesaid; one half of such penalty to go to the informer, and the other half to the poor of the parish or parishes where the offence was committed; such penalty to be levied by distress, by warrant of such justice or justices, rendering the overplus, &c., and for want of such distress, or of payment of such penalty on demand, then such offender shall, for every such offence, be sent to the house of correction of the county where taken, to be kept to hard labour not exceeding six calendar months, nor less than two calendar months; and the said justice or justices shall order such nets, &c. to be seized and immediately cut in pieces or otherwise destroyed or disposed of in his or their presence, as he or they may think proper.

Sect. 5. All persons who think themselves aggrieved by any judgment of any justice or justices in any case aforesaid may appeal to the justices of the said county of Devon at their next general quarter sessions for the said county, who are hereby empowered finally to determine the same; so that the person appealing enter into a recognizance before such justice or justices with sufficient sureties to abide the event of such appeal and the determination thereon, and so that such person so appealing shall, by himself or his agent give ten days' previous notice in writing of such appeal to the party against whose act such appeal shall be made; and the justices at the said sessions are hereby required to hear and determine the matter of every such appeal, and make such order therein, and award such costs as to them shall seem reasonable; and by their order or warrant to levy the costs so awarded by distress and sale, &c., rendering the overplus, &c., after deducting the charges, &c.; which determination shall be final and conclusive on all

SIZE, &c. OF  
FISH.

43 Geo. 3, c. 121.

Sea-trout not to be taken but at certain seasons, &c.

Penalties on persons selling salmon or offering the same for sale.

Allowing an appeal.



SIZE, &c. OF  
FISH.

58 Geo. 3, c. 43.

Justices at sessions to  
appoint con-  
servators of rivers.

Quarter sessions to  
fix periods in  
which salmon  
shall not be taken,  
&c.

Destroying sal-  
mon, or the brood,  
spawn, or fry  
thereof.

Proviso for  
angling.

First offence.  
Second and sub-  
sequent offence.

Killing, taking,  
having in posses-  
sion, selling, &c.  
spawn, fry, or

parties concerned, and not removable by *certiorari*, or any other writ or process whatsoever, into any Court of record at Westminster.

The 58 Geo. III. c. 43, intituled *An Act for preventing the destruction of the breed of salmon, and fish of salmon kind, in the rivers of England*, contains general regulations extending to all rivers throughout England, for the preservation of salmon. By sect. 1, after reciting, that 'Whereas provision has been made, in various acts of Parliament, for preventing the destruction of salmon, and other fish of the salmon kind, in the several rivers in England named therein, and in estuaries and arms of the sea near the mouths of the said rivers; and it would be of great public advantage if such protection should be afforded generally in all rivers throughout England,' it is enacted, "That, from and after the passing of this act, it shall be lawful for the justices of the peace, assembled at any general or quarter sessions of the peace, from time to time to appoint conservators or overseers for the preservation of the salmon, and fish of the salmon kind, and the brood, spawn, and fry thereof, and preventing the destruction thereof, and enforcing for that purpose the provisions of this act within the limits of the jurisdiction of such justices, and within the limits of which they shall be so appointed."

Sect. 2. "That where no provision is made by any act now in force for limiting the times within which it shall be lawful to take salmon, or fish of the salmon kind, in any of the rivers in England, it shall be lawful for the justices of the peace, acting for the several counties, at their several quarter sessions of the peace, and they are hereby required, at the request of any person, such person having first given notice, in some newspaper usually circulated within the county, of his intention to apply to the said quarter sessions in that behalf, to fix certain days, not exceeding one hundred and fifty days in each year, for each river within their respective counties, to be fence days for the several rivers respectively; during which time it shall not be lawful for any person or persons whatever, to take, kill, or destroy, or attempt to take, kill, or destroy, any salmon or salmon trout, or fish of the salmon kind, or any brood, spawn, or fry, of such fish; and the said justices are hereby further empowered, at any general quarter sessions, to vary annually the number of such days, and the periods at which they shall commence, as they shall think fit."

Sect. 3. "That if any person or persons shall at any time hereafter pursue, take, kill, or destroy, or seek or endeavour to take, kill, or destroy, pursue, hurt, or injure any salmon or salmon kind, by laying or using any hot lime or filth, or material or drug pernicious to fish, or using any water in which any green lint or flax has been steeped, or letting off stagnated water, or any water impregnated with any material or drug pernicious to fish; or if any person shall use or employ any such means as aforesaid, or use any fire or light, or white object, or lay down any kind of net, engine, or device, or wilfully do or commit, or cause to be done or committed, any act whatsoever, in any river, water, rivulet, stream, mill dam, mill sluice, cut, pool, or pond, communicating therewith, for the destruction of the brood, spawn, or small fry, of salmon therein, (angling excepted); or if any person shall hereafter make, erect, or set any bank, dam, hedge, or stank, net or nets, or place any fire or fires, light or lights, or any white object or objects, so that the young fry or young salmon be prevented from going down from such rivers, rivulets, or other waters communicating therewith as aforesaid, or any of them, every such person so offending shall for every such first offence forfeit and pay any sum not exceeding ten pounds, nor less than five pounds, and for every second and subsequent offence, any sum not exceeding fifteen pounds, nor less than ten pounds, at the discretion of the justice or justices before whom the offender or offenders shall be convicted, and shall also forfeit all the fish, spawn, brood or fry so taken, and all the nets, weapons, lines, instruments, boats, devices, or things used in the taking thereof."

Sect. 4. "That no person shall, at any time after the 1st day of September, 1818, take, kill, or destroy, or knowingly have in his or her possession, either on the water or on the shore, or shall bring to shore, or cry or

carry about, sell, offer or expose to or for sale, or shall exchange for any goods, matter, or thing, any spawn, fry, or brood of fish, or any unsizeable fish, or any kepper or shedder salmon, being unseasonable salmon, commonly called *old salmon*, or any salmon caught in any river during the periods when fishing for salmon is prohibited under the provisions of any law now in force, or when the same shall be prohibited by any order to be made by the justices at their sessions as hereinbefore provided; and it shall be lawful for any conservator or overseer thereof, or any other person, under the authority of this act, to take and seize all or any such spawn, fry, or brood of fish, or such other fish as aforesaid, wherever the same shall be found, together with all baskets and package in which the same shall be so found or taken, and to deliver the person on whom the same may be found to a constable or other peace officer; and after every such seizure shall be made, the spawn, fry, or brood, or other fish as aforesaid, together with the baskets and package in which the same shall be so seized, shall be delivered into the hands of some constable or other peace officer; and every such constable or other peace officer is hereby authorized and required to take every such offender with whom he shall be so charged for any such offence, into his custody, and also the spawn, fry, or brood of fish, and such other fish as aforesaid, and all baskets and packages in which the same shall be so seized, and which shall be delivered to such constable or other peace officer as aforesaid, and to carry such offender, and all such spawn, fry, or brood of fish, and such other fish as aforesaid, together with the baskets and package as aforesaid, which shall have been delivered to any such constable or other peace officer, with all convenient speed, before some justice or justices, or magistrate of the county, city, or place, where the offence shall be committed, for such offender to be dealt with according to law; and on the conviction of any such offender or offenders for any such offence, before any such justice or justices, or magistrate as aforesaid, every such offender shall forfeit all and every such spawn, fry, or brood of fish, unsizeable fish, and fish out of season, which shall be so seized, together with all baskets or package in which the same shall be so seized; and all such spawn, fry, or brood of fish, or such other fish as aforesaid, together with such baskets and package in which the same shall have been so seized as aforesaid, shall, by order of the justice or justices before whom the same shall be so brought, be delivered to the person or persons who shall have so seized the same, and shall prosecute to conviction any such offender; and every offender who shall be so convicted as aforesaid of any such offence, shall besides forfeit and pay for every such offence any sum not exceeding 10*l.* nor less than 5*l.*"

Sect. 5. "That nothing herein contained shall extend, or be deemed or construed to legalize, nor to demolish, take away, or destroy any net, fish lock, coop, bay, or other work, which shall have been, or may hereafter be, lawfully erected, put, placed, fixed, or used in any such arm of the sea, or estuary or mouth of any river, or in or upon any bank, sand, or shore thereof, or near thereto, or in or near any river, rivulet, brook, stream, pond, pool, or other water, mill lead, mill dam, sluice, or cut, which runs into or otherwise communicates therewith, or to the present modes or methods used for taking and killing fish therein, other than and as are in this act particularly prohibited."

Sect. 6. "That every the pecuniary and other penalties and forfeitures by this act imposed, may be sued for, recovered, and adjudged, and every offence against this act heard and determined, by and before any one or more justice or justices of the peace or magistrate for the county, shire, division, city, or place, wherein any offender against this act shall be or reside, or wherein or near to which the offence or offences shall be committed, by and upon the oath or affirmation of one or more credible witness or witnesses, or by the confession of the party or parties (a); which oath or oaths, affirmation or affirmations, every such justice of the peace and other ma-

#### SIZE, &c. OF FISH.

58 Geo. 3, c. 43.  
brood of fish, or unsizeable fish, &c.

Conservator may seize together with package, &c.

Proceedings.

Conviction.

Penalty.

Penalty.

Proviso for nets, &c. lawfully used, and for present modes of fishing, except as prohibited by this act.

\* Sic.

Recovery of penalties.

Oath to witnesses administered by justices of the peace, &c.

(a) See form (No. 11), *post*, 786.

SIZE, &c. OF  
FISH.  
58 Geo. 3, c. 43.

Justice may com-  
mit party not pay-  
ing penalty to  
common gaol, &c.;

or levy penalty by  
distress.

\* Sic.

If no distress, then  
party committed  
to gaol, &c., and  
kept to hard la-  
bour.

Justices, on receiv-  
ing information,  
may grant war-  
rants for appre-  
hending offenders;

or summons and  
warrant for party  
or witnesses;

gistrates aforesaid, are hereby authorized, empowered, and required, to administer accordingly; and in case any person who shall be convicted of any offence or offences against this act, and shall not immediately upon such conviction pay down the penalty or penalties, together with such costs of suit or prosecution in which he, she, or they, shall have been so convicted or ordered to pay as aforesaid, into the hands of the justice or justices of the peace or magistrate as aforesaid, by and before whom he or she shall have been so convicted, or other person by them or any of them authorized to receive the same, in order that the same may be disposed of and distributed according to the directions of this act, it shall be lawful for any such justice or justices of the peace, or magistrate aforesaid, to order any constable or other peace officer to take the charge of and keep in custody any such person so convicted; and immediately thereupon every such justice or justices of the peace, or magistrate, is hereby authorized, empowered, and required, to grant his or their warrant or warrants in due form of law, under his or their hand and seal, or hands and seals, and thereby commit every such offender to the common gaol or house of correction for the county, shire, division, city, or place, for which such justice or justices or magistrates aforesaid shall act, for such time or times hereinafter mentioned, unless the said penalty or penalties and costs shall respectively be sooner paid; or otherwise such justice or justices of the peace, or magistrate, shall and may grant his or their warrant or warrants in due form of law, under his or their hand and seal, or hands and seals, to levy and recover the said penalty and penalties and costs, by distress and sale of the offender's goods and chattels; and that all penalties and forfeitures which shall be so paid or levied as aforesaid, shall from time to time be paid, applied, and disposed of, as follows; (that is to say), one moiety thereof to the informer or informers, and the other moiety, after defraying all costs, charges, and expenses attending the prosecution, and the levying and recovering of the penalty, to the overseers of the poor of the parish or place where the offence or offences shall have been committed; and the overplus of the money levied remaining (if any there be) after any penalty or penalties, and all costs, charges, and expenses attending the levying and recovering thereof are deducted, (which costs, charges, and expenses, shall always be taxed, settled, and ascertained by and before the justice or justices of the peace or magistrate, as \* by or before whom any such offender shall be convicted), shall on demand be returned to the owner or owners of the goods and chattels so distrained; and in case sufficient distress or distresses shall not be found, or such penalty or penalties and costs shall not be immediately paid, that then it shall be lawful for any such justice or justices of the peace or magistrate, and he and they is and are hereby respectively authorized, empowered, and required, for the first offence to commit every such offender or offenders to such gaol or house of correction as aforesaid, for any time not exceeding four months nor less than two months; for the second offence, any time not exceeding eight months nor less than six months; and for the third and every other offence, for any time not exceeding twelve months, nor less than eight months; there to be kept at hard labour, and be and remain without bail or mainprize."

Sect. 7. "That it shall and may be lawful for any justice or justices of the peace or magistrate, or any of them, and they are hereby required, upon information (a) being made to him or them upon oath, against any person or persons who shall or may offend against any thing contained in this act, to grant his or their warrant or warrants under his or their hand and seal, or hands and seals, to apprehend any person or persons so offending, and cause such offender or offenders to be brought before him or them, or some other such justice or other magistrate; or it shall and may be lawful to and for any such justice or justices, or other magistrates as aforesaid, upon any information made without oath, to grant his or their summons or summonses against the party charged with such offence or offences, or for any witness

(a) See form (No. 11), post, 786.

or witnesses to prove any such offence or offences as aforesaid; and if any such person or persons who shall be duly summoned shall neglect or refuse to appear at the time and place appointed by such summons or summonses; every such justice or justices of the peace, or magistrates, shall and may, upon oath being made of the person or persons being so duly summoned, grant his or their warrant or warrants, under his or their hand and seal, or hands and seals, to apprehend and bring before him and them, or some other such justice or magistrate as aforesaid, the party or parties who shall neglect or refuse to appear after being duly summoned as aforesaid; and such justice or justices, or other magistrates aforesaid, shall inquire into, hear, and determine, the matter of every such offence or offences in a summary way."

SIZE, &c. OF  
FISH.  
58 Geo. 3, c. 43.

and may deter-  
mine summarily.

Sect. 8. "That no owner, farmer, or occupier of, or any person otherwise interested in any fishery or right of fishing in any arm of the sea, river, or other water aforesaid, shall be deemed an incompetent witness to prove any offence or offences done or committed against this act, by reason of his or her being such owner, farmer, or occupier."

Owners, &c., of  
fisheries may be  
witnesses to prove  
offences.

Sect. 9. "That every pecuniary penalty and forfeiture imposed by this act, may be recovered in a summary manner according to the provisions of this act, or may be sued for and recovered, together with full costs of suit, by and to the only proper use and behoof of any person who shall inform or sue for the same in any of his Majesty's Courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoign, wager of law, nor more than one imparlance shall be allowed."

How penalties may  
be sued for.

Sect. 10. "That every conviction of every offender against this act shall be certified by the justice or justices of the peace, by and before whom the same shall be made, to the general quarter sessions of the peace, to be held in and for the county, riding, division, city, or place, where the offender or offenders shall be convicted, and shall there be filed amongst the records of the said sessions; and every conviction shall be in the form of words, or to the following effect:—

Form of conviction.

*'BE it remembered, That, on the      day of      , in the year      , A. B. was, upon the complaint of C. D., convicted before me [or, us,] E. F. one [or, two] of his Majesty's justices of the peace [as the case may be], for      , in pursuance of an act made in the fifty-eighth year of the reign of his late Majesty king George the Third, [insert the title of the act], for that the said      [state the offence], [and if a case in which different penalties are imposed for repeated offences], this being the first offence, [second, or third offence, as the case may be], and I, [or, we], do hereby adjudge him, [her, or, them], to pay and forfeit for the said offence the sum of      , of lawful money of Great Britain, together with(a) the further sum of      , for costs of suit and prosecution, to the said C. D. Given under my hand and seal, [or, our hands and seals, as the case may be], at      , in the county of      , the day and year above written.'*

Which said conviction and adjudication shall be good and valid in law to all intents and purposes, and shall not be quashed, set aside, or adjudged void or insufficient for want of form only; and shall not be liable to be removed by *certiorari* or otherwise, into his Majesty's Court of King's Bench, or any other of his Majesty's Courts of record at Westminster, but shall be deemed and taken to be final to all intents and purposes whatsoever."

Sect. 11. "That where any offender shall be punished for any offence by virtue of this act, such offender shall not again be prosecuted nor incur any penalty by virtue of any other law or statute now in force, or be liable to any other punishment for the same offence."

No double prosecution.

Sect. 12. "That every person who shall think himself or herself aggrieved by the judgment of any justice of the peace or magistrates in any of the cases aforesaid, may appeal to the justices of the peace for the county, shire, division, city, or place, where such judgment shall be given, at the then next or next but one general quarter sessions of the peace; but that no such appeal shall be received, heard, or determined, unless the appellant or appellants shall, within ten days next after such judgment, and twenty days

Appeal.

(a) In the statute the word "with" is omitted.

SIZE, &c. OF  
FISH.

58 Geo. 3, c. 43.

\* Sic.

Recognizance.

Sessions, on proof  
of notice, to de-  
termine appeal  
and costs.

Distress for costs.

Notice of actions  
for executing this  
act.

Limitations of  
actions.

General issue.

Tender of amends.

In what case ver-  
dict for defend-  
ants.

Double costs.

Limitation of ac-  
tions for offences.

Proviso for former  
acts:

at the least before the holding of such sessions, give and leave in writing, as well at the public office of the clerk of the peace for such county, shire, division, city, or place, where such person or persons shall be convicted, as to the person or at the dwelling-house of the informer or prosecutor,\* of his, her, or their intention to bring such appeal, and shall also enter into a recognizance before such justice or justices, in such sum as any such justice or justices of the peace shall think fit, not exceeding 20*l.*, conditioned to try such appeal, and likewise to pay the costs of such appeal, in case judgment and sentence shall, upon the hearing thereof, be given against the appellant, within ten days next after the determination thereof; and that the said justices at their said sessions shall and may, upon due proof of such notice given as aforesaid, hear and determine every such appeal in a summary way, and shall award or order to the party in whose behalf such appeal shall be determined, such costs and charges as they in their discretion shall think reasonable and just to be paid by the party or parties against whom such appeal shall be determined; and in case such costs and charges shall not be paid within the space of ten days next after the hearing and determining of such appeal, the same may be levied by distress and sale of the goods and chattels of the person or persons ordered to pay the same, or his or their surety or sureties, in the same manner and by the same means as all distresses are ordered to be taken under or by virtue of this act."

Sect. 13. "No action of law shall be brought or commenced against any person or persons for any thing done or to be done by virtue or in execution of this act, until one calendar month after notice thereof in writing shall have been given to the person or persons against whom such action shall be intended to be brought, or left at his, her, or their last or usual place or places of abode, setting forth the cause of such action, and containing the name and place of abode of the plaintiff or plaintiffs, and also of his or their attorney; and that every action brought for any thing done or to be done as aforesaid, shall be brought within the space of three calendar months next after the cause of action or complaint shall arise, and shall be laid and sued in the county, shire, division, city, or place where the fact shall have been committed, and not elsewhere; and the defendant or defendants therein may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done by virtue thereof; and also, that it shall and may be lawful to and for such person or persons, at any time before action brought, to tender amends to the party complaining, or his or her agent or attorney, and in case the same is not accepted, to plead such tender in bar to the action, together with the plea of not guilty, and any other plea, with the leave of the Court; and if, on the trial of such action, it shall appear that the same was brought before the expiration of one calendar month next after such notice shall have been so given or left as aforesaid, or after the end of three months next after the cause thereof shall have arisen, or if such action shall have been brought or laid in any other county or place than as aforesaid, or after sufficient tender of amends shall have been made to the party or parties aggrieved, that then, and in any of the cases aforesaid, the jury shall find a verdict for and acquit the defendant or defendants in such action; or if the plaintiff or plaintiffs shall discontinue the same after the defendant or defendants shall have appeared, or shall be nonsuited, and if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants in such action shall have double costs, and have the like remedies for recovering the same, as defendants have for recovering their costs in other cases at law; and that no action, suit, information, or other proceeding whatsoever shall be brought or commenced against any person or persons for any offence or offences against this act, unless the same shall be laid or commenced within six calendar months next after any such offence or offences shall have been committed."

Sect. 14. "Nothing in this act contained shall extend or be construed to extend or alter any act or acts of Parliament, or any clause, provision, regulation, or penalty, or forfeiture, contained in any act or acts of Parlia-

ment in force for the regulation of any fishery or fisheries, or the preservation thereof, or of the brood, spawn, or fry of fish, in any particular county or arm of the sea, estuary, or river."

Sect. 15. "Nothing herein contained shall extend to affect the rights of any lord or lords, lady or ladies of any manor; and it shall be lawful for such lord or lords, lady or ladies, and they are hereby required, to appoint conservators for the protection of any river or rivers within their respective manors."

Sect. 16. "Nothing in this act contained shall extend or be construed to extend to prejudice or derogate from the rights, interests, privileges, franchises, or authority of any body or bodies politic, corporate, or collegiate, or their successors, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which such body or bodies politic, corporate, or collegiate, at the time of the passing of this act, did or might lawfully claim, use, or exercise in any river or rivers as aforesaid."

Sect. 17. "Nothing in this act contained shall extend or be construed to extend, to prejudice or derogate from the rights, interests, privileges, franchises, or authority of the mayor and commonalty and citizens of the city of London, or their successors, or the lord mayor of the said city for the time being, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction, which, at the time of making this act, the mayor and commonalty and citizens of the city of London, or the lord mayor of the said city for the time being, as conservator of the river Thames and waters of Medway, did or might lawfully claim, use, or exercise."

And by the 45 Geo. III. c. 33, certain other provisions are enacted with respect to the rivers in the county and borough of Carmarthen.

The stat. 13 Rich. II. st. 1, c. 19, enacts, that no person shall put in the waters of Thamise, Humber, Ouze, Trent, nor any waters, in any time of the year, any nets called stalkers, nor other nets or engines whatsoever, by which the fry or breed of salmons, lampreys, or any other fish, may in anywise be taken or destroyed; on the like pain.

The waters of Lone, Wyre, Mersee, Rybbyl, and all other waters in Lancashire, shall be put in defence as to taking of salmon from Michaelmas to Candlemas, and in no other time of the year. And conservators shall be appointed in like manner.

By the 17 Rich. II. c. 9, the justices of the peace (and the mayor of London on the Thames and Medway) shall survey the offences in both the acts above-mentioned; and shall survey and search all the weirs in such rivers, that they shall not be very strait for the destruction of such fry and brood, but of reasonable wideness after the old assize used or accustomed; and they shall appoint under-conservators, who shall be sworn to make like survey, search, and punishment. And they shall inquire in sessions, as well by their office as at the information of the under-conservators, of all defaults aforesaid, and shall cause them which shall be thereof indicted to come before them; and if they be thereof convict, they shall have imprisonment, and make fine at the discretion of the justices; and if the same be at the information of an under-conservator, he shall have half the fine.

By the 1 Eliz. c. 17, s. 1, 2, 3, 4, 5, no person, of what estate, degree, and condition soever he be, shall take and kill any young brood, spawn, or fry of fish; nor shall take and kill any salmon or trouts, not being in season, being kepper or shedder; nor any pike or pikerel not being in length ten inches fish or more; nor any salmon not being in length sixteen inches fish; nor any trout not being in length eight inches fish; nor any barbel not being in length twelve inches: and no person shall fish, or take fish by any device, but only with net or trammel, whereof the mesh shall be two inches and a half broad (angling excepted, and except smelts, loches, minnies, bullheads, gudgeons, and eels); on pain of forfeiting 20s. for every offence, and also the fish, nets, and engines (a).

**SIZE, &c. OF FISH.**

58 Geo. 3, c. 43.  
and for the rights of manors;

and for the rights of corporations, colleges, &c.;

and of the city of London;

and of lord mayor, as conservator of the Thames, &c.

46 Geo. 3, c. 33.

13 Rich. 2, c. 19.

17 Rich. 2, c. 9.

1 Eliz. c. 17.  
Spawn in general, and fish under size, and out of season.

(a) In *Bulbrooke v. Goodhere*, 3 Burr. 1768, it was held, that the water bailiff of the river Thames has no right to take the nets of a person fishing in his own

fishery, for the act does not give a power to seize otherwise than by the methods prescribed by the act.

SIZE, &c. OF  
FISH.

1 Eliz. c. 17.

(Note—In some editions of the statutes it is 20*l.* in others 20*s.*; in the record it is not distinguishable whether it be pounds or shillings. The latter seems more adequate to the offence).

Sects. 6, 7. And the conservators of rivers may inquire hereof by a jury; and in such case they shall have the fines.

Sects. 8, 9, 10. The leet also may inquire hereof; and then the forfeiture shall go to the lord of the leet. And if the steward do not charge the jury therewith, he shall forfeit 40*s.*; half to the King, and half to him that shall sue. And if the jury conceal the offence, he may impanel another jury to inquire of such concealment; and if it be found, the former jury shall forfeit every one 20*s.* to the lord of the leet.

Sects. 11, 12. If the offence be not presented in the leet within a year, then it may be heard and determined at the sessions or assizes. (Saving the right of the conservators.)

33 Geo. 2, c. 27.

By the 33 Geo. II. c. 27, s. 13, 15, 16, 17, 18, 19, no person shall take or knowingly have in his possession either in the water or on shore, or sell or expose to sale, any spawn, fry, or brood of fish, or any unsizeable fish, or fish out of season, or any smelt not five inches long; and any person may seize the same, together with the baskets and package, and charge a constable or other peace officer with the offender and with the goods, who shall carry them before a justice; and on conviction before such justice, the same shall be forfeited and delivered to the prosecutor; and the offender shall besides forfeit 20*s.* to be levied by distress by warrant of such justice, and distributed half to the prosecutor, and half to the poor of the parish where the offence was committed (and any inhabitant of such parish, nevertheless, may be a witness); for want of sufficient distress, to be committed to the house of correction to be kept to hard labour for any time not exceeding three months, unless the forfeiture be sooner paid: provided, that the justice may mitigate the said penalty, so as not to remit above one half. Persons aggrieved may appeal to the next sessions. And the form of the conviction may be thus:—

*"BE it remembered, That, on this day of , in the year of the reign of , A. O. is convicted before me , one of his Majesty's justices of the peace for the of , and I do adjudge him to pay and forfeit the sum of . Given under my hand and seal the day and year above said."*

Nets standing day  
and night.

And by the 2 Hen. VI. c. 15, no person shall fasten any nets over rivers, to stand continually day and night; on pain of 100*s.* to the King.

### III. Of the Herring and other Fisheries.

28 Geo. 2, c. 14.  
Herring fishery.

THE 28 Geo. II. c. 14, s. 9, enacts, that if any person shall wilfully damnify, spoil, or destroy, without consent of the society of the Free British Fishery, any of the nets, sails, cordage, stores, or other materials belonging to the said society, he shall, on conviction on the oath of two witnesses before one justice, forfeit to the society treble value, to be levied by distress; and, for want of sufficient distress, be committed to the house of correction, there to be kept to hard labour for any time not exceeding three months, or till satisfaction be made; information to be exhibited, or prosecution to be in six calendar months.

26 Geo. 3, c. 81.

By the 26 Geo. III. c. 81, after 1st June, 1787, an annual bounty (a) is granted for seven years to owners of ships of certain dimensions and constructions (which by stat. 27 Geo. III. c. 10, is extended to all vessels however built), of fifteen tons and upwards, employed in the White Herring Fishery, under certain regulations particularly set forth in those acts; and so far as the same fall under the jurisdiction of justices of the peace, it is thought necessary to insert them as follows:—

(a) And see 5 Geo. IV. c. 64, *post*, 779.

Sects. 17, 18 order, that, on all barrels and casks in which any fish (except fresh fish) shall be packed, either for exportation or home consumption, the names of the curers of such fish shall be marked and burnt with iron, in fair, large, legible, conspicuous, and permanent characters; and the staves of every barrel in which any white herrings, or wet white fish, shall be packed or put up for exportation, shall not be a less thickness at the bulge than half an inch, and shall be full bound; and, in default thereof, the same may be seized and secured by any officer of excise or customs; and, on proof of the fact on oath before one justice, the same, together with the casks, shall be forfeited.

Sect. 19. And every person who, for seven successive years, shall have followed the occupation of a seaman or fisherman on board any ship or vessel employed in the fisheries of Great Britain, (being a married man), may set up and exercise such trade as he is apt and able for, in any town or place in Great Britain, without molestation by reason of using such trade, as freely, and with the same provisions and regulations, as any mariner or soldier, by 22 Geo. II. c. 44, are authorized to do.

Sect. 43. And whereas, by stats. 1 Geo. I. c. 18, and 9 Geo. II. c. 33, no sort of flat fish nor fresh fish whatsoever, (except turbot and lobsters), could be legally imported or sold in England, which were taken by, bought of, or received from any foreigner, or out of any strange bottom (except protestant strangers) inhabiting this kingdom, on forfeiture of 100*l.* by the person offending; and the master of the vessel in which any such fish shall be illegally imported was also liable to forfeit 50*l.*, to be recovered in the Courts at Westminster. And whereas the great expense and delay attending such prosecutions discourage persons from suing for such penalties, it is therefore enacted, that if upon complaint made on oath before two justices by any officer, it shall appear that he doth know, or is credibly informed, or hath cause to believe, that any fish hath been imported or exposed to sale, in the port of London, contrary to the aforesaid acts, such justices may summon the person accused to appear before them at a time and place specified in the summons; and if he shall not appear, then, on due proof of service of such summons, either personally, or by leaving the same at his usual place of abode whilst he shall be on shore, or, not being on shore, with some person in the vessel to which he belongs, may by warrant cause such person to be brought before them, at such time and place as shall be specified in such warrant, and thereupon, whether such party shall appear upon such summons, or be apprehended, the justices may proceed to hear and determine the matter of the complaint.

Sect. 46. All pecuniary penalties by the said act of 9 Geo. II. c. 33, imposed, may be recovered before two justices, on due proof and conviction of the offence, by confession or oath of one witness; and the whole of such penalties shall go to the informer; and if such penalty shall not, upon conviction, with the costs thereof, be immediately paid, the same shall be levied by distress and sale; and for want of sufficient distress, the offender shall be sent, by the same justices, to the common gaol for one year, unless the penalty shall be sooner paid.

Sect. 47. To the end that the person convicted in any of the penalties last aforesaid may not, by flight after conviction, evade imprisonment, such justices, immediately after conviction, may order such offender into custody, (in case the penalty be not immediately paid), during such time, not exceeding forty-eight hours, as they shall think proper to allow for return of the warrant of distress.

Sect. 48. Provided, that if it shall appear, to the satisfaction of such justices, either by confession or other witness, that such party hath not goods or chattels sufficient to answer the penalty, such justices may, without issuing any warrant of distress, commit the party so convicted; as if such warrant had actually issued, and a return of *nulla bona* been made thereon.

Sect. 49. Provided also, that if any such offender ordered to be committed shall, before his actual commitment to prison, procure security to be given by two sufficient sureties for payment of the penalty and charges,

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25 Geo. 3, c. 81.

Casks to be marked.

Thickness of the staves.

Fishermen may set up trades.

Certain penalties imposed by 1 Geo. 1, c. 18, and 9 Geo. 2, c. 33, may be recovered by two justices.

All penalties imposed by 9 Geo. 2, c. 33, may be recovered by two justices.

Offenders may be detained for forty-eight hours.

Where the goods are not sufficient to answer the distress.

Security may be given for payment of the penalty.



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26 Geo. 3, c. 81.

within fourteen days exclusive of the day of conviction, the justices may accept such security; and on non-payment within the time limited, the same, or any other justices, may cause the party convicted, and his sureties, to be apprehended by warrant, and them may commit to the common gaol, for the same time as the person convicted was liable to have been imprisoned if no security had been given, unless the penalty and charges shall be sooner paid.

Appeal.

Sect. 50. Any person so convicted thinking himself aggrieved by the judgment of any justices, may, within three calendar months then next, appeal to the sessions, giving six days' notice to the informer of such his intent, and with two sureties entering into recognizance before one justice to appear and prosecute such appeal, and abide the order or determination of the same Court, and pay the costs awarded at such sessions, (if any); and if such judgment be affirmed, the party appealing shall pay to the informer double costs, to be ascertained by order of the Court.

Sect. 51. In case the person appealing shall have paid the penalty into the hands of the justices by way of deposit, or shall be then imprisoned, such person may appeal within the time aforesaid on his entering (without sureties) into such recognizance aforesaid, and remaining in prison in the mean time, or depositing such penalty with the justices until the merits of the said appeal shall be determined.

Conviction not to  
be set aside for  
want of form.

Sect. 52. No conviction or judgment as aforesaid shall be set aside by the sessions for want of form, or through the mis-stating of any fact, circumstance, or other matter, provided the material facts alleged in such conviction or judgment, and on which such conviction shall be grounded, be proved to the satisfaction of the Court; and no such conviction or judgment, nor any order or proceeding of the said Court, shall be removed by *certiorari* into any other Court.

Witnesses.

Sect. 44. Persons appearing in the complaint to be necessary witnesses may be summoned by the justices to appear before them; and in case of non-appearance, then, on due proof of having been duly summoned, may be apprehended by warrant of such justices, and brought before them; and if any witness shall refuse to be sworn, or to give evidence, or wilfully forswear himself, or prevaricate in his evidence, such justices may, by warrant, commit him to the common gaol for one year without bail.

Written evidence.

Sect. 45. And the examination of every witness shall be taken down in writing, by or before the said justices, and in case the party accused cannot be made to appear at the time of such examination, and such witness cannot be made to attend when such party shall appear; in that case such examination in writing may be read and made use of, and shall have the same effect as if such witness had been examined *vis à voce*.

48 Geo. 3, c. 110.

By stat. 48 Geo. III. c. 110, many important regulations are enacted respecting the herring fishery: but they are not inserted in this place, as being too confined in their nature and objects. It may be observed, however, that, by the 57th section of the act, the several penalties and forfeitures thereof may be recovered in the same manner as penalties and forfeitures under the excise laws.

55 Geo. 3, c. 94.

The above statutes, subject to certain alterations, are made perpetual by the 55 Geo. III. c. 94.

Disputes between  
officers and curers.

Sect. 36 of which act relates to the mode of settling disputes between officers and curers, and enacts, "That, in every such case, any justice of the peace, to whom application shall be made either by the officer or curer, shall appoint two skilful persons, who shall have no interest in the matter in dispute, one to be nominated by the officer and the other by the opposite party; and if either party shall fail to make such nomination before or at the time when he shall be required by authority of the said justice (not being longer than twenty-four hours from the time of being required to make such appointment) so to do, then the said justice shall nominate one skilful person, not interested in the matter in dispute, in his place; and the persons so appointed, upon examination of the matters in dispute, shall certify on their oaths, to be taken before the said justice, their opinion on the

matters aforesaid; and if they shall agree in their opinion, the matter in dispute shall be determined accordingly; but if the arbitrators so to be appointed shall differ in opinion thereon, the said justice shall require them to name one other skilful person, not interested in the matter in dispute, which person so nominated shall examine the matters in dispute, and upon such examination shall certify upon oath, to be made before the said justice, his opinion thereon, and the said matter shall then be finally determined accordingly."

The statute 1 & 2 Geo. IV. c. 79, repeals the bounty of 3*l.* *per* ton granted by the acts 48 Geo. III. c. 110; 51 Geo. III. c. 101; 52 Geo. III. c. 153; 54 Geo. III. c. 102; and 55 Geo. III. c. 94.

Sect. 2 repeals so much of 48 Geo. III. c. 110, or any other act, as relates to the appointment of a superintendant of the deep sea herring fishery, repealed.

Sect. 3 provides, that the commissioners for the British herring fishery may make regulations for carrying into execution the purposes of this and the recited acts; and orders that no bounty be paid unless the rules be complied with.

By sect. 4, if herrings caught in the Irish fishery shall be produced to the officers of the British fishery, or if caught in the British fishery and produced to the officers of the Irish fishery, for the bounty, the same shall be forfeited, &c.

Sect. 5 enacts, that if any person buying, &c. fresh herrings shall use, or have in possession, any cran or measure of greater content than required by the regulations of the British herring fishery, he shall forfeit the same, and 10*l.*

Sect. 7 extends the regulations, &c. in acts 48 Geo. III. and 55 Geo. III. to the Isle of Man, and provides, that the bounty extended to the Isle of Man shall be paid by the excise in Scotland.

Sect. 8 repeals regulations in act 55 Geo. III. c. 94, regarding herrings imported in barrels from Ireland, or the Isle of Man.

By stat. 5 Geo. IV. c. 64, bounties and allowances on British herrings under 55 Geo. III. c. 94, and 1 & 2 Geo. IV. c. 79, are repealed, after July 5, 1825.

And sect. 2, enacts, that, from July 5, 1825, to July 5, 1829, new bounties shall be paid, *viz.* 4*s.*, 3*s.*, 2*s.*, and 1*s.*, to 5th July in each year successively, for every barrel of herrings caught and cured according to regulations of British fisheries acts, 48 Geo. III. c. 110, 55 Geo. III. c. 94, 1 & 2 Geo. IV. c. 79, &c., and of 59 Geo. III. c. 109, and 1 Geo. IV. c. 82,—4*s.*, *per* *cwt.* on dried cod cured in Great-Britain, until July 5, 1829;—pickled cod, 2*s.* 6*d.* *per* barrel, under regulations of 1 Geo. IV. c. 103, until July 5, 1829. Bounties in Ireland, 4*s.* *per* *cwt.* on dried cod, &c., and 2*s.* 6*d.* on pickled cod, as in Great Britain.

The 3rd section orders that the tonnage bounty to vessels engaged in the white fisheries shall be 20*s.* *per* ton to 5th July, 1826; 15*s.* to 1827; 10*s.* to 1828; 5*s.* to 1829.

And sect. 4 makes the bounties under this act payable as bounties on fish and on tonnage under recited acts.

Sect. 6 repeals, from July 5, 1825, bounties on salmon, &c. in Great Britain under schedule (C) of 43 Geo. III. c. 69.

By sect. 8, fish are exempted from all duties on exportation.

The 1 Will. IV. c. 54, intituled *An Act to revive, continue, and amend, several acts relating to the Fisheries*, passed 16th July, 1830, reciting, that, by the 48 Geo. III. c. 110; and by the 55 Geo. III. c. 94; and by the 1 & 2 Geo. IV. c. 79, 'certain regulations were made respecting the British white herring fisheries; and by the said acts various bounties were granted for the encouragement of the said fisheries:' and that by the said act 1 & 2 Geo. IV. c. 79; and by the 5 Geo. IV. c. 64; and by the 7 Geo. IV. c. 34, 'the said bounties, or such of them as were then existing, have been repealed, such repeal having taken effect upon and from the 5th day of April, 1830: and whereas doubts may arise whether the repeal of the bounties aforesaid hath not rendered ineffectual certain of the provisions and regulations of the before-mentioned acts of the forty-eighth and fifty-fifth years of

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55 Geo. 3, c. 94.

1 & 2 Geo. 4, c. 79.

5 Geo. 4, c. 64.

1 Will. 4, c. 54.

# HERRING FISHERIES, &c.

1 Will. 4, c. 54.

Nothing in the acts 5 Geo. 4, c. 64, and 7 Geo. 4, c. 34, has repealed the powers of the recited acts of 48 & 55 Geo. 3, and 1 & 2 Geo. 4, so far as they relate to marking or branding barrels of herrings.

Old barrels employed in the fisheries with an old official brand, to be forfeited, with their contents.

The declaration required to be made on oath by recited acts of 48 and 55 Geo. 3, may be made on affirmation.

Penalty for false declaration.

The powers of regulating the trade of the cod and ling fisheries vested in the commissioners by 1 Geo. 4, c. 103, revived, except so far as respects bounties.

the reign of his said late Majesty king George the Third, and of the first and second years of the reign of his late Majesty king George the Fourth, relative to the placing a mark or character on barrels containing herrings properly cured, and it is expedient to remove such doubts; it is therefore enacted, "That nothing in the said acts passed in the fifth and seventh years of the reign of his late Majesty king George the Fourth hath repealed or rendered ineffectual so much of the said acts passed in the forty-eighth and fifty-fifth years of the reign of his late Majesty king George the Third, and of the first and second years of the reign of his late Majesty king George the Fourth, as relates to the placing a mark or character on barrels or half barrels containing herrings properly cured, save only so far as respects the payment of any bounties therein mentioned; and that, save and except so far as respects the said bounties, the said acts passed in the forty-eighth and fifty-fifth years of the reign of his said late Majesty king George the Third, and in the first and second years of the reign of his late Majesty king George the Fourth, with reference to the placing a mark or character on barrels containing herrings properly cured, and every other provision and regulation of the said acts which were in force on the said 5th day of April, 1830, are, and is, and shall be, in full force, virtue, and effect, as though the said acts so passed in the fifth and seventh years of the reign of his late Majesty king George the Fourth had not been made."

Sect. 2. "That if any person or persons shall ship or put on board any ship, vessel, or boat about to be employed in the said fisheries, any old barrels, or any old half barrels theretofore employed in the said fisheries, which, at the time of such shipment, shall bear any official brand theretofore affixed thereupon, under and in pursuance of the said acts or any of them, or of this present act, or shall pack any herrings or other fish in any such old barrels or half barrels, all such old barrels or any old half barrels, and the herrings or other fish, shall be forfeited."

Sect. 3. 'And whereas by the said acts passed in the forty-eighth and fifty-fifth years of the reign of his late Majesty king George the Third, various oaths were required to be taken for the protection of his Majesty's revenue, and it is no longer necessary that, with a view to that object, such oaths should continue to be administered;' it is enacted, "That all persons who, under and by virtue of the said recited acts of the forty-eighth and fifty-fifth years of the reign of his late Majesty king George the Third, were required to make any such declaration or statement on oath, shall henceforth be admitted to make such declaration or statement on their, his, or her affirmation, and without oath; and if any person shall wilfully and corruptly make any such declaration or statement falsely, every such person shall incur and become liable to a fine of not less than 10*l.* nor more than 20*l.*"

Sect. 4. 'And whereas, by the 1 Geo. IV. c. 103, certain bounties were granted for the encouragement of the British cod and ling fisheries, which bounties, by virtue of the said recited acts passed in the fifth and in the seventh years of the reign of his late Majesty, have ceased and determined: and whereas, by the said act passed in the first year of the reign of his late Majesty, certain provisions were made, empowering the commissioners of the herring fishery to make certain regulations respecting the said cod and ling fisheries: and whereas, by an act passed in the fifth year of the reign of his late Majesty king George the Fourth, intituled *An Act to amend the several acts for the encouragement and improvement of the British and Irish fisheries*, the said act of the first year of his said late Majesty was repealed; and it is expedient that the powers vested as aforesaid in the said commissioners (save so far only as respects the payment of the said bounties) should be revived, and be again vested in the said commissioners; it therefore enacts, "That so much of the said act passed in the first year of the reign of his late Majesty king George the Fourth, as authorized the said commissioners to make such regulations as aforesaid, shall be and the same is hereby revived, and shall be continued in force, save only so far as respects the payment of the said bounties; any thing in the said act of the fifth year of his said Majesty's reign to the contrary notwithstanding."

Sect. 5. " That all penalties and forfeitures hereby imposed shall be sued for, recovered, and applied by such and the same persons, in such and the same manner, and to such and the same purposes, as any penalties and forfeitures incurred under the said acts of the forty-eighth and fifty-fifth years of the reign of his said late Majesty king George the Third may be sued for, recovered, mitigated, and applied."

By the 6th section the powers granted to the commissioners of the Irish fisheries by 59 Geo. III. c. 109, shall be vested in the directors of inland navigation. The lord lieutenant may appoint additional directors; who shall not be entitled to any salary.

By sect. 7 the lord lieutenant may employ persons for completing piers begun, or for receiving repayment of loans, &c.

By sect. 8 the lord lieutenant may, for five years, order sums to be issued out of the consolidated fund for the purposes of this act.

By sect. 9 the directors of inland navigation shall have all the powers of commissioners of the fisheries, and the act is not to revive the bounties.

#### HERRING FISHERIES, &c.

1 WILL. 4, c. 54.

Recovery of forfeitures under this act.

### IV. *Of the Oyster Fisheries.*

THE stat. 7 & 8 Geo. IV. c. 29, s. 36, enacts, " That if any person shall steal any oysters or oyster brood from any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, every such offender shall be deemed guilty of larceny, and, being convicted thereof, shall be punished accordingly; and if any person shall unlawfully and wilfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any such oyster fishery, for the purpose of taking oysters or oyster brood, although none shall be actually taken, or shall, with any net, instrument, or engine, drag upon the ground or soil of any such fishery, every such person shall be deemed guilty of a misdemeanor, and, being convicted thereof, shall be punished by fine or imprisonment, or both, as the Court shall award, such fine not to exceed 20*l.*, and such imprisonment not to exceed three calendar months; and it shall be sufficient in any indictment or information to describe, either by name or otherwise, the bed, laying, or fishery, in which any of the said offences shall have been committed, without stating the same to be in any particular parish, township, or vill: provided always, that nothing herein contained shall prevent any person from catching or fishing for any floating fish, within the limits of any oyster fishery, with any net, instrument or engine adapted for taking floating fish only."

Stealing oysters, or oyster brood, from oyster beds.

Dredging for oysters within the limits of any oyster fishery.

Proviso.

See the General Clauses affecting all the provisions of this act, title *Excerpt*, Vol. III. p. 550 to 556.

The stat. 7 & 8 Geo. IV. c. 27, repeals the stats. 31 Geo. III. c. 51, and 48 Geo. III. c. 144.

### V. *Rules concerning Fishing in or near the Sea.*

By the 9 Geo. II. c. 33, s. 4, no person shall take, kill, or destroy, any lobsters on the coast of Scotland from June 1 to Sept. 1, on pain of 5*l.*; to be recovered by any person who shall inform and sue for the same, on a summary complaint, before two justices of the shire on the coast where the offence shall be committed.

Lobsters.

By stat. 3 Jac. I. c. 12, s. 2, every person who shall set up any new wear along the sea shore, or in any haven, harbour, or creek, or within five miles of the mouth of any haven or creek, shall, on conviction, before one justice or mayor, forfeit for every offence 10*l.*, half to the King, and half to him that shall sue, to be levied by the constables or churchwardens by distress.

Erecting a new wear.

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3 Jac. 1, c. 12.

Spawn of sea fish.

Size of nets at sea.

Size of sea fish.

Ships proceeding  
to the whale  
fishery.

Sect. 2. Every person who shall willingly take, destroy, or spoil, any spawn, fry, or brood of any sea fish, in any wear or other engine or device whatsoever, shall forfeit for every offence 10*l.* in like manner.

It seems from the case of *Bridger, qui tam, v. Richardson*, 2 *M. & S.* 568, that this provision does not comprehend shell fish; and, if it does, it means a taking for destruction, and not a taking of oyster spawn for the purpose of removing it to beds for future growth and maturity, to make it marketable.

Sect. 2. And every person who shall fish in any haven, harbour, or creek, or within five miles of the mouth of any haven, harbour, or creek of the sea, with any draw net, or drag net, under three inches mesh, viz. one and a half inch from knot to knot (except for the taking of smoulds in Norfolk only), or with any nets with canvas, or other engine or device, whereby the spawn, fry, or brood of sea-fish, may be destroyed, shall in like manner forfeit such net, and also 10*s.* for every offence, half to the poor, and half to him that shall sue.

Sect. 3. But this act shall not extend to any net of lesser mesh only for taking herrings, pilchards, sprats, or lavidnian.

And by 1 Geo. I. st. 2, c. 18, and by a subsequent statute, if any person shall use at sea on the English coast, any trawl net, drag net, or set net, for catching any fish (except herrings, pilchards, sprats, or lavidnian), which hath the mesh less than three and a half inches from knot to knot; or which hath a false or double bottom, cod, or pouch; or shall put any net upon or behind another, in order to catch or destroy the small fish which would have passed through any single net of three and a half inches mesh, he shall on conviction (after summons) before one justice where the offender resides or shall be found, on oath of two witnesses, in one month after the offence, forfeit the same, and also 20*l.*, half to the informer, and half to the poor; to be levied by distress; for want of sufficient distress, to be committed to gaol for twelve months; and the nets by warrant of such justice to be burned. Persons aggrieved may appeal to the next sessions.

By sect. 7 of the same act, (1 Geo. I. st. 2, c. 18), if any person shall bring to shore, or expose to sale, or shall exchange for any other goods, matter, or thing, any fish less than the following sizes from the eyes to the extent of the tail, viz. bret or turbot, sixteen inches; brill or pearl, fourteen; codling, twelve; whiting, six; bass and mullet, fourteen; sole, place, or dab, eight; flounder, seven; he shall forfeit the fish to the poor of the parish, and also 20*s.*, half to the informer, and half to the poor; to be levied in the like manner; for default of payment or of sufficient distress, to be sent to the next house of correction, or other common gaol or prison of the county, city, town, or place, to be severely whipped and kept to hard labour six days, and not longer than fourteen. Persons aggrieved may appeal to the next sessions. The prosecution must be within one month.

But by the 33 Geo. II. c. 27, s. 11, bret or turbot, brill or pearl, although under the said dimensions, may be exposed to sale, so as the same be not sold by retail for above 6*d.* a pound. And if any greater price shall be demanded or taken, or such fish shall not be weighed and measured, if required, the same shall be forfeited, and the offender shall also forfeit 20*s.*, to be recovered, mitigated, and applied as the penalties in the said act mentioned under the last head relating to the spawn of fish, and fish under size and out of season; and the money paid shall be returned to the party who paid the same.

And 42 Geo. III. c. 22, s. 4, recites, that, whereas, by 26 Geo. III. c. 41, s. 1, it is enacted, that, before any vessel proceed on the Whale Fishery, oath shall be made by the owner and the master, or chief officer of the vessel, before the principal officers of the customs of the port from which such vessel intends to proceed, that it is really and truly their firm purpose and determined resolution, that such vessel shall, as soon as licence shall be granted, forthwith proceed on a voyage to the Greenland Seas, or Davis's Straits, or the seas adjacent, and there, in the approaching season, use the utmost endeavours of themselves and ship's company, to take whales or other

creatures living in the sea, and on no other design or view of profit in such voyage, and to import the whale fins, oil, and blubber thereof, into Great Britain; in case of absence from illness or other unavoidable circumstances, such officers may accept an affidavit thereof, sworn by such owner or owners before any justice, in which affidavit shall be declared every matter and thing which by the said recited act such owner is required to declare.

HERRING  
FISHERIES, &c.

## VI. Importing Fish.

THE 6 Geo. IV. c. 105, repeals the stats. 18 Car. II. c. 2; 1 Geo. I. st. 2, c. 18; 9 Geo. II. c. 33; and 33 Hen. VIII. c. 2, relative to the buying and importation of foreign fish.

The fish markets in London and Westminster are regulated by the statutes of 10 & 11 Wm. III. c. 24; 22 Geo. II. c. 49; 29 Geo. II. c. 39; 33 Geo. II. c. 27; 2 Geo. III. c. 15; 36 Geo. III. c. 118; and 42 Geo. III. c. 19; which are not of sufficient general interest to be here inserted. See *Chit. Game Laws*, 254, &c. *Tyrwhitt & T. Digest of the Statutes*, tit. *Fish-market*.

See the 5 Geo. IV. c. 64, giving bounties in the herring, salmon, and other fisheries, *ante*, p. 779.

## VII. Forms, List of.

COMMITMENT for a Misdemeanor on 7 & 8 Geo. IV. c. 29, s. 34, for taking (not by Angling) Fish in Water, in Land belonging to a House, (No. 1).

INDICTMENT for the like Offence, (No. 2).

CONVICTION on 7 & 8 Geo. IV. c. 29, s. 34, for taking Fish in Water, &c., not being in Land adjoining or belonging to a Dwelling-house of Owner, (No. 3).

CONVICTION on 7 & 8 Geo. IV. c. 29, s. 34, for Angling in Water belonging to Dwelling-house of Owner, (No. 4).

CONVICTION on like Act for Angling elsewhere, (No. 5).

COMMITMENT on 7 & 8 Geo. IV. c. 30, s. 15, for breaking the Dam of a Fish Pond, (No. 6).

THE like for putting Lime, &c. into it, (No. 7).

INDICTMENT on 7 & 8 Geo. IV. c. 30, s. 15, for breaking the Dam of a Fish Pond, (No. 8).

INDICTMENT for other Offences under same Section of the Act, (No. 9).

INDICTMENT on 7 & 8 Geo. IV. c. 29, s. 36, for stealing Oysters or Oyster Brood, (No. 10).

INFORMATION against a Person for preventing the young Salmon from going down a River, on stat. 58 Geo. III. c. 43, (No. 11).

(No. 1).

Commencement as *ante*, p. 11, form (No. 2).—on &c., at the parish &c., unlawfully and wilfully did take and destroy a number of fish in a water [running through and (b)] being in land [adjoining and (b)] belonging to the dwelling house of one A. B., situate in the parish aforesaid, and county aforesaid, the said A. B. being also the owner of the said water [and (b) having a right of fishery therein], against the form of the statute in such case made and provided. And you, the said keeper, &c. [Conclude as usual, *ante*, p. 11, form (No. 2).]

Commitment for a misdemeanor on 7 & 8 Geo. 4, c. 29, s. 34, for taking (not by angling) fish in water, in land belonging to a house (a).

(a) A warrant may be readily framed (b) The word in the act is "or."  
from this precedent.

## FORMS.

(No. 2).

Indictment for the like offence.

— *THE jurors for our lord the King upon their oath present, that C. D., late of &c., on &c., at &c., in certain water, to wit, a stream [or, pond] of water there situate, then and there [running through and] being in certain land, to wit, a garden [or, pleasure ground &c., according to the fact], [adjoining and] belonging to the dwelling house of one A. B. there, the said A. B. then and there having a right of fishery in the said water [or, if not a running stream, "owner of the said water"] divers, to wit, one hundred fish, to wit, twenty eels, twenty pike, &c. of the said A. B., of the value of five pounds, then and there being found in the said water in the said land, unlawfully and wilfully, and not by angling in the day time, did take and destroy; against the form of the statute in such case made and provided, and against the peace of our said lord the King, his crown and dignity. [Add other counts, if there be any doubt, or any fact necessary to be stated in the indictment.]*

(No. 3).

Conviction on 7 & 8 Geo. 4, c. 29, s. 34, for taking fish in water, &c., not being in land adjoining or belonging to a dwelling-house of owner (a).

— *BE it remembered, that, on &c., at &c., C. D. of &c., is convicted before me, to wit, J. P., one of his Majesty's justices of the peace in and for the said county, for that the said C. D., on &c., at the parish &c., in a certain pond [or, stream] of water there situate, the private property of A. B. [or, wherein A. B. then had a private right of fishery] the said water not then being water running through or being in any land adjoining or belonging to the dwelling-house of the said A. B., or any person being the owner of such water, or having a right of fishery therein, ten fish, called trout, [according to the fact] of the value of ten shillings, then and there being found, then and there in the said water unlawfully and wilfully did take and destroy, [or, attempt to take and destroy], not by angling in the day time; against the form of the statute in that case made and provided: I the said J. P. do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of [five] pounds over and above the value of the said fish so taken as aforesaid, and the further sum of [ten shillings], being the value of the said fish, and also to pay the sum of shillings\* for costs; and, in default of immediate payment of the said sums, to be imprisoned in the [and there kept to hard labour] for the space of [see s. 67, title HARRING, Vol. III. p. 553], calendar months, unless the same sums shall be sooner paid; and I direct that the said sum of five pounds shall be paid to J. S., [see s. 66, ante, p. 764, n.] of aforesaid, in which the said offence was committed, to be by him applied according to the direction of the statute in that case made and provided; and that the said sum of ten shillings shall be paid [to the said A. B., or, if he have been examined in proof of the offence, then thus: also to the said J. S., the said A. B. having been examined in proof of the offence aforesaid]; and I order that the said sum of shillings for costs shall be paid to [the complainant]. Given under my hand and seal, the day and year first above mentioned.*

J. P.

\* If time be given for payment of the penalty, &c., the form should be the same as the above to the asterisk]—for costs; and I order that the said sums shall be paid by the said C. D., on or before the day of next; and I direct that the said sum of five pounds shall be paid to J. S., of" &c. as in the above form, to the end.

(No. 4).

Conviction on 7 & 8 Geo. 4, c. 29, s. 34, for angling in water belonging to dwelling-house of owner (b).

— *BE it remembered, that, on &c., at &c., C. D. of &c., is convicted before me, J. P., one of his Majesty's justices of the peace in and for the said county, for that the said C. D., on &c., about the hour of [eleven] in the [forenoon] of the same day, at the parish of [in the county aforesaid, in a certain stream [or, pond] of water there situate, then and there running through [or, being in] certain land, to wit, a [garden] adjoining [or, belonging] to the dwelling-house of one A. B. there, the said A. B. then and there having a right of fishery in the said water [or, if not a running stream, being owner of the said water], ten fish, called trout, [as the case is], of the said A. B., of the price and value of ten shillings, then and there being found, then and there in the said water, by angling, unlawfully and wilfully did*

(a) The 71st section of the act prescribes the formal parts of this conviction. See the enactment and form, *post*, HARRING, Vol. III. p. 554. For the usual forms of summons and warrant, see HARRING, Vol. I. p. 850; HARRING, Vol. V.

(b) The 71st section of the act prescribes the formal parts of the above conviction. See *post*, Vol. III. p. 554.

take ["take or destroy, or attempt to take or destroy"]; against the form of the statute in that case made and provided: I the said J. P. do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of [five] pounds, and also to pay the sum of shillings\* for costs; and, in default of immediate payment, to be imprisoned in the , [and there kept to hard labour] for the space of [see s. 67, title *MARTIN*, Vol. III. p. 553], calendar months, unless the said sums shall be sooner paid; and I direct that the said sum of five pounds shall be paid to J. S. [see s. 66, ante, p. 764, n.] of aforesaid, in which the said offence was committed, to be by him applied according to the directions of the statute in that case made and provided; and I order that the said sum of shillings for costs shall be paid to [the complainant]. Given under my hand and seal the day and year first above mentioned.

J. P.

\* If time be given for payment of the penalty, &c., the form should be the same as the above, to the asterisk—[for costs; and I order that the said sums shall be paid by the said C. D. on or before the day of next; and I direct that the said sum of five pounds shall be paid to J. S., of] &c. as in the above form, to the end.

(No. 5).

— } BE it remembered, that, on &c., at &c., C. D. of &c., is convicted before me, to wit } J. P., one of his Majesty's justices of the peace for the said county, for that he, the said C. D., on &c., about the hour of [eleven] in the [forenoon] of the same day, at the parish of , in the county aforesaid, in a certain pond [or, stream] of water there situate, the private property of A. B., [or, wherein A. B. then had a private right of fishery], the said water not then being water running through or being in any land adjoining or belonging to the dwelling-house of the said A. B., or any person being the owner of such water, or having a right of fishery therein, ten fish, called trout, [according to the fact], of the value of ten shillings, then and there being found, then and there, in the said water, by angling, unlawfully and wilfully did take ["take or destroy, or attempt to take or destroy"]; against the form of the statute in that case made and provided. I, the said J. P., do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of [two] pounds," &c., as in the preceding form, to the end.

Conviction on like act for angling elsewhere.

(No. 6).

Commencement as ante, p. 11, form (No. 2).—on &c., at &c., the dam of a certain fish-pond, ["of any fish-pond, or of any water which shall be private property, or in which there shall be a private right of fishery,"] of one A. B., there situate, unlawfully and maliciously did break down and destroy, with intent thereby then and there to take and destroy the fish in the said pond, [or, and did thereby then and there cause the loss and destruction of divers of the fish in the said pond]; against the form of the statute in that case made and provided. And you, the said keeper, &c. [Conclude as ante, p. 11, form (No. 2).]

Commitment on 7 & 8 Geo. 4, c. 30, s. 16, for breaking the dam of a fish-pond.

(No. 7).

Commencement as ante, p. 11, form (No. 2).—on &c., at &c., unlawfully and maliciously did put a large quantity of lime ["lime, or other noxious material"] into a certain fish-pond ["any fish-pond, or any water which shall be private property, or in which there shall be a private right of fishery,"] of one A. B., there situate, with intent thereby to destroy the fish in the said pond; against the form of the statute in that case made and provided. And you, the said keeper, &c. [Conclude as ante, p. 11, form (No. 2).]

The like for putting lime, &c., into it.

(No. 8).

— THE jurors for our lord the King upon their oath present, that C. D., late of &c., on &c., with force and arms, at &c., the dam of a certain fish pond of one A. B., there situate and being, then and there unlawfully and maliciously did break down and destroy, with intent thereby then and there to take and destroy the fish in the said pond then and there being, [or, and did thereby then and there cause the loss and destruction of divers of the fish in the said pond then and there being]; against the form of the statute in such case made and provided, and against the peace of our said lord the King, his crown and dignity. [If there be any doubt as to

Indictment on 7 & 8 Geo. 4, c. 30, s. 15, for breaking the dam of a fish-pond.



## FORMS.

the water being a fish-pond, insert a count according to the fact, shewing it to be "water, the private property of A. B.," or, "water in which A. B. had a private right of fishery." See the act.]

(No. 9).

Indictment for other offences under same section of the act.

The above precedent may be framed to meet any other of the offences mentioned in the 15th section of the 7 & 8 Geo. IV. c. 30, stating, that the defendant *did put a large quantity, to wit, one bushel of lime, &c.,* ["lime, or other noxious material"], *into a certain fish-pond,* ["any fish-pond, or any water" &c.], (as above), *of A. B., there situate, with intent thereby then and there to destroy the fish in the said pond then and there being,* [or, *did break down and destroy the dam of a certain mill pond of the said E. F., there situate, &c.*]

(No. 10).

Indictment on 7 & 8 Geo. 4, c. 29, s. 36, for stealing oysters, or oyster-brood.

— *THE jurors for our lord the King upon their oath present, that C. D., late of &c., on &c., at &c., from a certain oyster bed, called* , [if of any particular name], *the property of A. B. (a), and sufficiently marked out and known as the property of the said A. B., one thousand oysters, of the value of twenty shillings, then and there being found, then and there feloniously did steal, take, and carry away; against the form of the statute in such case made and provided, and against the peace, &c.* [Add other counts, if according to the fact, stating the stealing to be of "oyster brood," or the stealing to be from an oyster "laying," or "fishery."]

As to Dredging for Oysters, see the act, ante, p. 781.

(No. 11).

Information against a person for preventing the young salmon from going down a river, on stat. 58 Geo. 3, c. 43 (b).

— *THE information and complaint of A. B., of &c., one of the conservators appointed for the preservation of the salmon and fish of the salmon kind, and the brood, spawn, and fry thereof, within the river* , *in the said county, made before me, J. P., esquire, one of his Majesty's justices of the peace in and for the said county, on &c., who says, that, within six months last past, at a place called* , *in a part of the said river* , *in the parish of* , *one C. D., of &c., did lay down and place, set and erect, certain engines and devices, namely, wooden bars, the said bars not being an inch apart from each other, for the destruction of the brood, spawn, or small fry of salmon in the said river; which said bars so laid down, placed, set up, and erected, acted and act as a bank, dam, or hedge, so that the young fry or young salmon were and are thereby prevented from going down from the said river to the sea, contrary to an act passed in the fifty-eighth year of the reign of his late Majesty king George the Third, intituled "An Act for preventing the destruction of the breed of salmon, and fish of salmon kind, in the rivers of England; whereby he the said C. D. has forfeited the sum of ten pounds, to be distributed as the said act directs; and therefore he the said A. B. prays that justice may be done in the premises. Before me,* J. P.

Conviction.

The statute gives the form of the conviction. See ante, p. 773.

(a) There is no occasion to name the particular place, township, parish, or vill, in which the oyster bed, &c. is. (b) Stat. 58 Geo. III. c. 43, s. 3, 6, 10 and 13, ante, p. 770 to 774.

**Fishermen.** See **Fish**. Fishmongers having Game in Possession, or Exposing to Sale, see **post**, **Game**, Vol. II.

**Fixtures, Stealing of.** See **Larceny**, Vol. III. p. 567;—**Malicious Injuries to,** see **Malicious Injuries to Property**, Vol. III. p. 727, 729.

flax and Hemp. See post, Hemp, Vol. II.

Flint Books, Evidence by, see ante, p. 39.

Flight. See post, Forfeiture, Vol. II.

Flood Gates, Destroying of, see Malicious Injuries to Property, Vol. III. p. 731. See also Rivers, Vol. V.

## Forcible Entry and Detainer<sup>(a)</sup>.

FORCE, in the common law, is most commonly taken in ill part, for unlawful violence. 1 *Inst.* 161 *b*.

It seems, that, at the common law, a man disseised of any lands or tenements, (if he could not prevail by fair means), might lawfully regain the possession thereof by force, unless he were put to a necessity of bringing his action, by having neglected to re-enter in due time: And it seems certain, that, even at this day, he who is wrongfully dispossessed of his goods may justify the retaking of them by force<sup>(b)</sup> from the wrong-doer, if he refuse to re-deliver them; for the violence which happens through the resistance of the wrongful possessor, being originally owing to his own fault, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought. 1 *Hawk. c.* 64, *s.* 1; and 3 *Salk.* 169. Perhaps, however, as

(a) See, in general, 1 *Russ. on Crimes*, 283; *Com. Dig. Forcible Entry*; *Bac. Ab. Forcible Entry*; 3 *Chit. C. L.* 1135.

(b) But this, as a general position, seems incorrect; at all events, the force must not be such as to amount to a breach of the public peace. It is laid down by *Blackstone* in his *Commentaries*, Vol. III. p. 4, that, "when any one hath deprived another of his goods or chattels personal, or wrongfully detains one's wife, child, or servant, the owner of the goods, and the husband, parent, or master, may lawfully claim and retake them, wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace. The reason for this is obvious, since it may frequently happen that the owner may have this only opportunity of doing himself justice, his goods may be afterwards conveyed away or destroyed, and his wife, children, or servants concealed or carried out of his reach, if he had no speedier remedy than the ordinary process of law. If, therefore, he can so contrive to gain possession of his property again without force or terror, the law favours and will justify his proceeding. But, as the public peace is a superior consideration to any one man's

private property, and as, if individuals were once allowed to use private force as a remedy for private injuries, all social justice must cease, the strong hand would give law to the weak, and every man would revert to a state of nature; for these reasons it is provided, that this natural right of recaption shall never be exerted where such exertion must occasion strife or bodily contention, or endanger the peace of society. If, for instance, my horse is taken away, and I find him in a common, a fair, or a public inn, I may lawfully seize him to my use, but I cannot justify breaking open a private stable, or entering on the grounds of a third person to take him, except he be feloniously stolen, but must have recourse to an action at law." And the learned commentator cites 2 *Roll. Rep.* 55, 208; 2 *Roll. Ab.* 565. It is conceived, however, that, although the owner were to take his goods, &c., from the wrong-doer in a forcible way, no action would lie against him for the mere re-taking, though, indeed, it would lie for the injury occasioned by any force unnecessarily used in such retaking. See further as to retaking goods, *Com. Dig. Pleader*, (3 M 39).

**Forcible Entry and Detainer.**

Lord *Kenyon* observed, some doubt may arise respecting what Mr. Serjt. *Hawkins* says, that, at common law, the party may enter with force into that to which he has a legal title. But without giving any opinion concerning that *dictum*, one way or the other, but leaving it to be proved or disproved whenever that question should arise; all that the Court wished to say was, that their opinion in the principal case left that question untouched, it appearing by the indictment there (which was at common law) that the defendants "unlawfully" entered, and therefore the Court could not intend that they had any title. *R. v. Wilson and others*, 8 T. R. 364.

But this indulgence of the common law, in suffering persons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the public peace, by giving an opportunity to powerful men, under the pretence of feigned titles, forcibly to eject their weaker neighbours, and also by force to retain their wrongful possessions; it was thought necessary by many severe laws to restrain all persons from the use of such violent methods of doing themselves justice. 1 *Hawk. c. 64, s. 2*.

However, even at this day, in an action of forcible entry grounded on those laws, if the defendant make himself a title which is found for him, he shall be dismissed without any inquiry concerning the force; for howsoever he may be punishable at the King's suit, for doing what is prohibited by statute, as a contemner of the laws, and disturber of the peace, yet he shall not be liable to pay any damages for it to the plaintiff, whose injustice gave him the provocation in that manner to right himself. *Id. s. 3 (a)*.

Yet, still forcible entry and detainer are offences at the common law; and the prosecutor, if he please, may proceed in that way: but then the indictment ought to express, not only the common technical words *with force and arms*, but also such circumstances as thereby it may appear upon the face of the indictment to be more than a common trespass: for a man cannot be indicted for a bare trespass. *Vide 3 Burr. 1698—1731*.

Indeed, there is no doubt but that the offence of forcible entry is indictable at common law, though the statutes give other remedies to the party aggrieved, restitution and damages: and, therefore, in an indictment on the statutes, it is necessary to state the interest of the prosecutor; but I do not know, said Lord *Kenyon*, C. J., that it has ever been decided, that it is necessary to allege a greater degree of force in an indictment at common law for a forcible entry than in an indictment on the statutes. Therefore, an indictment at common law, charging the defendants with having "unlawfully and with a strong hand" entered the prosecutor's mill, and certain lands and houses, and expelled him from the possession, is good: for the words, "with a strong hand," mean something more than a common trespass. 8 T. R. 357.

(a) There are many cases in which the resumption of possession by the mere act of the party is allowed, as if a tenant omit, at the expiration of his tenancy, to deliver up possession, the landlord may legally break open the outer door and resume possession, though there be furniture therein; and if the landlord put his cattle on the land, and the tenant detain them as damage feasant, he may be sued. *Turner v. Maymott*, 7 Moore, 574; 1 Bing. 158, 8 C.; and see *Taunton v. Costar*, 7 T. R. 431; 6 Taunt. 202; 8 B. & C. 4; and it is laid down in *Tidd's Prac.* 9th ed. 1196, that whenever a party has a right of entry, either by an adverse title or for a condition broken, (*Com. Dig. Condition*, (O 3), or on the expiration of a term or notice

to quit, (7 T. R. 431; 1 Bing. 158; 7 Moore, 574, 8 C.), he may lawfully enter and take possession of the premises, if vacant, or turn cattle thereon without bringing an ejectment, provided he can find an opportunity of doing so without using force. If the owner, in resuming possession, be guilty of a forcible entry with a strong hand, or other breach of the peace, he will be liable to an indictment. But the circumstance of the owner of property using too much force to regain possession, but taking care to avoid personal injury to the party resisting, will not enable the latter to sue him. If, however, any unnecessary injury be committed, the owner might be sued. See cases, *supra*, 8 T. R. 299; *Id.* 78; 1 *Saund.* 296.

But the safest and most usual way is to proceed upon the statutes; and therefore, (after having premised that by stat. 8 Hen. VI. c. 9, s. 7, they which keep their possessions with force in any lands and tenements, whereof they or their ancestors, or they whose estate they have in such lands and tenements, have continued their possession in the same by three years or more, be not endangered by force of this statute), we will consider those several statutes, with the interpretation that hath been put upon them, under the following heads: 1 *Hawk. c. 64, s. 13*:—

- I. *The Statutes relating to, 789.*
- II. *What is a Forcible Entry, 792.*
- III. *What is a Forcible Detainer, 794.*
- IV. *How Punishable by Action at Law, 794.*
- V. *How Punishable at the General Sessions by Indictment, 795.*
- VI. *How Punishable by one Justice, 797.*
- VII. *How Punishable on a Certiorari, 801.*
- VIII. *How Punishable as a Riot, 801.*
- IX. *Forms, see List of, post, 801.*

**STATUTES  
RELATING TO.**

Persons having  
been in possession  
three years.

**I. Statutes relating to.**

By stat. 5 Ric. II. c. 8, "And also the King defendeth, that none from henceforth make any entry into any lands and tenements, but in case where entry is given by the law; and in such case not with strong hand, nor with multitude of people, but only in peaceable and easy manner. And if any man from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by imprisonment of his body, and thereof ransomed at the King's will."

5 Ric. 2, c. 8.  
What entry illegal.

But this statute, as observed by Mr. *Russell*, 1 *Russ. Cr.* 284, gave no speedy remedy, leaving the party injured to the common course of proceeding by indictment or action, and made no provision at all against forcible detainers; in consequence of which the 15 Ric. II. c. 2, was passed, confirming and extending the former act. Thus—

15 Ric. II. c. 2. "Item, it is accorded and assented, that the ordinances and statutes, made and not repealed, of them that make entries with strong hand into lands and tenements, or other possessions whatsoever, and them hold with force, and also of those that make insurrections, or great ridings, riots, routs, or assemblies, in disturbance of the peace or of the common law, or in affray of the people, shall be holden and kept, and fully executed, joined to the same, that at all times that such forcible entry shall be made, and complaint thereof cometh to the justices of peace, or to any of them, that the same justices or justice take sufficient power of the county, and go to the place where such force is made; and if they find any that hold such place forcibly after such entry made, they shall be taken and put in the next gaol, there to abide convict by the record of the same justices or justice until they have made fine and ransom to the King; and that all the people of the county, as well the sheriffs as other, shall be attendant upon the same justices to go and assist the same justices to arrest such offenders, upon pain of imprisonment, and to make fine to the King. And, in the same manner, it shall be done of them that make such forcible entries in benefices or offices of holy church."

15 Ric. 2, c. 2.  
Justices to commit  
offender till  
fine and ransom.

But this statute, as observed by Mr. *Russell*, 1 *Russ. C.* 284, gave no remedy against those who were guilty of a forcible detainer after a peaceable entry, nor against those who were guilty of both a forcible entry and a forcible detainer, if they were removed before the coming of a justice of the peace; and it gave no power to the justice to restore the party injured to his possession, and did not impose any penalty on the sheriff for disobeying the precepts of the justices in the execution of the statute. The 8 Hen. VI. c. 9, was therefore passed.

STATUTES  
RELATING TO.

8 Hen. 6, c. 9.  
Provisions extended to cases of forcible detainer.

The office and duty of justices of peace, when any forcible entry is made into lands, or peaceable entry, and after detaining with force.

Justices empowered to restore premises to former possessor.

The justices' precept to the sheriff to return a jury to inquire of forcible entries.

Juror to have 40s. per annum.

The sheriff's penalty for omitting his duty.

8 Hen. VI. c. 9, s. 1, recites the 15 Ric. II. c. 2.

Sect. 2. 'And for that the said statute doth not extend to entries in tenements in peaceable manner, and after holden with force, nor if the persons which enter with force into lands and tenements be removed and avoided before the coming of the said justices or justice, as before, nor any pain ordained if the sheriff do not obey the commandments and precepts of the said justices for executing the said ordinance, many wrongful and forcible entries be daily made into lands and tenements by such as have no right, and also divers gifts, feoffments, and discontinuances, sometimes made to lords, and other puissant persons, and extortioners, within the said counties where they be conversant, to have maintenance, and sometimes to such persons as be unknown to them so put out, to the intent to delay and defraud such rightful possessors of their right and recovery for ever, to the final disherison of divers of the King's faithful liege people, and likely it is daily to increase, if due remedy be not provided in this behalf.' Our lord the King, considering the premises, hath ordained, "That the said statute, and all other statutes of such entries or alienations made in times past, shall be holden and duly executed; joined to the same, that from henceforth, where any doth make any forcible entry on lands and tenements, or other possessions, or them hold forcibly, after complaint thereof made within the same county where such entry is made, to the justices of peace, or to one of them, by the party grieved, that the justices or justice so warned, within a convenient time, shall cause, or one of them shall cause, the said statute duly to be executed, and that at the costs of the party so grieved."

Sect. 3. "And moreover, though that such persons making such entry be present, or else departed before the coming of the said justices or justice, notwithstanding the same justices or justice in some good town next to the tenements so entered, or in some other convenient place, according to their discretion, shall have, or either of them shall have, authority and power to inquire by people of the same county, as well of them that make such forcible entries into lands and tenements, as of them which the same hold with force; and if it be found before any of them, that any doth contrary to this statute, then the said justices or justice shall cause to reeaise the lands and tenements so entered or holden as afore, and shall put the party so put out in full possession of the same lands and tenements so entered or holden as before."

Sect. 4. "And also, when the said justices or justice shall make such inquiries as before, they shall make, or one of them shall make, their warrants and precepts directed to the sheriff of the same county, commanding him, on the King's behalf, to cause to come before them, and every of them, sufficient and indifferent persons, dwelling next about the lands so entered as before, to inquire of such entries; whereof every man, which shall be impanneled to inquire in this behalf, shall have land or tenement of the yearly value of forty shillings by year at the least, above reprises. And that the sheriff return issues upon every of them at the day of the first precept returnable 20s., and at the second day 40s., and, at the third time, 100s., and at every day after, double. And if any sheriff or bailiff within a franchise, having return of the King's writ, be slack, and make not execution duly of the said precepts to him directed to make such inquiries, that he shall forfeit to the King 20l. for every default, and moreover shall make fine and ransom to the King."

Sect. 5. "And that as well the justices or justice aforesaid, as the justices of assize, and every of them, at their coming into the country to take assizes, shall have, and every of them shall have, power to hear and determine such defaults and negligences of the said sheriffs and bailiffs, and every of them, as well by bill at the suit of the party grieved, to sue for himself, as for the King, by indictment only to be taken for the King. And if the sheriff or bailiff be duly attainted in this behalf by indictment, or by bill, that he which sueth for himself and for the King, have the one moiety of the forfeiture of 20l. together with his costs and expenses. And that the same process be made against such persons indicted or sued by bill in this

behalf, as should be against persons indicted or sued by writ of trespass done with force and arms against the peace of the King."

Sect. 6. "And moreover, if any person be put out, or disseised of any lands or tenements in forcible manner, or put out peaceably, and after holden out with strong hand; or, after such entry, any feoffment or discontinuance in any wise thereof be made, to defraud and take away the right of the possessor; that the party grieved in this behalf shall have assize of *novel disseisin*, or a writ of trespass against such disseisor; and if the party grieved recover by assize, or by action of trespass, and it be found by verdict, or in other manner by due form in the law, that the party defendant entered with force into the lands and tenements, or them after his entry did hold with force, that the plaintiff shall recover his treble damages against the defendant; and moreover, that he make fine and ransom to the king; and that mayors, justices or justice of peace, sheriffs, and bailiffs of cities, towns and boroughs, having franchise, have in the said cities, towns, and boroughs, like power to remove such entries, and in other articles aforesaid, rising within the same, as the justices of peace and sheriffs in counties and countries aforesaid have."

Sect. 7. "That they which keep their possessions with force in any lands and tenements, whereof they or their ancestors, or they whose estate they have in such lands and tenements, have continued their possessions in the same by three years or more, be not endamaged by force of this statute."

The above provision of the 6th section is still further enforced by the 31 Eliz. c. 11.

31 Eliz. c. 11, sect. 1. 'Whereas there is one good act made and established in the eighth year of the reign of King Henry the Sixth, against such persons as should make forcible entry into lands, tenements, and other possessions, or them should forcibly hold; and one very good proviso or clause, in the said act contained, as ensueth:'

Sect. 2. "That they which keep their possessions with force, in any lands and tenements whereof they or their ancestors have continued their possession in the same by three years or more, be not endamaged by force of the said statute."

Sect. 3. 'And whereas divers of the queen's majesty's good and loving subjects, and their ancestors, or those whose estate they have, for many years together, above the space of three years or more, have been in quiet possession of their dwelling-houses, and other their lands and possessions; and now of late divers of her Majesty's said subjects, having entries made upon their possessions, having had such quiet and long possession, for disturbing of such enterers, and for keeping of their possession against such enterers, by colour of indictments of forcible entry, or forcible keeping possession, found against them, by means of the oaths of such enterers, have been removed and put out of their dwelling-houses and other their possessions, which they have quietly held by the space of three years together, or longer time, next before such indictments found against them, against the true meaning and intent of the said proviso or clause contained in the said act: 'For remedy of which inconvenience, and for true declaration and explanation of the law therein, be it ordained, declared, and enacted, by the authority of this present Parliament, that no restitution upon any indictment of forcible entry, or holding with force, be made to any person or persons, if the person or persons so indicted hath had the occupation, or hath been in quiet possession by the space of three whole years together, next before the day of such indictment so found, and his, her, or their estate or estates therein not ended or determined; which the party indicted shall and may allege for stay of restitution, and restitution to stay until that be tried, if the other will deny or traverse the same; and if the same allegation be tried against the same person or persons so indicted, then the same person or persons so indicted to pay such costs and damages to the other party, as shall be assessed by the judges or justices before whom the same shall be tried; the same costs and damages to be recovered and levied as is usual for costs and damages contained in judgments upon other actions.'

#### STATUTES RELATING TO.

8 Hen. 6, c. 9.  
What action may be had against him who doth put out, or keep out of possession with force.

They may keep their land by force, who have had three years' possession.

31 Eliz. c. 11.

The proviso in the statute of 8 Hen. 6, c. 9, touching continuance of possession by three years.

No restitution shall be made, if the party indicted hath been three years in quiet possession, and his estate not ended.

Costs shall be awarded against the party indicted, if his said allegation be found against him.

WHAT IS A  
FORCIBLE  
ENTRY.

21 Jac. 1, c. 15.  
Others than free-  
holders may have  
restitution.

Doubts having arisen upon the construction of the above acts, whether a lessee for years, or copyholder ousted by the lessor or lord, could have restitution, the same were removed by the 21 Jac. I. c. 15, which enacts, "That such judges, justices, or justice of the peace, as by reason of any act or acts of Parliament now in force are authorized and enabled, upon inquiry, to give restitution of possession unto tenants of any estate of freehold, of their lands or tenements which shall be entered upon with force, or from them withholden by force, shall, by reason of this present act, have the like and the same authority and ability from henceforth (upon indictment of such forcible entries, or forcible withholdings before them duly found) to give like restitution of possession unto tenants for term of years, tenants by copy of court roll, guardians by knights service, tenants by *elegit*, statute merchant and staple, of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force."

We will now proceed to notice the construction to be put on these statutes.

## II. What is a forcible entry.

What is a forcible entry.

A FORCIBLE entry or detainer is committed by violently taking or keeping possession of lands and tenements, with menaces, force, and arms, and without the authority of the law. 4 *Bla. Com.* 148.

Species of property.

*Species of Property*—It seems clear, that no one can come within the danger of the above statutes, by a violence offered to another in respect of a way, or such like easement, which is no possession, and there seems to be no good authority that an indictment will lie on this case for a common or office. 1 *Hawk. c. 64, s. 31.*

But it may be laid down as a general rule, that a person may be indicted for a forcible entry into any such incorporeal hereditament for which a writ of entry will lie, either by the common law, as for rents; or by statute, as for tithes, &c., see 1 *Russ. C.* 286; and he might be indicted for a forcible entry into ecclesiastical possessions, such as churches, vicarages, &c. *Id.*

Nature of right.

*Nature of Right*—It is immaterial, to create this offence, whether the party had a right to enter or not, for the offence consists in asserting the right in a forcible way to the breach of the peace. The statutes, however, do not extend to a case where the party ousted had the bare custody of the premises for the defendant; 1 *Hawk. c. 64, s. 32*; but they extend to the forcible ouster of one joint tenant, or tenant in common, by another; *Id. s. 33*; and to all cases where the party in possession has some estate therein.

Nature of the force.

*Nature of the Force*—It seems certain, that if one who pretends a title to lands barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church or market, or for such like purpose, without doing any act, which either expressly or impliedly amounts to a claim of such lands, he cannot be said to make an entry thereinto. 1 *Hawk. c. 64, s. 20.*

What a mere trespass or not.

But it seemeth, that if a person enter into another man's house or ground, either with apparent violence offered to the person of any other, or furnished with weapons, or company, which may offer fear; though it be but to cut or take away another man's corn, grass, or other goods, or to fell or crop wood, or to do any other like trespass; and though he do not put the party out of his possession, yet it seemeth to be a forcible entry. *Dalt. c. 126.*

But if the entry were peaceable, and, after such entry made, they cut or take away any other man's corn, grass, wood, or other goods, without apparent violence or force; though such acts are counted a disseisin with force, yet they are not punishable as forcible entries. *Id.*

But if he enter peaceably, and there shall by force or violence cut or take away any corn, grass, or wood, or shall forcibly or wrongfully carry away any other goods there being, this seemeth to be a forcible entry punishable by the statutes. *Id.*

So also shall those be guilty of a forcible entry, who, having an estate in

land by a defensible title, continue with force in the possession thereof, after a claim made by one who had a right of entry thereto. 1 *Hawk. c. 64, s. 23.*

If one find a man out of his house and forcibly withhold him from returning to it, and send persons to take peaceable possession of it in the party's absence, this, according to the better opinion, is a forcible entry. 1 *Russ. C. 287; 1 Hawk. c. 64, s. 26.*

In general, it seemeth clear that, to denominate the entry forcible, it ought to be accompanied with some circumstances of actual violence or terror; and therefore that an entry, which hath no other force than such as is implied by the law, in every trespass whatsoever, is not within these statutes. 1 *Hawk. c. 64, s. 25.*

Actual violence or terror necessary.

*R. v. Wilson and eleven others.*—The defendants were indicted for a forcible entry and detainer at common law. The first count stated, that they, with force and arms, unlawfully and injuriously, and with a strong hand, entered, &c. &c. The third count was the same as the first, as to those words; the second and fourth, the same as the first and third, excepting that they omitted the words *with a strong hand*. There was a demurrer to all these counts; and, in support of the demurrer, it was contended, that a private trespass only was charged upon the face of the indictment, and not a public breach of the peace indictable. Against the demurrer, it was admitted that the second and fourth counts were not maintainable. And by the Court these points were determined:—

Strong hand.

A mere trespass, which is the subject of a civil action, and where the words *vi et armis* are a matter of form, cannot be converted into an indictable offence;

That the offence of forcible entry is indictable at common law;

In an indictment on the statutes, it is necessary to state the interest of the prosecutor;

It is sufficient to state the same degree of force in an indictment at common law, and in an indictment upon the statutes; but there must be stated that degree of force and violence in fact which constitutes the offence;

The words *manu forti* mean something more than a common trespass;

It is not sufficient to charge the defendant with having entered *vi et armis*.

No particular technical words are necessary in such an indictment at common law; all that is required is, that it should appear by the indictment that such force and violence have been used as constitute a public breach of the peace.

And the first and third counts were adjudged good. And at another day Lord *Kenyon*, C. J., added, that the Court desired that their decision might not be considered as a precedent in other cases to which it did not apply. And that what *Hawkins* says, (*ante*, p. 787), that at common law the party may enter with force into that to which he has a legal title, was left untouched by this case, for that here the indictment stated the defendants to have unlawfully entered, and therefore the Court could not intend that they had any title. 8 *T. R. 357.*

As to the matter of violence; it seems to be agreed, that an entry may be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of the entry, as by breaking open the doors of a house, whether any person be in or not, especially if it be a dwelling-house, and perhaps also by an act of outrage after the entry, as by carrying away the party's goods; but it seems that an entry is not forcible by the bare drawing up a latch, or pulling back the bolt of a door, there being no appearance therein of its being done by strong hand, or multitude of people; and it hath been holden that an entry into a house through a window, or by opening a door with a key, is not forcible. 1 *Hawk. c. 64, s. 26.*

Violence.

An actual assault is not necessary to a forcible entry or detainer. *Milner v. Maclean*, 2 C. & P. 17.

WHAT IS A  
FORCIBLE  
ENTRY.



WHAT IS A  
FORCIBLE  
ENTRY.

Terror.

In respect of the circumstances of *terror*; it is to be observed, that whenever a man, either by his behaviour or speech at the time of his entry, gives those who are in possession just cause to fear that he will do them some bodily hurt, if they will not give way to him, his entry is esteemed forcible; whether he cause such a terror by carrying with him such an unusual number of attendants, or by arming himself in such a manner as plainly intimates a design, or by actually threatening to kill, maim, or beat those who shall continue in possession, or by giving out such speeches as plainly imply a purpose of using force, as if one say that he will keep his possession in spite of all men, or the like. *Id.* s. 27.

But it seems that no entry shall be judged forcible from any threatening to spoil another's *goods*, or to destroy his cattle, or to do him any other such like damage which is not personal. *Id.* s. 28.

However, it is clear that it may be committed by a single person, as well as by twenty. *Id.* s. 29.

But, nevertheless, all those who accompany a man, when he makes a forcible entry, shall be judged to enter with him, whether they actually come upon the lands or not. *Com. Dig.* "Forcible Entry," (A 3).

He who barely agrees to a forcible entry made to his use without his knowledge or privity, is not within the statutes, because he did not concur in or promote the force. 1 *Hawk. c.* 64, s. 24.

As to when the offence amounts to a riot, see *post*, 801.

## III. What is a Forcible Detainer.

What a forcible  
detainer.

It seemeth certain, that the same circumstances of violence or terror, which will make an entry forcible, will make a detainer forcible also. And a detainer may be forcible, whether the entry were forcible or not. 1 *Hawk. c.* 64, s. 32.

No attempt by the former possessor to re-enter is necessary to constitute a forcible detainer. See 1 *Russ. C.* 288.

A lessee who, after the end of his term, *keeps arms* in his house to oppose the entry of the lessor, though no one attempt an entry; or a lessee at will detaining *with force* after the will is determined, will be guilty of this offence. So will a lessee resisting with force a distress for rent, or forestalling or rescuing the distress. See *Com. Dig. Forcible Detainer*, (B 2). So will a mortgagor detaining with force after the mortgage is determined, and such like. *Id. Ibid.* But the mere denying possession in these cases would not amount to a forcible detainer. *Id.*

The 8 Hen. VI. c. 9, as we have seen *ante*, 791, does not apply to a person who has been in possession for three years by himself, or any other under whom he claims; but a person in quiet possession for three years, and then disseised by force, and restored, cannot afterwards detain with force within three years after his restitution, for his possession was interrupted. *Com. Dig. Forcible Detainer*, (B 2).

By 31 Eliz. c. 11, we have seen *ante*, 791, no restitution is to be given on an indictment of forcible entry and detainer where the party has been three years in quiet possession, before the indictment found, and his estate not determined. See further as to this, *post*, 797.

## IV. How Punishable by Action at Law.

How punished by  
action.

The 8 Hen. VI. c. 9, s. 6, enacts, that if any person be put out or disseised of any lands or tenements in forcible manner, or put out peaceably and after holden out with strong hand, the party grieved shall have assize of novel disseisin, or writ of trespass against the disseisor; and if he recover, he shall have treble damages, and the defendant moreover shall make fine and ransom to the King.

*The Party aggrieved shall have Assize, &c.*—But this action, being at the suit of the party, and only for the right, is only where the entry of the defendant was not lawful; for if a man entereth with force, where his entry is lawful, he shall not be punished by way of action; but yet he may be indicted upon the statute, for the indictment is for the force and for the King; and he shall make fine to the King, although his right be never so good. *Dalt. c. 129; ante, 787, n.*

The act is applicable only to parties in possession as freeholders, and does not apply to persons in possession as tenants from year to year, or others. *8 B. & C. 409.* See a form of declaration, 2 *Chit. Pl. 5th ed. 865.*

*Treble Damages*—And this he shall recover as well for the mesne occupation as for the first entry: and albeit he shall recover treble damages, yet he shall recover costs, which shall be trebled also: for the word *damages* includeth costs of suit. 1 *Inst. 257; 10 Co. 115; 1 Vent. 22; sed vide Hard. 152.*

HOW PUNISHABLE BY ACTION AT LAW.

## V. How Punishable at the General Sessions by Indictment.

Tax party grieved, if he will lose the benefit of his treble damages and costs, may be aided and have the assistance of the justices at the general sessions, by way of indictment on the statute of 8 Hen. VI.; which being found there, he shall be restored to his possession, by a writ of restitution granted out of the same court to the sheriff. *Dalt. c. 129.*

If the indictment be not before the justices at sessions, restitution of the property cannot be granted, for justices of oyer and terminer or general gaol delivery, though they may inquire of forcible entries, and fine the parties, yet cannot award a writ of restitution. See 3 *Bac. Ab. Forcible Entry, (F); 1 Hawk. c. 64, s. 36.* If, indeed, the indictment be removed into the King's Bench by *certiorari*, that Court may give restitution. *Post, 801.*

In the caption of which indictment, it will be sufficient to say *justices assigned to keep the peace of our lord the King*, without shewing that they have authority to hear and determine felonies and trespasses; for the statute enables all justices of the peace, as such, to take such indictments. 1 *Hawk. c. 64, s. 36.*

It must appear on the face of the indictment that the entry was with more force than in a common trespass; at least, a public breach of the peace must appear. 8 *T. R. 361, 362.* An averment, that defendant entered with a strong hand will suffice; *Styles, 136; Cro. Eliz. 461;* but the mere words "force and arms" will not. *Id.* If the word "disseised," is inserted, it is not also necessary to use the terms *expelled* or *unlawfully*, for the last is superfluous, and the first is implied in the word *disseised*; but, unless the word *disseised* be used, the indictment at common law should contain the word "expelled." 8 *T. R. 357; Cro. Jac. 32; Yelv. 165.* It appears also to be sufficient to allege that the defendant on such a day entered and disseised the prosecutor, without adding the words *then and there* to the disseisin. *Cro. Jac. 41, 151.*

An indictment for a forcible detainer is good, without shewing that the defendant's original entry was peaceful. *Cro. Jac. 19;* but it seems clear that an entry must be shewn, as the act would not apply if the party had been always in possession. 1 *Hawk. c. 64, s. 40.* It is said, that a forcible detainer need not be laid as against the peace; but it is not usual to omit this allegation. *Cro. Jac. 32, 151.*

The tenement in which the force was made must be described with convenient certainty; and the indictment must set forth that the defendant actually entered, and ousted the party grieved; and continueth his possession at the time of finding the indictment; otherwise he cannot have restitution, because it doth not appear that he needeth it. 1 *Hawk. c. 64, s. 37, et seq.*

(a) If a man's wife, children, or servants, do continue in the house or upon the land, he is not ousted of his possession; but his cattle being upon the ground do not preserve his possession. *Dalt. c. 132.*

Indictment at sessions.

Elsewhere.

Form of indictment.

Statement of force.

Statement of tenement, &c.

Statement of defendant being in possession.

INDICTMENT  
FOR.

If it merely state that the defendant forcibly entered a certain "tenement," which may signify any thing which may be held, and even an incorporeal hereditament, it will be defective. 1 *Sess. Cas.* 357; 1 *East*, 441; 2 *Str.* 891. So, to allege that the defendant entered two closes of meadow or pasture, a house, a rood of land, or certain lands belonging to a house, is bad, for the same certainty is required as in a declaration in ejectment. 1 *Hawk. c.* 64, s. 37. As to which certainty, see 2 *Chit. Pl.* 5th ed. 878, n., and the cases there cited.

But an indictment may be void as to such part of it as is uncertain in this respect, and good for so much as is certain; thus, an indictment for forcible entry into a house and certain acres of land, may be quashed as to the land and stand good as to the house. 3 *Bac. Abr.* "Forcible Entry," (E); and see further, 1 *Russ. C.* 290.

Statement of party's interest in premises.

Where the indictment is not at common law, it must shew the estate of the party disseised.

An indictment for forcible entry was quashed, for not setting forth that the party was seised or disseised, or what estate he had in the tenement: for if he had only a term for years, then the entry must be laid into the freehold of A. in the possession of B. *R. v. Griffith*, 3 *Salk.* 169; 3 *Burr.* 1732.

An indictment on the 8 Hen. VI. must state that the place was the freehold of the party grieved at the time of the injury; but it seems to be sufficient on the statutes of Richard the Second, to shew who had the possession. 1 *Hawk. c.* 64, s. 38. So, an indictment under 21 Jac. I. c. 15, must allege such an estate in him as that statute requires. 1 *Hawk. c.* 64, s. 38; *Cald.* 415.

An indictment for a forcible entry into a copyhold is bad, if it only state that the copyhold was held at the will of the lord, according to the custom of the manor, without saying "by copy of court-roll." *Anon. Ventr.* 89.

It has been held, that, in an indictment under the 8 Hen. VI., the tenure of the estate will be implied from the word *disseised*, without other words of freehold. *Wroth's case*, 3 *Leon.* 102; and see *Palm.* 277.

An averment in the indictment merely that the prosecutor was "seised," is sufficient. *R. v. Dillon*, 2 *Chit. Rep.* 314.

An indictment at common law, stating that the prosecutor was possessed, will suffice. *R. v. Wilson*, 8 *T. R.* 360.

Unless the particular statute require it, it seems unnecessary to shew the quantity of estate which the party injured had in the land, or by what title he claims it; for it is not the title, but the possession, which is in question. *Id.* And see 2 *Roll. Abr.* 80, pl. 3; *contra*, 1 *Ventr.* 306. And where more is stated than is necessary to prove the offence laid in the indictment, such unnecessary matter need not be proved. Thus, in an indictment for a forcible entry on the possession of a lessee for years, proof of the force and of such possession is sufficient, although the indictment allege that the premises were the freehold of A., and such allegation is not proved. *R. v. Lloyd*, *Cald.* 415.

Ouster and continuance thereof.

The indictment, to entitle the party to an award of restitution, must state not only the ouster, but also the defendant's continuance in possession at the time of the finding the indictment. 1 *Hawk. P. C.* 64, s. 41.

Evidence.

*Evidence*—The material averments in the indictment must be alleged as proved. In an indictment on the statutes, proof that the prosecutor holds colourably as a freeholder or leaseholder, will suffice; for the Court will not on the trial enter into the validity of an adverse claim made by the defendant, and which he ought to assert, not by force, but by action. *Per Vaughan B.*, *R. v. Williams*, *Monmouth Summer Assizes*, 1828; *Talf. Dick. Ser.* 239.

Witnesses.

The tenant whose land has been entered upon or witholden by force, is not a competent witness, for he is entitled to restitution if the defendant be convicted. See *Id.* and *R. v. Williams*, 9 *B. & C.* 549, *S. C.*; *R. v. Breen*, *R. & M.*, *N. P. C.* 242.

Punishment.

*Punishment*—The statute 5 Rich. II. stat. 1, c. 8, imposes a punishment of imprisonment and ransom at the King's will; and, by the common

law, a fine or imprisonment may be imposed on conviction for a forcible entry at common law. See *Cald.* 415.

RESTITUTION.

*Restitution*—The foregoing statutes shew in what cases restitution may be awarded. "The same justice or justices before whom an indictment for forcible entry or detainer shall be found, may award restitution, but no other justices, except those before whom the inquest was found, can award restitution, unless the indictment be removed by *certiorari* into the King's Bench, and that Court, by the plenitude of its power, can restore, because that is supposed to be implied by the statute, on the ground, that whenever an inferior jurisdiction is erected, the superior jurisdiction must have authority to put it in execution." 1 *Russ. C.* 291; 3 *Bac. Ab. Forcible Entry*, (F). It seems, justices of oyer and terminer, or general gaol delivery, cannot award a writ of restitution. *Id.* See *vid.* 1 *Hawk. c.* 64, s. 51.

Restitution.

The restitution can be to such property only for which a writ of entry will lie. See 1 *Hawk. c.* 64, s. 45, *ante*, 792.

It can only be to him who was put out of actual possession, and not to one who was only seised in law. *R. v. Marrow, C. T. Hardw.* 174. He must be alive, and his interest continue up to the time of the actual execution of the writ of restitution; if such be not the case, the defendant may shew the fact, when the writ is prayed for, or apply to the Court to quash the writ, or give an indemnity to the sheriff, and get him to return to the writ the fact as to the death or discontinuance of interest.

The restitution must be awarded within three years after the inquisition. *R. v. Harris*, 3 *Salk.* 313.

By the 8 Hen. VI. c. 9, and 31 Eliz. c. 11, *ante*, p. 791, we have seen, that any one indicted on these acts, may allege quiet possession for three whole years, so as to stay the award of restitution. In such a case the possession must have continued without interruption during three whole years next before the indictment. 3 *Bac. Ab. Forcible Entry* (G); 1 *Hawk. c.* 64, s. 53. And the possession must be of a lawful estate. *Id.* As to the plea and costs under this, see *post*, and 1 *Russ. C.* 293.

A *supersedeas* of the restitution may be awarded by the same justices who awarded the restitution, or by the Court of King's Bench, on a *certiorari*. 3 *Bac. Ab. Forcible Entry*, (G); 1 *Hawk. c.* 64, s. 61; 1 *Russ.* 293.

The Court of King's Bench may also set aside the restitution, and grant re-restitution. *Id. Cro. Jac.* 151; *Alleyne*, 50.

As to how restitution is to be made, see next section.

If possession under a writ of restitution be avoided immediately after execution by a fresh force, the party shall have a second writ of restitution without a new inquisition; but the second writ must be applied for in a reasonable time. *R. v. Harris*, 1 *Ld. Raym.* 482.

## VI. How Punishable by one Justice.

For a more speedy remedy, it is enacted, by stat. 8 Hen. VI. c. 9, that the party grieved may complain to any one justice, or to a mayor, sheriff, or bailiff, within their liberties. See the act, *ante*, p. 790.

Punishment, &amp;c., of wrong-doer.

But although one justice alone may proceed in such cases, yet it may be advisable for him, if the time for viewing the force will suffer it, to take to his assistance one or two more justices.

Concerning which power of one justice, it is, as we have seen, *ante*, p. 790, enacted as follows:—

After complaint made to such justice, by the party grieved, of a forcible entry made into lands, tenements, or other possessions, or forcible holding hereof, he shall, within a convenient time, at the costs of the party grieved, without any examining or standing upon the right or title of either party), take sufficient power of the county and go to the place where such force is made. See stats. 15 Rich. II. c. 2; 8 Hen. VI. c. 9, s. 2, *ante*, p. 789, 90. *Dalt. c.* 44.

PUNISHABLE BY  
ONE JUSTICE.

*Complaint by the Party grieved*—Yet these words do not enforce any necessity of such a complaint; for it is holden, that the justice may and ought to proceed upon any information or knowledge thereof whatsoever, though no complaint at all be brought unto him by any party grieved thereby. *Lamb.* 147.

*Power of the County*—All people of the county, as well the sheriff as other, shall be attendant on the justices to arrest the offenders; on pain of imprisonment and fine to the King. 15 Rich. II. c. 2.

If the doors be shut, and they within the house shall deny the justice to enter, it seems he may break open the house, to remove the force. *Dalt.* c. 44.

And if, after such entry made, the justice shall find such force, he shall cause the offenders to be arrested.

He shall also take away their weapons and armour, and cause them to be appraised; and after, to be answered to the King as forfeited, or the value thereof. *Dalt.* c. 44.

Also such justice ought to make a record (a) of such force by him viewed; which record shall be a sufficient conviction of the offenders, and the parties shall not be allowed to traverse it: and this record, being made out of the sessions by a particular justice, may be kept by him; or he may make it indented, and certify the one part into the King's Bench, or leave it with the clerk of the peace, and the other part he may keep himself. For this view of the force by the justice, being a judge of record, maketh his record thereof, in the judgment of the law, as strong and effectual as if the offenders had confessed the force before him; and, touching the restraining of traverse, more effectual than if the force had been found by a jury, upon the evidence of others. (This is as to the fine and imprisonment, but not as to restitution). 15 Geo. II. c. 2; *Dalt.* c. 44.

And the offenders being arrested, (as before is said), shall be put in the next gaol (b), there to abide convict by the record of the same justice until they have made fine and ransom to the King. 15 Rich. II. c. 2.

*Shall be put in the next Gaol*—It is said, that the justice hath no power to commit the offender to gaol, unless he do it upon his own view of the fact, and not upon the jury finding the same afterwards. *Dalt.* c. 44; 1 *Hawk.* c. 64, s. 8.

And if such offenders, being in the house at the coming of the justice, shall make no resistance, nor make shew of any force, then the justice cannot arrest or remove them at all upon such view. *Dalt.* c. 44.

But, howsoever, if the force be found afterwards by the inquiry of the jury, the justice may bind the offenders to the peace; and if they be gone, he may make his warrant to take them, and may after send them to the gaol until they have found sureties for the peace. *Ibid.*

*Note*—Mr. Dalton in this place says, *good behaviour*, which I have presumed to alter to *the peace*, as deeming it much the safer; and not being sufficiently satisfied concerning the power of a justice of the peace to bind to the good behaviour in the like cases, which power Mr. Dalton hath enlarged more than all other authors, without any assistance from the commission of the peace, or any act of Parliament, other than had been for above 200 years before.

*Until they have made Fine*—In the case of *R. v. Sir Edm. Elwell*, he was brought up upon a *habeas corpus*, with a return of the cause of his commitment, which was upon a conviction of forcible entry and detainer. And it being moved to discharge him upon exceptions to the commitment, the Court refused to enter into the consideration of them, till the conviction was likewise regularly removed before them. But, by consent, he was bailed in the

(a) See form (No. 5), *post*, 803. (b) See form of *mittimus*, (No. 6), *post*, 803.

mean time. And this term the conviction being before the Court, it appeared that there was no fine set by the justices, and it was therefore moved to be quashed. It was agreed on both sides that there should be a fine; but it was insisted, that it being now before the King's Bench by a *certiorari*, they might set the fine. But, by the Court:—We are not to execute the judgment of an inferior court. The conviction is to be upon view: and they who view the nature of the force are the properest judges what fine to set: and though a *certiorari* should come before the fine is set, yet it would be no contempt in the justices to complete their judgment by setting one. *Lambard*, indeed, was of opinion, that the justices could not set the fine at all; but upon what foundation we can never imagine. The justices are not bound to do it upon the spot, but may take a reasonable time to consider of the fine, because, by the words of the act, the commitment is to be, till he has paid the fine. The conviction must be quashed, and the defendant discharged. 2 *Str.* 794; 2 *Ld. Raym.* 1514.

The same was likewise solemnly resolved in *Leighton's case*; and that the justice may assess the same either before the commitment or after. 1 *Hawk. c.* 64, s. 8.

And the fine must be assessed upon every offender severally, and not upon them jointly; and the justice ought to estreat the fine, and to send the estreat into the Exchequer, that from thence the sheriff may be commanded to levy it for his Majesty's use. *Dalt. c.* 44.

But upon payment of the fine to the sheriff, or upon sureties found (by recognizance) for the payment thereof, it seemeth that the justice may deliver the offenders out of prison again at his pleasure. *Dalt. c.* 44.

And so much concerning removing the force: but the party ousted cannot be restored to his possession by the justice's view of the force, nor unless the same force be found by the inquiry of a jury.

Concerning which it is, as we have seen *ante*, 790, by stat. 8 Hen. VI. c. 9, s. 3, enacted as follows: And though that the persons making such entry be present, or else departed before the coming of the justice, he may notwithstanding, in some good town next to the tenements so entered, or in some other convenient place by his discretion, (and that though he go not to see the place where the force is, [*Dalt. c.* 44]), have power to inquire by the people of the county, as well of them that make such forcible entry, as of them which hold the same with force.

Sects. 4, 5. In order to which, the justice shall make his precept (a) to the sheriff, commanding him in the King's behalf to cause to come before him, sufficient and indifferent persons, dwelling next about the lands so entered, to inquire of such entries; whereof every man shall have lands or tenements of 40s. a-year above reprises. And the sheriff shall return issues on every of them, at the day of the first precept returnable 20s., and at the second day 40s., and at the third day 100s., and at every day after double. And the sheriff making default shall, on conviction before the same justice or before the judge of assize, forfeit 20l.; half to the King, and half to him who shall sue, with costs; and moreover shall make fine and ransom to the King.

*Before the same Justice*—And the justice may proceed against the sheriff for this default, either by bill at the suit of the party, or by indictment at the suit of the King. *Dalt. c.* 44.

And the defendant also, if he be not present, ought to be called to answer for himself; for it is implied by natural justice in the construction of all laws, that no one ought to suffer any prejudice thereby, without having first an opportunity of defending himself. 1 *Hawk. c.* 64, s. 60.

And it seems to be settled at this day, that if the defender tender a *traverse* of the force, the justice ought not to make any restitution, till the *traverse* be tried. 3 *Salk.* 169.

The defendant may also, by the 31 Eliz. c. 11, plead three years' possession; whereby it is enacted, That no restitution upon an indictment of for-

PUNISHABLE BY  
ONE JUSTICE.

Fine assessed severally.

Restitution by one justice.

Traverse.

31 Eliz. c. 11.  
No restitution to be made if the party indicted hath

(a) Form (No. 7), *post*, 804.

PUNISHABLE BY  
ONE JUSTICE.

been three years  
in quiet possession,  
and his estate  
not ended.

cible entry, or holding with force, be made to any person or persons, if the person or persons so indicted hath had the occupation, or hath been in quiet possession by the space of three whole years together next before the day of such indictment so found; and his, her, or their estate or estates therein not ended or determined; which the party indicted shall and may allege for stay of restitution, and restitution to stay until that be tried, if the other will deny or traverse the same; and if the same allegation be tried against the same person or persons so indicted, then the same person or persons so indicted to pay such costs and damages to the other party as shall be assessed by the judges or justices before whom the same shall be tried; the same costs and damages to be recovered and levied as is usual for costs and damages contained in judgments upon other actions. This enactment will be found fully set forth, *ante*, 791.

It hath been holden, that the plea of such possession is good, without shewing under what title or of what estate such possession was; because it is not the title, but possession only, which is material in this case. 1 *Hawk.* c. 64, s. 56; *sed vide ante*, 797. And it was holden by the Court, in *Leighton's case*, that if the defendant shall either traverse the entry or the force, or plead that he has been three years in possession, the justice may summon a jury for the trial of such traverse, for it is impossible to determine it upon view; and if the justice have no power to try it, it would be easy for any one to elude the statute by the tender of such a traverse, and therefore, by a necessary construction, the justice must needs have this power incidental to what is expressly given him. 1 *Hawk.* c. 64, s. 8. And this traverse must be tendered in writing, and not by a bare denial of the fact in words; for thereupon a *venire facias* must be awarded, a jury returned, the issue tried, a verdict found, and judgment given, and costs and damages awarded; and there must be a record, which must be in writing, to do all this, and not a verbal plea. *Dalt.* c. 133; 1 *Hawk.* c. 64, s. 58. Upon which traverse tendered, the justice shall cause a new jury to be returned by the sheriff, to try the traverse; which may be done the next day, but not the same day. *Dalt.* c. 133. And it seemeth he who tendereth the traverse shall bear all the charges of the trial; and not the King or the party prosecuting. *Id.*

And the 8 Hen. VI. c. 9, s. 3, *ante*, 790, enacts, If such forcible entry or detainer be found (a) before such justice, then the said justice shall cause to reeise (b) the lands and tenements so entered or holden, and shall restore the party put out to the full possession of the same.

*The said Justice*—It seems to be agreed that no other justices of the peace, except those before whom the indictment shall be found, shall have any power, either at the sessions or out of it, to make any award of restitution. 1 *Hawk.* c. 64, s. 50.

*Shall cause to reeise*—And the justice may break open the house by force to reeise the same; and so may the sheriff do, having the justice's warrant. *Dalt.* c. 44.

*Reeise*—That is, shall remove the force, by putting out all such offenders as shall be found in the house, or upon the lands, that entered or held with force. *Dalt.* c. 130.

The sheriff, if need be, may raise the power of the county to assist him in the execution of the precept; and therefore, if he make a return thereto, that he could not make a restitution by reason of resistance, he shall be amerced. 1 *Hawk.* c. 64, s. 49.

*And shall restore the party put out*—And this he may do in his own proper person; or he may make his warrant to the sheriff to do it; *Dalt.* c. 44; 1 *Hawk.* c. 64, s. 49; and it may be, it seems, done over again if the wrong doer immediately after again dispossess forcibly. See *ante*, 797.

(a) See form (No. 5), *post*, 803.

(b) See form (No. 10), *post*, 805.

And by the 21 Jac. I. c. 15, it is enacted, That such judges, justices, or justices of the peace, as may give restitution unto tenants of any estate of freehold, may give the like unto tenants for term of years, tenants by copy of court roll, guardians by knight's service, tenants by elegit, statute merchant, and staple, of lands or tenements by them so holden, which shall be entered upon by force, or holden of them by force.

PUNISHABLE BY  
ONE JUSTICE.

## VII. *How Punishable on a Certiorari.*

ALTHOUGH regularly the justices only who were present at the inquiry, and when the indictment was found, ought to award restitution, yet if the record of the presentment or indictment shall be certified by the justice or justices into the King's Bench, or the same presentment or indictment be removed or certified thither by *certiorari*, the justices of that Court may award a writ of restitution to the sheriff, to restore possession to the party expelled; for the justices of the King's Bench have a supreme authority in all cases of the crown. *Dalt. c. 44, ante, 797.*

How punishable on  
a certiorari.

Also, where, upon a removal of the proceedings into the King's Bench, the conviction shall be quashed, the Court will order restitution to the party injured. As in the case of *R. v. Jones*, a conviction of forcible entry was quashed for the old exception of message or tenement, by reason of the uncertainty; but the restitution was opposed on an affidavit that the party's title (which was by lease) was expired since the conviction. But the Court said, they had no discretionary power in this case, but were bound to award restitution on quashing the conviction. 1 *Str.* 474. Any execution of restitution executed after the *teste* of the *certiorari* is avoided, but the justices are not brought into contempt without notice. 3 *Bac. Ab. Forcible Entry*, (G); 1 *Hawk. c. 64, s. 61, 62.* See *post*, *Riot*, Vol. V.

Where a conviction of forcible entry is quashed, the Court must award restitution.

## VIII. *How Punishable as a Riot.*

If a forcible entry or detainer shall be made by three persons or more, it is also a riot, and may be proceeded against as such, if no inquiry hath before been made of the force. *Dalt. c. 44.* See *post*, *Riot*, Vol. V.

## IX. *Forms, List of (a).*

COMMITMENT on 5 Ric. II. c. 8, for a Forcible Entry into a Freehold, (No. 1).

COMMITMENT on 21 Jac. I. c. 15, for Forcible Entry into a Leasehold, Copyhold, &c., (No. 2).

COMMITMENT for Forcible Detainer on stat. 8 Hen. VI. c. 9, or 21 Jac. I. c. 15, (No. 3).

INDICTMENT for a Forcible Entry and Detainer on Statutes, (No. 4).

RECORD of a Forcible Detainer upon View, (No. 5).

MITTIMUS for Forcible Detainer, (No. 6).

PRECEPT to Sheriff to return a Jury, (No. 7).

THE Juror's Oath, (No. 8).

THE Inquisition, Indictment, or Finding of the Jury, (No. 9).

WARRANT to the Sheriff for Restitution, (No. 10).

(a) For other forms, see 4 *Wentworth's Precedents.*



## FORMS.

(No. 1).

Commitment on  
5 Ric. 2, c. 8, for  
a forcible entry  
into a freehold.

Commencement as *ante*, p. 11, form (No. 2).]—on &c., at &c., forcibly, and with strong hand, did enter into a certain messuage, [or, land, &c., according to the fact], with the appurtenances there situate, of which one A. B. was then seised in his demesne as of fee, and the said A. B., from the peaceable possession of the said messuage, [or, land, &c.], with the appurtenances aforesaid, forcibly and with strong hand unlawfully did expel and put out; against the form of the statute in that case made and provided. And you, the said keeper, &c. [Conclude as *ante*, p. 11, form (No. 2).]

(No. 2).

Commitment on  
21 Jac. 1, c. 15, for  
forcible entry into  
a leasehold, copy-  
hold, &c.

Same as the last precedent, adapting it to a term for years, tenancy by copy of court roll, or tenancy by *elegit*, statute merchant, and staple. See the 21 Jac. 1. c. 15, *ante*, p. 792, 791, as thus:—"of which one A. B. was possessed for a certain unexpired term of years, [&c. &c. as in the last precedent.]

(No. 3).

Commitment for  
forcible detainer  
on stat. 8 Hen. 6,  
c. 9, or 21 Jac. 1,  
c. 15.

Commencement as *ante*, p. 11, form (No. 2).]—on &c., at &c., with force and arms, and with a strong hand, unlawfully did enter a certain messuage, with the appurtenances there situate, of which one A. B. was seised in his demesne as of fee, and the said A. B., from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there did unlawfully expel and put out; and that the said C. D., then and there, and from thence hitherto, the said A. B., from the possession of the said messuage with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully and injuriously did keep out, and the said messuage and appurtenances, and the possession thereof, then and there unlawfully and forcibly did hold, and still doth hold, from the said A. B.; against the form of the statute in that case made and provided. And you, the said keeper, &c. [Conclude as *ante*, p. 11, form (No. 2).]

(No. 4).

Indictment for a  
forcible entry and  
detainer on sta-  
tutes (2).

County of } THE jurors for our lord the King upon their oath present, that  
\_\_\_\_\_ } A. I., late of &c., [gentleman], on &c., was possessed of a certain [messuage] with the appurtenances, situate, lying, and being in \_\_\_\_\_, in the parish aforesaid, in the county aforesaid, for a certain term of years, then and still to come and unexpired, and being so possessed thereof, one A. O., late of &c., afterwards, to wit, on &c., the said &c. aforesaid, into the same messuage, with the appurtenances aforesaid in \_\_\_\_\_ aforesaid, in the parish and county aforesaid, with force and arms, and with strong hand, unlawfully did enter, and the said A. I. from the peaceable possession of the said [messuage], with the appurtenances aforesaid, then and there with force and arms, and with strong hand, unlawfully did expel and put out, and the said A. I. from the possession thereof, so as aforesaid, with force and arms, and with strong hand, being unlawfully expelled and put out, the said A. O., him the said A. I., from the aforesaid \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, until the day of the taking this inquisition, from the possession of the said messuage, with the appurtenances aforesaid, with force and arms, and with strong hand, unlawfully and injuriously then and there did keep out, and doth still keep out, to the great damage of the said A. I., against the peace of our said lord the King, [and against the form of the statutes in that case made and provided.]

Note—If it is a freehold, then the party should be said to be *seised* thereof in his demesne as of fee; and consequently he must be thereof *disseised*; otherwise it is of a lesser estate, of which he is not properly said to be *seised*, but possessed thereof at the will of the lord, according to the custom of the manor, or the like, and then he must be *expelled, ejected, removed*, or the like.

(a) See the acts, *ante*, 789 to 792, and observations as to the form of the indictment, *ante*, 795. This precedent may be adapted to an indictment for the offence

at common law by striking out the words "against the form of the statutes, &c." See other forms, 3 Chit. C. L. 1136; *Talf. Dick. Sess.* 239; *Arch.* 386.

## (No. 5).

*Note*—The books upon the office of a justice of the peace generally set forth that the record ought to be in the present tense, and not in the time past, (and herewith do accord the adjudged cases in the Court of King's Bench); yet, nevertheless, they all exhibit the form of a record in the time past, and not in the present. (1 *Sir*. 443). Therefore Dr. Burn took the liberty to alter the same from the record in *Id.* Raymond of the conviction of *Sir Edm. Elwell* and others; (see *ante*, p. 798); adding the fine thereunto, for the want of which that conviction was quashed. And he gave the following form of a record of a forcible *detainer*, rather than a forcible *entry*, because the justice for the most part cannot be supposed to be present at the entry, as not having knowledge thereof till after the entry is made.

Record of a forcible detainer upon view.

Kent, } *BE it remembered, that, on the of , in the year of the reign of to wit, } our sovereign lord King George &c., at Beckingham, in the county of Kent, aforesaid, Eliz. Elwell complaineth to us, Sir E. Bettenson, baronet, P. Burrell, and W. Passenger, esquires, three of the justices of our said lord the King, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, that Sir Edm. Elwell, late of London, baronet, Joseph Billers, late of , and Daniel Monty, late of , into the messuage of her the said E. E., being the mansion house of her the said E. E., called Langley House, situate within the parish of Beckingham aforesaid, did enter, and her the said E. E., of the messuage aforesaid, whereof the said E. E. at the time of the entry aforesaid was seised as of the freehold of her the said E. E., for the term of her life, unlawfully ejected, expelled, and amoved, and the said messuage from her, the said E. E., unlawfully, with strong hand and armed power, do yet hold and from her detain, against the form of the statute in such case made and provided; whereupon the same E. E. then, to wit, on the said 15th day of September, at the parish of B. aforesaid, prayeth of us, so as aforesaid being justices, to her in this behalf that a due remedy be provided, according to the form of the statute aforesaid; which complaint and prayer by us, the aforesaid justices, being heard, we, the aforesaid E. B., baronet, P. B. and W. P., esquires, justices aforesaid, to the messuage aforesaid, personally have come, and do then and there find and see the aforesaid Ed. E., J. B., and D. M., the aforesaid messuage, with force and arms, unlawfully, with strong hand and armed power detaining, against the form of the statute in such case made and provided, according as she, the same E. E., so as aforesaid hath unto us complained; therefore it is considered by us, the aforesaid justices, that the aforesaid Edmund Elwell, Joseph Billers, and Daniel Monty, of the detaining aforesaid with strong hand, by our own proper view then and there as aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid: whereupon we, the justices aforesaid, upon every of the aforesaid Ed. E., J. B., and D. M., do set and impose severally a fine of 10*l.* of good and lawful money of Great Britain, to be paid by them and every of them severally to our said sovereign lord the King, for the said offences; and do cause them, and every of them, then and there to be arrested; and the same Ed. E., J. B., and D. M., being convicted, and every of them being convicted upon our own proper view, of the detaining aforesaid with strong hand as is aforesaid, by us the aforesaid justices are committed, and every of them is committed, to the gaol of our said lord the King, at Maidstone, in the county of Kent, aforesaid, being the next gaol to the messuage aforesaid, there to abide respectively, until they shall have paid their several fines respectively to our said lord the King, for their respective offences aforesaid. Concerning which the premises aforesaid, we do make this our record. In witness whereof, we, the aforesaid E. B., baronet, P. B., and W. P., esquires, the justices aforesaid, to this record our hands and seals do set, at the parish of B. aforesaid, in the county of Kent aforesaid, on the day of , in the year aforesaid of the reign of our said sovereign lord the now King.*

## (No. 6).

County of } *EDWARD Hassel, esquire, one of the justices of our sovereign lord the King, assigned to keep the peace within the said county of W., and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed: To the keeper of his Majesty's gaol at , in the said county, and to his deputy and deputies there, and to every of them, greeting: Whereas, upon complaint made unto me this present day by A. I. of , in the said county, [yeoman],*

Mittimus for forcible detainer.

## FORMS.

*I went immediately to the dwelling-house of the said A. I., at aforesaid in the said county, and there found A. O., late of [labourer], B. O., late of the same, [weaver], and C. O., late of [butcher], forcibly, with strong hand and armed power, holding the said house, against the peace of our said lord the King, and against the form of the statute in such case made and provided: Therefore I send you, by the bringers hereof, the bodies of the said A. O., B. O., and C. O., convicted of the said forcible holding by mine own view, testimony, and record; commanding you in his said Majesty's name to receive them into your said gaol, and there safely to keep them, and every of them respectively, until they shall have respectively paid the several sums of ten pounds of good and lawful money of Great Britain to our said sovereign lord the King, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail you not, at the peril that may follow thereof. Given at aforesaid, in the county aforesaid, under my seal, the day of , in the year of the reign of our said sovereign lord the King.*

*Note*—By the forms in the books, all the offenders stand committed until all have paid, so as that the first shall not be discharged on payment of his own fine, but continue until all the rest have paid likewise; which seems unreasonable, and is not warranted by the statute.

(No. 7).

Precept to sheriff  
to return a jury.

County of } *RICHARD Whinfield, esquire, one of the justices of our lord the King, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, to the sheriff of the said county, greeting: On behalf of our said lord the King, I command you that you cause to come before me at , in the county aforesaid, on the day of next ensuing, twenty-four sufficient and indifferent men, of the neighbourhood of aforesaid, in the county aforesaid, every of whom shall have lands or tenements of forty shillings yearly at the least, above reprises, to inquire upon their oaths for our said lord the King, of a certain entry made with a strong hand (as it is said) into the messuage of one A. I. aforesaid, in the county aforesaid, against the form of the statute in such case made and provided. And you are to return upon every of the jurors by you in this behalf to be impaneled twenty shillings of issues at the aforesaid day. And have you then there this precept. And this you shall in no wise omit, upon the peril that shall thereof ensue. Witness the said R. W. at , in the county aforesaid, the day of , in the year of the reign of .*

(No. 8).

The juror's oath.

*YOU shall true inquiry and presentment make of all such things as shall come before you, concerning a forcible entry [or, detainer] said to have been lately committed in the dwelling-house of , [yeoman], at in this county; you shall spare no one for favour or affection, nor grieve any one for hatred or ill-will, but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you: So help you God.*

*The oath that A. F., your foreman, hath taken on his part, you and every of you shall truly observe and keep on your parts: So help you God.*

(No. 9).

The inquisition,  
indictment, or  
finding of the  
jury.

County of } *AN inquisition for our sovereign lord the King, indented and taken at , in the said county, the day of , in the year of the reign of , by the oaths of good and lawful men of the said county, before J. P., esquire, one of the justices of our said lord the King, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, who say, upon their oaths aforesaid, that A. I. of aforesaid, [yeoman], long since lawfully and peaceably was seised in his demesne as of fee [if it is not freehold, then say possessed] of and in one messuage, with the appurtenances, in aforesaid, in the county aforesaid, and his said possession [and seisin] so continued until A. O., late of , [yeoman], B. O., late of the same, [yeoman], and C. O., late of the same, [yeoman], and other malefactors unknown, on the day of now last past, with strong hand and armed power into the mes-*

runge aforesaid, with the appurtenances aforesaid, did enter, and him the said A. I. thereof disseised, and with strong hand expelled; and him the said A. I. so disseised and expelled from the said messuage, with the appurtenances aforesaid, from the said day of , until the day of the taking of this inquisition, with like strong hand and armed power did keep out, and do yet keep out: to the great disturbance of the peace of our said lord the King, and against the form of the statute in such case made and provided.

We whose names are hereunto set, being the jurors aforesaid, do, upon the evidences now produced before us, find the inquisition aforesaid true.

A. B.

C. D., &amp;c.

(No. 10).

County of } *MARTIN Dunn, esquire, one of the justices of our sovereign lord the King, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed: To the sheriff of the said county greeting: Whereas, by an inquisition taken before me the justice aforesaid, at , in the county aforesaid, on this present day of , in the year of the reign of , upon the oaths of , and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found that A. O., late of , [yeoman], and B. O., late of , [yeoman], on the day of now last past, into a certain messuage, with the appurtenances, of A. I., of aforesaid, in the county aforesaid, [gentleman], situate, lying, and being at aforesaid, in the county aforesaid, with force and arms did enter, and him the said A. I. thereof, then with strong hand did disseise and drive out, and him the said A. I., then driven out from the aforesaid messuage, with the appurtenances, from the day of aforesaid, to this present day of the taking of the said inquisition, with strong hand and armed force did keep out, and do yet keep out, as by the inquisition aforesaid more fully appeareth of record: Therefore, on the behalf of our said sovereign lord the King, I charge and command you, that taking with you the power of the county (if it be needful) you go to the said messuage and other the premises, and the same with the appurtenances you cause to be resealed, and that you cause the said A. I. to be restored and put into his full possession thereof, according as he, before the entry aforesaid, was seized, according to the form of the said statutes. And this you shall in nowise omit, on the penalty thereon incumbent. Given under my hand and seal at , in the said county, the day of , in the year of the reign of .*

Warrant to the sheriff for restitution.

**Foreign Judgment, Proof of, see ante, p. 48.**

**Foreign Lato and Register, Proof of, see ante, p. 49.**

**Foreign Money, &c., Larceny of, see Larceny, Vol. III. p. 569. See also Coin, Vol. I.**

## Foreign Offences.

(See Admiralty, Vol. I.; Homicide, Vol. III. p. 253).

**IT** seems, that if a person having committed a felony in a foreign country, comes into England, he may be arrested here, and conveyed and given up to the magistrates of the country against the laws of which the offence was committed. *Mure v. Kaye*, 4 Taunt. 34.

## Foreign Service.

[3 Jac. I. c. 4; 59 Geo. III. c. 69].

Entering into,  
when an offence.

**E**NTERING into the service of any foreign state without the King's consent, or contracting with it any engagement which subjects the party to an influence or control inconsistent with the allegiance due to his sovereign, such as receiving a pension from a foreign prince without the King's leave, is at common law a high misdemeanor, and punishable accordingly. Such also is disobedience to the King's command to a subject abroad to return home: or to his writ of *ne exeat regno* to a subject at home, commanding him to continue here. 1 *East's P. C.* 81; 4 *Bla. Com.* 122.

And, says *Hawkins*, it is so high an offence to prefer the interest of a foreign prince to that of our own, that any act is criminal which may but incline a man so to do, as to receive a pension from a foreign prince without the leave of our king. 1 *Hawk. c. 22, s. 3.*

3 Jac. I. c. 4.

Subjects going out  
of the realm to  
serve, &c., a fe-  
lony.

The serving or procuring others to serve foreign states, has been provided against by several statutes. Stat. 3 Jac. I. c. 4, s. 18, enacts, that "every subject of this realm that shall go or pass out of this realm to serve any foreign prince, state, or potentate, or shall pass over the seas, and shall voluntarily serve any such foreign prince, state, or potentate, not having before his going taken the oath of obedience, shall be a felon."

By sect. 19, "If any gentleman or person of higher degree, or any person which hath borne, or shall bear any office, or place of captain, lieutenant, or any other place, charge, or office, in camp, army, or company of soldiers, or conductor of soldiers, shall after go or pass voluntarily out of this realm, to serve any such foreign prince, state, or potentate, or shall voluntarily serve any such prince, state, or potentate, before that he and they shall become bound by obligation, with two sureties, &c." not to be reconciled to the see of Rome, nor enter into any conspiracy against the King, "he shall be a felon."

In construction of this act, it has been held, that if a party go out of the realm with intent to serve a foreign state, although there be no service in fact; or if a party do actually so serve, though he did not go abroad for that purpose, but on some other occasion, it will be within the act. 1 *East's P. C. c. 2, s. 23*; 3 *Inst.* 80.

The trial should be at the place where the party left this kingdom. 3 *Inst.* 80.

59 Geo. 3, c. 69.

Subjects enlisting  
or engaging to en-  
list or serve in fo-  
reign service, mili-  
tary or naval,

The 59 Geo. III. c. 69, repeals stats. 9 Geo. II. c. 30; 29 Geo. II. c. 17, and the Irish acts, 11 Geo. II. and 19 Geo. II.

Sect. 2. "If any natural-born subject of his Majesty, his heirs and successors, without the leave or licence of his Majesty, his heirs or successors, for that purpose first had and obtained, under the sign manual of his Majesty, his heirs or successors, or signified by order in council, or by proclamation of his Majesty, his heirs or successors, shall take or accept, or shall agree to take or accept any military commission, or shall otherwise enter into the military service as a commissioned or non-commissioned officer, or shall enlist or enter himself to enlist, or shall agree to enlist or to enter himself to serve as a soldier, or to be employed or shall serve in any warlike or military operation in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or soldier, or in any other military capacity; or if any natural-born subject of his Majesty shall, without such leave or licence as aforesaid, accept, or agree to take or accept, any commission, warrant, or appointment as an officer, or shall enlist or enter himself, or shall agree to enlist or enter himself, to serve as a sailor

Accepting commis-  
sion, &c.

or marine, or to be employed, or engaged, or shall serve in and on board any ship or vessel of war, or in and on board any ship or vessel used or fitted out, or equipped or intended to be used, for any warlike purpose, in the service of or for or under or in aid of any foreign power, prince, state, potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people; or if any natural-born subject of his Majesty shall, without such leave and licence as aforesaid, engage, contract, or agree to go, or shall go, to any foreign state, country, colony, province, or part of any province, or to any place beyond the seas, with an intent or in order to enlist or enter himself to serve, or with intent to serve in any warlike or military operation whatever, whether by land or by sea, in the service of or for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or in the service of or for or under or in aid of any person or persons exercising or assuming to exercise the powers of government in or over any foreign country, colony, province, or part of any province or people, either as an officer or a soldier, or in any other military capacity, or as an officer or sailor, or marine, in any such ship or vessel as aforesaid, although no enlisting money, or pay or reward, shall have been or shall be in any or either of the cases aforesaid actually paid to or received by him, or by any person to or for his use or benefit; or if any person whatever, within the united kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions elsewhere, or in any country, colony, settlement, island, or place belonging to or subject to his Majesty, shall hire, retain, engage, or procure, or shall attempt or endeavour to hire, retain, engage, or procure, any person or persons whatever to enlist, or to enter or engage to enlist, or to serve or to be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, for or under or in aid of any foreign prince, state, potentate, colony, province, or part of any province or people, or for or under or in aid of any person or persons exercising or assuming to exercise any powers of government as aforesaid, or to go or to agree to go or embark from any part of his Majesty's dominions, for the purpose or with intent to be so enlisted, entered, engaged, or employed as aforesaid, whether any enlisting money, pay, or reward shall have been or shall be actually given or received, or not; in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable by fine and imprisonment, or either of them, at the discretion of the Court before which such offender shall be convicted."

**FOREIGN SERVICE.**

59 Geo. 3, c. 66.

Engaging to go, or going into foreign countries, with intent to enlist, &c.

Retaining or procuring others to enlist, &c.

Misdemeanor.

Proviso for persons enlisted or serving before the times herein specified.

Sect. 3. " Nothing in this act contained shall extend, or be construed to extend, to render any person or persons liable to any punishment or penalty under this act, who at any time before the 1st day of August, 1819, within any part of the united kingdom, or of the islands of Jersey, Guernsey, Alderney, or Sark, or at any time before the 1st day of November, 1819, in any part or place out of the united kingdom, or of the said islands, shall have taken or accepted, or agreed to take or accept, any military commission, or shall have otherwise enlisted into any military service as a commissioned or non-commissioned officer, or shall have enlisted, or entered himself to enlist, or shall have agreed to enlist, or to enter himself to serve as a soldier, or shall have served, or, having so served, shall, after the said 1st day of August, 1819, continue to serve in any warlike or military operation, either as an officer or soldier, or in any other military capacity, or shall have accepted, or agreed to take or accept, any commission, warrant, or appointment, as an officer, or shall have enlisted or entered himself to serve, or shall have served, or having so served shall continue to serve as a sailor or marine, or shall have been employed or engaged, or shall have served, or, having so served, shall, after the said 1st day of August, continue to serve in and on board any ship or vessel of war, used or fitted out, or equipped, or intended for any warlike purpose; or shall have engaged, or contracted, or agreed to go, or shall have

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SERVICE.

59 Geo. 3, c. 69.

gone to, or having so gone to shall, after the said 1st day of August, continue in any foreign state, country, colony, province, or part of a province, or to or in any place beyond the seas, unless such person or persons shall embark at or proceed from some port or place within the united kingdom, or the islands of Jersey, Guernsey, Alderney, or Sark, with intent to serve as an officer, soldier, sailor, or marine, contrary to the provisions of this act, after the said 1st day of August, or shall embark or proceed from some port or place out of the united kingdom, or the islands of Jersey, Guernsey, Alderney, or Sark, with such intent as aforesaid, after the said 1st day of November, or who shall, before the passing of this act, and within the said united kingdom, or the said islands, or before the 1st day of November, 1819, in any port or place out of the said united kingdom, or the said islands, have hired, retained, engaged, or procured, or attempted or endeavoured to hire, retain, engage, or procure, any person or persons whatever to enlist or to enter, or to engage to enlist or to serve, or be employed in any such service or employment as aforesaid, as an officer, soldier, sailor, or marine, either in land or sea service, or to go, or agree to go or embark for the purpose or with the intent to be so enlisted, entered, or engaged or employed, contrary to the prohibitions respectively in this act contained, any thing in this act contained to the contrary in anywise notwithstanding; but that all and every such persons and person shall be in such state and condition, and no other, and shall be liable to such fines, penalties, forfeitures, and disabilities, and none other, as such person or persons was or were liable and subject to before the passing of this act, and as such person or persons would have been in, and been liable and subject to, in case this act and the said recited acts by this act repealed, had not been passed or made."

Justices to issue warrants for the apprehension of offenders.

Sect. 4. "That it shall and may be lawful for any justice of the peace residing at or near to any port or place within the united kingdom of Great Britain and Ireland, where any offence made punishable by this act as a misdemeanor shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any justice of the peace; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offence upon oath, and to commit such person to gaol, there to remain until delivered by due course of law, unless such offender shall give bail, to the satisfaction of the said justice, to appear and answer to any information or indictment to be preferred against him, according to law, for the said offence; and that all such offences which shall be committed within that part of the united kingdom called England, shall and may be proceeded and tried in his Majesty's Court of King's Bench at Westminster, and the venue in such case laid at Westminster, or at the assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace, in and for the county or place where such offence was committed; and that all such offences which shall be committed within that part of the united kingdom called Ireland, shall and may be prosecuted in his Majesty's Court of King's Bench at Dublin, and the venue be laid at Dublin, or at any assizes or session of oyer and terminer and gaol delivery, or at any quarter or general sessions of the peace, in and for the county or place where such offence was committed; and all such offences as shall be committed in Scotland, shall and may be prosecuted in the Court of Justiciary in Scotland, or any other court competent to try criminal offences committed within the county, shire, or stewartry within which such offence was committed; and where any offence made punishable by this act as a misdemeanor shall be committed out of the said united kingdom, it shall be lawful for any justice of the peace residing near to the port or place where such offence shall be committed, on information on oath of any such offence, to issue his warrant for the apprehension of the offender, and to cause him to be brought before such justice, or any other justice of the peace for such place; and it shall be lawful for the justice of the peace before whom such offender shall be brought, to examine into the nature of the offence upon oath, and to commit such person

Where offences shall be tried.

Where offence committed out of united kingdom, justice to issue warrant for apprehension of offender.

to goal, there to remain till delivered by due course of law, or otherwise to hold such offender to bail to answer for such offence in the superior Court, competent to try, and having jurisdiction to try, criminal offences committed in such port or place; and all such offences committed at any place out of the said united kingdom shall and may be prosecuted and tried in any superior Court of his Majesty's dominions competent to try, and having jurisdiction to try, criminal offences committed at the place where such offence shall be committed."

Sect. 5. "That in case any ship or vessel in any port or place within his Majesty's dominions shall have on board any such person or persons who shall have been enlisted, or entered to serve, or shall have engaged or agreed or been procured to enlist or enter or serve, or who shall be departing from his Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving or being engaged or employed in the service of any foreign prince, state, or potentate, colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise the powers of government in or over any foreign colony, province, or part of any province or people, either as an officer, soldier, sailor, or marine, contrary to the provisions of this act, it shall be lawful for any of the principal officers of his Majesty's customs, where any such officers of the customs shall be, and, in any part of his Majesty's dominions in which there are no officers of his Majesty's customs, for any governor or persons having the chief civil command, upon information on oath given before them respectively, which oath they are hereby respectively authorized and empowered to administer, that such person or persons as aforesaid is or are on board such ship or vessel, to detain and prevent any such ship or vessel, or to cause such ship or vessel to be detained and prevented from proceeding to sea on her voyage with such persons as aforesaid on board: provided nevertheless, that no principal officer, governor, or person, shall act as aforesaid, upon such information upon oath as aforesaid, unless the party so informing shall not only have deposed in such information that the person or persons on board such ship or vessel hath or have been enlisted or entered to serve, or hath or have engaged or agreed, or been procured to enlist or enter or serve, or is or are departing as aforesaid, for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving, or being engaged or employed in such service as aforesaid, but shall also have set forth in such information upon oath, the facts or circumstances upon which he forms his knowledge or belief, enabling him to give such information upon oath; and that all and every person and persons convicted of wilfully false swearing in any such information upon oath, shall be deemed guilty of and suffer the penalties on persons convicted of wilful and corrupt perjury."

Sect. 6. "That if any master or other person having or taking the charge or command of any ship or vessel, in any part of the united kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions beyond the seas, shall knowingly and willingly take on board, or, if such master or other person having the command of any such ship or vessel, or any owner or owners of any such ship or vessel, shall knowingly engage to take on board any person or persons who shall have been enlisted or entered to serve, or shall have engaged or agreed, or been procured, to enlist or enter or serve, or who shall be departing from his Majesty's dominions for the purpose and with the intent of enlisting or entering to serve, or to be employed, or of serving, or being engaged or employed in any naval or military service, contrary to the provisions of this act, such master or owner, or other person as aforesaid, shall forfeit and pay the sum of 50*l.* for each and every such person so taken or engaged to be taken on board; and moreover, every such ship or vessel, so having on board, conveying, carrying, or transporting, any such person or persons, shall and may be seized and detained by the collector, comptroller, surveyor, or other officer of the customs, until such penalty or penalties shall be satisfied and paid, or until such master or person, or the owner or owners of such ship or vessel, shall give good and sufficient

FOREIGN  
SERVICE.

59 Geo. 3, c. 69.

Vessels with persons on board engaged in foreign service, may be detained at any port in his Majesty's dominions.

Of what facts and circumstances oath is to be made.

Masters of ships, &c., taking on board persons enlisted contrary to this Act.

Penalty.



FOREIGN  
SERVICE.

30 Geo. 3, c. 69.  
Persons fitting  
out armed vessels  
to aid in military  
operations with  
any foreign pow-  
ers without li-  
cence;

or issuing commis-  
sions for ships.

Misdemeanor.

Ship, &c., for-  
feited.

Officers of cus-  
toms and excise,  
&c. may seize.

Aiding the warlike  
equipment of ves-  
sels of foreign  
states, &c.

bail, by recognizance, before one of his Majesty's justices of the peace, for the payment of such penalty or penalties."

Sect. 7. " If any person within any part of the united kingdom, or in any part of his Majesty's dominions beyond the seas, shall, without the leave and licence of his Majesty for that purpose first had and obtained as aforesaid, equip, furnish, fit out, or arm, or attempt, or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out, or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province or people, as a transport or store ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, or against the inhabitants of any foreign colony, province, or part of any province or country, with whom his Majesty shall not then be at war; or shall, within the united kingdom, or any of his Majesty's dominions, or in any settlement, colony, territory, island, or place belonging or subject to his Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court in which such offender shall be convicted; and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of any such ship or vessel, shall be forfeited; and it shall be lawful for any officer of his Majesty's customs or excise, or any officer of his Majesty's navy, who is by law empowered to make seizures for any forfeiture incurred under any of the laws of customs or excise, or the laws of trade and navigation, to seize such ships and vessels aforesaid, and in such places and in such manner in which the officers of his Majesty's customs or excise and the officers of his Majesty's navy are empowered respectively to make seizures under the laws of customs and excise, or under the laws of trade and navigation; and that every such ship and vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores which may belong to or be on board of such ship or vessel, may be prosecuted and condemned in the like manner, and in such courts as ships or vessels may be prosecuted and condemned for any breach of the laws made for the protection of the revenues of customs and excise, or of the laws of trade and navigation."

Sect. 8. " If any person in any part of the united kingdom of Great Britain and Ireland, or in any part of his Majesty's dominions beyond the seas, without the leave and licence of his Majesty for that purpose first had and obtained as aforesaid, shall, by adding to the number of the guns of such vessel, or by changing those on board for other guns, or by the addition of any equipment for war, increase or augment, or procure to be increased or augmented, or shall be knowingly concerned in increasing or augmenting the warlike force of any ship or vessel of war, or cruiser, or other armed vessel, which at the time of her arrival in any part of the united kingdom, or any of his Majesty's dominions, was a ship of war, cruiser, or armed vessel in the service of any foreign prince, state, or potentate, or of any person or persons exercising or assuming to exercise any powers of government in or over any colony, province, or part of any province or people belonging to the subjects of any such prince, state, or potentate, or to the inhabitants of any colony, province, or part of any province or country under the control of any person or persons so exercising or assuming to exercise

the powers of government, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon being convicted thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the Court before which such offender shall be convicted."

Sect. 9. "Offences made punishable by the provisions of this act, committed out of the united kingdom, may be prosecuted and tried in his Majesty's Court of King's Bench at Westminster, and the venue in such case laid at Westminster, in the county of Middlesex."

Sect. 10. "Any penalty or forfeiture inflicted by this act, may be prosecuted, sued for, and recovered, by action of debt, bill, plaint, or information, in any of his Majesty's Courts of record at Westminster or Dublin, or in the Court of Exchequer, or in the Court of Session in Scotland, in the name of his Majesty's attorney-general for England or Ireland, or his Majesty's advocate for Scotland respectively, or in the name of any person or persons whatsoever; wherein no essoign, protection, privilege, wager of law, nor more than one imparlance shall be allowed; and in every action or suit the person against whom judgment shall be given for any penalty or forfeiture under this act shall pay double costs of suit; and every such action or suit shall and may be brought at any time within twelve months after the offence committed, and not afterwards; and one moiety of every penalty to be recovered by virtue of this act shall go and be applied to his Majesty, his heirs or successors, and the other moiety to the use of such person or persons as shall first sue for the same, after deducting the charges of prosecution from the whole."

Sect. 11. "If any action or suit shall be commenced, either in Great Britain or elsewhere, against any person or persons for any thing done in pursuance of this act, all rules and regulations, privileges and protections, as to maintaining or defending any suit or action, and pleading therein, or any costs thereon, in relation to any acts, matters, or things done, or that may be done by any officer of customs or excise, or by any officer of his Majesty's navy, under any act of Parliament in force on or immediately before the passing of this act, for the protection of the revenues of customs and excise, or prevention of smuggling, shall apply and be in full force in any such action or suit as shall be brought for any thing done in pursuance of this act, in as full and ample a manner to all intents and purposes as if the same privileges and protections were repeated and re-enacted in this act."

Sect. 12. "Nothing in this act contained shall extend, or be construed to extend, to subject to any penalty any person who shall enter into the military service of any prince, state, or potentate in Asia, with leave or licence signified in the usual manner from the governor-general in council, or vice president in council, of Fort William in Bengal, or in conformity with any orders or regulations issued or sanctioned by such governor-general or vice president in council."

By the annual mutiny act persons persuading soldiers to desert are made punishable by fine or imprisonment, or both. See tit. *Military Law*, Vol. III.

Disobedience to letters from the King to a subject commanding him to return from beyond the seas, or to his writ of *ne exeat regno*, or proclamation commanding the subject to stay at home, is "a high misprison and contempt;" 4 *Blac. Com.* 122; and if the subject neglects to return from beyond the seas when commanded, his lands shall be seized till he does return. 1 *Hawk. P. C. c.* 22, s. 4.

And, in the words of Mr. *Hawkins*, "it is a high offence for any subject to deny the King that assistance for the good of the public, either in his councils or wars, which by the law he is bound to give him." 1 *Hawk. c.* 22, s. 2.

FOREIGN SERVICE.

50 Geo. 3, c. 69. Misdemeanor.

Offences committed out of the kingdom may be tried at Westminster.

How penalties sued for and recovered.

Double costs.

Limitation of actions.

Former rules established by law to be applied to actions commenced in pursuance of this act.

Penalties not to extend to persons entering into military service in Asia.

Mutiny act.

Prerogative of *ne exeat regno*, &c.

Refusing to assist his Majesty in council, &c.

## Forestalling, Ingrossing, and Re-grating (a).

[5 & 6 Edw. VI. c. 14; 12 Geo. III. c. 71.]

Derivation.

**FORESTALLING** (*forestellan*, or *forestallan*) in the English Saxon, signifieth properly to *market before the public*, or to *prevent the public market*; and metaphorically, to *intercept* in general; and seemeth derived from *fore*, which is the same as *before*, and *stalle*, a standing place or department; from whence sprang the ancient word *stallage*, which signifieth money paid for erecting a stall or stand for the selling of goods in a fair or market.

*Ingrossing* is from *in*, and *gross*, great or whole.

Repeal of statutes against offence.

And *regrating*, from *re*, again, and the French *grater*, to *grate* or scrape; and signifieth the scraping or dressing of cloth or other goods in order for selling the same again.

Offence punishable at common law.

There have been several statutes made from time to time against these offences in general, and also especially with respect to particular species of goods according to their several circumstances; almost all of which, from stat. 5 & 6 Edw. VI. c. 14, and others downwards, made for enforcing the same, are repealed by stat. 12 Geo. III. c. 71. But these offences still continue punishable upon indictment at the common law by fine and imprisonment.

And at the common law all endeavours whatsoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by spreading false rumours, or by buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market, or by any other such like devices, are highly criminal, and punishable by fine and imprisonment. 1 *Hawk.* c. 80, s. 1.

By the common law, a merchant bringing victuals into the realm may sell the same in gross: but no person can lawfully buy within the realm any merchandize in gross, and sell the same in gross again, without being liable to be indicted for the same. 3 *Inst.* 196.

The bare ingrossing of a whole commodity, with an intent to sell it at an unreasonable price, is an offence indictable at common law, whether any part thereof be sold by the ingrosser or not. 1 *Hawk.* c. 80, s. 3.

5 & 6 Edw. 6, c. 14.

And so jealous is the common law of all practices of this kind, that it will not suffer corn to be sold in the sheaf; perhaps for this reason, because, by such means, the market is in effect forestalled. 1 *Hawk.* c. 80, s. 4.

By the stat. of 5 & 6 Edw. VI. c. 14, these offences were particularly described; which statute, though now repealed as aforesaid, yet may be of use as containing a parliamentary exposition of the respective terms denoting the several particular offences; and is as follows:—

Forestaller.

Whosoever shall buy, or cause to be bought, any merchandize, victual, or any other thing whatsoever, coming by land or by water, toward any market or fair to be sold in the same, or coming towards any city, port, haven, creek, or road from any parts beyond the sea to be sold; or make any bargain, contract, or promise, for the having or buying the same, or any part thereof, so coming as is aforesaid, before the said merchandize, victuals, or other things shall be in the market, fair, city, port, haven, creek, or road, ready to be sold; or shall make any motion by word, letter, message, or otherwise, to any person for the enhancing of the price, or dearer selling of any thing above mentioned; or else dissuade, move, or stir any person coming to the market or fair, to abstain or forbear to bring or convey any of the

(a) See, in general, 1 *Russ. on Crimes*, 169; 2 *Chit. C. L.* 532.

## Forestalling, Ingrossing and Regrating.

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things above rehearsed to any market, fair, city, port, haven, creek, or road, to be sold as aforesaid—shall be deemed a forestaller.

FORESTALLING,  
&c.

Sect. 3. Whosoever shall ingross, or get into his hands by buying, contracting, or promise taking, other than by demise, grant, or lease of land or tythe, any corn growing in the fields, or any other corn or grain, butter, cheese, fish, or other dead victuals whatsoever, to the intent to sell the same again, shall be deemed an unlawful ingrosser.

5 & 6 Edw. 6, c. 14.  
Ingrosser.

Sect. 2. And whosoever shall by any means regrate, obtain, or get into his hands or possession, in a fair or market, any corn, wine, fish, butter, cheese, candles, tallow, sheep, lambs, calves, swine, pigs, geese, capons, hens, chickens, pigeons, conies, or other dead victual whatsoever, that shall be brought to any fair or market to be sold, and shall sell the same again in any fair or market holden or kept in the same place, or in any other fair or market within four miles thereof, shall be deemed a regrator.

Regrator.

It has been observed, that notwithstanding the repeal of stat. 5 & 6 Edw. VI. the offences of forestalling, ingrossing, and regrating, remain punishable at common law; and indeed lamentable would be the plight of the public and of the state, were there no remedy against practices which have been justly termed most heinous offences against religion and morality, and against the established law of the country.

In the case of *R. v. Waddington*, 1 *East*, 143, 145, which was ably argued at the bar, and well considered by the Court, the following were declared to be among the offences at common law, and not done away by the repeal of stat. 5 & 6 Edw. VI. viz.

R. v. Waddington.

1. Spreading false rumours with intent to enhance the price of hops.
2. Endeavouring to enhance the price of hops by persuading dealers, &c. not to take their hops to market, and to abstain from selling for a long time.
3. Ingrossing large quantities of hops, by buying with intent to resell the same for an unreasonable profit, and thereby to enhance the price.
4. Getting into hand large quantities, by contracting with various persons for the purchase, with intent to prevent the same being brought to market, and to resell at an unreasonable profit, and thereby greatly to enhance the price.

5. Unlawfully ingrossing by buying large quantities, with like intent.

6. Ingrossing hops then growing, by forehand bargains, with like intent.

To forestall any commodity which is become a common victual and necessary of life, or is used as an ingredient in the making or preservation of any victual, though not formerly used or considered as such, is an offence at common law. *R. v. Waddington*, 1 *East*, 143.

But, at the present day, it would probably be holden that no offence is committed unless there is an intent to raise the price of provisions by the conduct of the party, for the mere transfer of a purchase in the market where it is made, the buying articles before they arrive at a public market, or the purchasing of a large quantity of a particular article, can scarcely be regarded as in themselves necessarily injurious to the community, and, as such, indictable offences; a party buying and selling again, does not necessarily increase the price of the commodity to the consumer, for the division of labour or occupations will, in general, occasion the commodity to be sold cheaper to the consumer; see *Smith's Wealth of Nations*, Vol. II. 309, and Index, title *Labour*; and many cases may occur in which a most laudable motive may exist for buying large quantities of the same commodity. See the arguments, &c. in 14 *East*, 406; 15 *East*, 511. Indeed, in the case of *The King v. Rastby*, *Hilary Term*, 40 Geo. III., the Court were equally divided on the question, whether regrating is an indictable offence at common law, and though the defendant was convicted, no judgment was ever passed upon him. MSS. 2 *Chit. Crim. Law*, 528, n.

An indictment for ingrossing "a great quantity" of fish, geese, and ducks, as holden bad; for the quantity of each ought to be specified. *R. v. Gilvert*, 1 *East*, 583.

Indictment must  
state the quantity.

The punishment for these offences is fine or imprisonment, or both.

Punishment.

FORESTALLING,  
&c.  
Forms.

This offence is now of rare occurrence, or, at all events, the offender is rarely, if ever, proceeded against; it is deemed, therefore, not necessary to insert any forms hereon.

See precedents of forms of indictments for these offences, 2 *Chit. Crim. Law*, 536; *Archb. Crim. Law*.

## Forfeiture (a).

THE forfeitures for particular offences may be found under their respective titles: here, it is treated of forfeitures in general. As to the levying and estreating of fines and forfeitures, see *ante*, title *fines and forfeitures*.

### I. Of Forfeiture of Lands and Goods, 814.

[1 Rich. III. c. 3; 17 Edw. II. c. 16; 54 Geo. III. c. 145].

### II. Of Loss of Dower, 817.

[1 Edw. VI. c. 12; 5 & 6 Edw. 6, c. 11].

### III. Of Corruption of Blood, 817.

## I. Of Forfeiture of Lands and Goods.

Forfeiture of lands.

It seems agreed that, by the common law, all lands of inheritance, whereof the offender was seised in his own right, and also all rights of entry to lands in the hands of a wrong doer, are forfeited to the King, by an attainder of high treason, and to the lord of whom they are immediately holden by an attainder of petit treason or felony. 2 *Hawk. c. 49, s. 1*.

But it seems clear that the lord cannot enter into the lands holden of him, upon an escheat for petit treason or felony, without a special grant, till it appear by due process that the King hath had his prerogative of the year, day, and waste. *Id. s. 3*.

Concerning which year, day, and waste, it is enacted by the 17 Edw. II. c. 16, that the King shall have the goods of all felons attainted, and fugitives, wheresoever they be found. And if they have freehold, it shall be forthwith taken into the King's hands, and the King shall have all profits of the same by one year and one day; and the land shall be wasted and destroyed in the houses, woods, and gardens, and in all manner of things belonging to the same land. And after the King hath had the year, day, and waste, the land shall be restored to the chief lord of the fee, unless that he fine before with the King for the year, day, and waste.

From the 54 Geo. III. c. 145, it appears that no attainder except for high treason, petit treason, or murder, or for abetting the same, shall extend to the disinheriting of any heir, &c. See the act *ante*, title *Attainder*, Vol. I.

Copyholds.

All *copyhold* estates are forfeited to the lord and not to the King, unless there be some act of Parliament or express custom to the contrary. 1 *Cruise*, 361. But, to entitle him thereto, the *attainder* must be complete, 3 *B. & A.* 510, unless there be an express custom entitling him to it on mere conviction. 2 *Ventr.* 38. And the lord must, it seems, do some act towards seizing the copyhold. In a late case, where a copyholder was convicted of a capital felony, but was pardoned on condition of remaining two years in prison,

(a) As to forfeiture in general, see the law fully collected in 1 *Chit. Crim. Law*, 727 to 742; *Com. Dig. Forfeiture*; *Bac. Ab. Forfeiture*. It is thought fit in this edition not to enlarge much on this title,

the same not being peculiarly applicable to the general purposes of this work, and being on a subject of a very intricate nature.

and the lord did not do any act towards seizing the copyhold, it was held that, at the expiration of the two years, the copyholder might sue in ejectment for the land, inasmuch as the pardon restored his competency, and the estate would not vest in the lord without some act done. *Doe d. Evans v. Evans*, 5 B. & C. 584.

OF FORFEITURE  
OF LANDS, &c.

As to forfeiture of goods, it seems agreed that all things whatsoever which are comprehended under the notion of a personal estate, whether they be in action or possession, which the party hath or is entitled to in his own right, and not as executor or administrator to another, are liable to such forfeiture, in the following cases:

Forfeiture of  
goods.

1. Upon a conviction of treason or felony. 2 *Hawk. c. 49, s. 13.*
2. Upon a flight found before the coroner, on view of a dead body. *Id. s. 14; Lambert v. Taylor*, 6 D. & R. 188; 4 B. & C. 138, S. C.
3. Upon an acquittal of a capital felony, if the party be found to have fled. 2 *Hawk. c. 49, s. 14.*

4. Also a person indicted of petit larceny, and acquitted, yet if it be found he fled for it, forfeits his goods as in case of grand larceny. 1 *Hale*, 530; 2 *Hawk. c. 49, s. 14.*

But it is certain that the party may in all cases, except that of the coroner's inquest, traverse the finding of the flight. Also it seems agreed that the particulars of the goods found to be forfeited, may be also traversed. 2 *Hawk. c. 49, s. 14.*

5. Upon a presentment by the oaths of twelve men that a person arrested for treason or felony, fled from or resisted those who had him in custody, and was killed by them in the pursuit or scuffle. *Id. s. 16.*

6. By being waived or left by a felon in his flight, whereby he forfeits the goods so waived, whether they be his own, or the goods of others stolen by him, which shall not be restored to the right owners, but upon a proper prosecution. *Id. s. 17.*

7. Also a convict within clergy forfeits all his goods, though he be burnt in the hand; yet thereby he becomes capable of purchasing other goods. 2 *Hale*, 388, 389.

But, on burning in the hand, he ought to be immediately restored to the possession of his lands. 2 *Hale*, 389.

8. If a person be found *felo de se*, he shall forfeit his goods and chattels, but not his lands. 3 *Inst.* 54; 5 *Rep.* 109.

Upon outlawry in treason or felony, the offender shall lose and forfeit as much as if he had appeared, and judgment had been given against him, as long as the outlawry is in force. *Wood's Inst. b. 4, c. 5.*

Forfeiture upon  
outlawry.

And those that tarry till the exigent in treason, felony, or petit larceny, forfeit their goods, though they render themselves to justice, and are acquitted; for it was a flight in law. *Id.*

But where the killing a man in his own defence is in the law no felony, there is no forfeiture unless he fled; for that is a distinct forfeiture, although the party be not guilty of the fact. 1 *Hale*, 493.

Forfeiture in *se*  
*defendendo*.

Every description of personal property is in general included in this forfeiture. *Co. Lit.* 391 a; *Noy*, 155; 2 *Hawk. c. 49, s. 9.* Choses in action and possession, and rights of action, are forfeited alike to the crown without office found. 2 B. & A. 258; 1 *Chit. C. L.* 732, 2nd ed. But property which he holds as the personal representative of another, is not, in general, forfeited like his own. 2 *Hawk. c. 49, s. 9.* If a man pledges goods, and afterwards is attainted of felony, the King shall not have the goods pledged without paying the sum for which they were pledged. *Bro. Ab. Pledges, pl. 31.* See 1 *Stark. Rep.* 319.

Description of  
personal property.

It seems agreed that the forfeiture, upon an attainder, either of treason or felony, shall have relation to the time of the offence, for the avoiding of all subsequent alienations of the land, but only to the time of the conviction or flight found, as to chattels; unless the party were killed in flying or resisting, in which case it is said that the forfeiture of the chattels shall relate to the time of the offence. 2 *Hawk. c. 49, s. 30.*

To what time the  
forfeiture shall  
relate.

See further as to when the forfeiture begins to run. 1 *Chit. C. L.* 735.

OF FORFEITURE  
OF LANDS, &c.

What is to be done  
with the felon's  
goods before for-  
feiture.

And as to the necessity of office being found, see *Doe d. Evans v. Evans*, 5 B. & C. 587, n.

But though the goods of an offender be not forfeited till the conviction or flight found by inquest, yet, whether they may be seized upon the offence committed, hath been controverted; concerning which Lord Hale saith thus:—

It seemeth clear, that, at the common law, if a man had committed felony or treason, or though possibly he had committed none, yet if he had been indicted, the sheriff, coroner, or other officer, could not seize and carry away the goods of the offender or party accused.

Again, he could not in that case have removed the goods out of the custody of the offender or party accused, and deliver them over to the constables, or to the *villata*, to answer for them.

But if the party were indicted, the sheriff or other officer might make a simple seizure of them only to inventory and appraise them, and leave them to the custody of the servants, or bailiff of the party indicted, in case he would give security against their being embezzled; or, in default thereof, he might deliver them to the constable or vill to be answerable for them, but yet so that the party accused and his family have sufficient out of them for their livelihood and maintenance.

And possibly the same law was, though he were not indicted, but *de facto* had committed a felony, but with this difference, if he had been indicted, this kind of seizure might have been made, whether he committed the felony or not.

But in case there were no indictment, then it is at the peril of him that seizeth, if he committed not the felony.

And then, as to the statute of 1 Rich. III. c. 3, it is as follows:—

No sheriff or other person shall take or seize the goods of any person arrested or imprisoned for suspicion of felony, before he be convicted or attainted, or before the goods be otherwise forfeited; on pain of double value to the party grieved.

Mr. *Staundforde* thinks this is but in affirmance of the common law, only that it gives a penalty; but it seems to be somewhat more; for this prohibits the seizure of the goods of a party imprisoned, though he were also indicted, but not yet convicted, where unquestionably the common law allowed such a seizure, if the party or his friends did not secure the forthcoming of the goods, where the party was indicted.

But upon this statute these things are considerable: 1. As to persons at large, it seems to me, (says he), that, if they fly not, there can be no seizure at all made whether they are indicted or not; for the statute did not intend a greater privilege to a party imprisoned, than to him that is at large. 2. That if he be at large, and fly for it, yet his goods cannot be seized and removed, whether he be indicted or not indicted. 3. That if he be indicted, and at large, yet the goods cannot be removed, but only viewed, appraised, and inventoried, in the house or place where they lie.

And yet I know not how it comes to pass, says he, the use of seizing the goods of persons accused of felony, though imprisoned or not imprisoned, hath so far obtained, notwithstanding this statute, that it passeth for law and common practice, as well by constables, sheriffs, and other the King's officers, as by lords of franchises, that there is nothing more usual.

Upon the whole, he says, that the opinion of my Lord Coke, in his 3 *Inst.* 228, hath truly stated the law, at least as it stands upon the statute of 1 Rich. III. viz. 1. That, *before* the indictment, the goods of any person cannot be searched, inventoried, or in any sort seized. 2. That *after* the indictment, they cannot be seized and removed, or taken away before conviction or attainder.

But then it may be said, to what purpose may they be searched and inventoried, after indictment, if they may not be removed, but are equally liable to embezzlement as before.

I think (he says) he is not bound to find sureties, neither hath the officer at this day any power to remove them in default of sureties, and commit them to the vill, but only to inventory them, and leave them where he

found them, (unless in case of a second *capias* on stat. 25 Edw. III. c. 14), for the prisoner or party indicted may sell them *bond fide*; and if he may do so, the vendee may take them, and the *villata* cannot refuse the delivering of them to the vendee, though the goods had been delivered to them.

But there is this advantage by the viewing and appraising, that thereby the King is ascertained what the goods are, and may pursue them that take or embezzle them by information, (if the party happen to be convict), and try the property with them, whether they are really sold, or sold only fraudulently, without valuable consideration, to prevent the forfeiture. 1 *Hale*, 363, 4, 5, 6, 7.

OF LOSS OF  
DOWER.

## II. Of Loss of Dower.

ALBEIT a person shall be attainted of felony, yet his wife shall not forfeit her dower. 1 Edw. VI. c. 12, s. 17.

Forfeiture of  
dower in felony.

But on his attainder of treason she shall forfeit her dower. 5 & 6 Edw. VI. c. 11, s. 13. But in some kinds of treason, (particularly with regard to the coin), there is a special saving of the wife's dower by statute.

In treason.

See further as to the loss of dower, 1 *Chit. C. L.* 738-9.

## III. Of Corruption of Blood.

It is agreed that by an attainder of treason or felony (see now 54 Geo. III. c. 145), the blood is so far stained or corrupted, that the party loses all the nobility or gentility he might have had before, and becomes ignoble. 2 *Hawk. c.* 49, s. 47.

Corruption of  
blood.

Also, that he can neither inherit as heir to an ancestor, nor have an heir. *Id. s.* 48.

But the King's pardon, though it doth not restore the blood, yet, as to issue born after, hath the effect of a restitution. 1 *Hale*, 358.

But restitution of blood, in its true nature and extent, can only be by act of Parliament. 1 *Hale*, 358; 2 *Hawk. c.* 49, s. 51.

As to the abolition of corruption of blood in all cases, except high treason, petit treason, and murder, see the 54 Geo. III. c. 145, *ante*, title *Attainder*, Vol. I.

See further as to corruption of blood, 1 *Chit. C. L.* 740, 1, 2.

## Forgery.

I. *Forgery at Common Law*, 817 to 820.

II. *Forgery by Statute*, 820 to 840.

III. *Forms*, see *List of*, post, 841.

### I. Of Forgery at Common Law.

**‘To forge,’** says Sir Edward Coke, “is metaphorically taken from the smith, who beateth upon his anvil, and forgereth what fashion or shape he will.” But the common law of England hath declared it an offence to forge thus metaphorically, and defining that offence to be, in the words of Sir *William Blackstone*, “the fraudulent making or alteration of a writing to the



*Forgery.*

[1.

prejudice of another's right," hath always attached to it a certain punishment, as for a misdemeanor. It is also made criminal by the statute law, which, though in general following the common law definition, extends over a greater number and variety of subjects, and attaches a higher penalty to the crime.

But, though, as we have said, the common law regards forgery as a crime, and must have regarded it as such before the time of legal memory, the principle does not appear to have been observed, until a comparatively modern date. This is not at all remarkable; for we cannot wonder, if, in these ruder stages of society, the motive of private benefit was found stronger than that of public justice; or a civil remedy preferred to a criminal prosecution. Up to the reign of Elizabeth, we have no record of relief being sought from the grievance of forgery, otherwise than by civil action. This civil remedy was by writ of forger of false deeds, at the suit of the party grieved; and this writ, it may be observed, only extended to the forgery of deeds, such writings alone being then in use; and the subject-matter of the fraud could only be real property, as that was the only species of property whose title was evidenced by writing, in former days. Thus, when the 1 Hen. V. c. 3, was passed, giving an action to the party grieved, such action was confined to lands and tenements as the subject-matter, and to deeds as the means of affecting it. And as the remark is true, that the idea of a possibility of damage, unless very near and impending, is a notion too refined for rude legislators, we find this statute declaring the *fabrication* of the deed not sufficient—it must be followed by *publication*. When published, an action immediately lay. Now, whatever may have been the state of opinion as to the crime of forgery at common law, in the time of Henry the Fifth, before the enactment of the statute alluded to, (and no memorials have reached us whereby that can be ascertained), nothing is more certain, than that criminal prosecutions must have immediately fallen into perfect disuse, since the remedy given by the statute was more likely, from the cause mentioned, to gratify the feelings of that age.

In thus glancing at the history of forgery at common law, it will be noticed as remarkable, how little the subsequent doctrines of the Courts, as to the *crime*, seem to have been influenced, as one would suppose they naturally ought to have been, by the notions which were held concerning it, when treated as a civil injury. These notions, as we have seen, were very confined; they laid it down as merely the forging and publishing, in another's name, a deed relating to real property; and it may be of some importance to observe, how, from this limited state of things, the more enlarged definition of forgery as a *crime* at common law arose; its penalties were extended; and the civil notions above named became merged, through the agency of circumstances, in the more enlarged ideas that came to be entertained of the serious nature of the offence, and of the high degree of criminality which attended it.

The various frauds, which, as committed through the medium of writing, were very similar in their kind to forgery, though not included in its civil definition, were in those times remediable by writ of deceit. We allude to such, for example, as forging the impression of a seal, personating another in a judicial proceeding, acknowledging a fine in his name, and the like. Now nothing could be more likely than that the idea of these things, as grievances, should be confounded with that of forgery, so similar in its nature, and so similar in its remedy. And such, in fact, was the case. Injuries, such as we have mentioned, in the course of time, began to be placed on the same footing as forgery, and to be regarded, as they really were, only a different species of that offence. The "investing of writing with a fictitious character," was the common attribute of both; the little distinctive character they possessed was gradually wearing away, and the idea of forgery as a *crime* began then to force itself on the consideration of society. Then came the enactment of the 5th of Elizabeth, c. 14, which, with more wisdom than that of Henry, making it a *criminal* as well as civil offence, and attaching to it a serious punishment, effectually triumphed over the already much disturbed common law notions of its qualities as a mere

civil injury, restored the principle which must have existed before the time of legal memory, put an end to all *civil* remedies, and established it, as it hath ever since continued, a crime indictable at the common law as a misdemeanor. This statute declared forgery punishable of itself, and the common law now no longer deemed *publication* necessary; considering the very making, with a fraudulent intention, and without lawful authority, of any instrument which is the subject of forgery, to be of itself a sufficient completion of the offence before publication. Objections had been urged to this on the ground that the publication of the instrument was the medium by which the intent is made manifest; but it is obvious that it may be as plainly proved by other evidence; and many cases are in the books, where, no publication having taken place, circumstances nevertheless existed sufficient to warrant the jury in finding a fraudulent intention. From the causes of extension we have mentioned, the definition now included deeds relating not merely to lands, but to any other subject; and not deeds only, but any other writing then in use, and possessed of a distinctive character. Of such, however, "then in use," there were few not under seal: and this circumstance may account for the doubts entertained by *Hawkins*, whether, at common law, forgery could be committed of any documents but such as were of a public kind; for, in the infancy of commerce, when no peculiar severity distinguished this offence from common frauds, an accurate discrimination on the subject was of comparatively small importance. These doubts were, however, entirely removed by the decision in *Ward's case* (to be found in *Ld. Raymond's Reports*, p. 1461), who was prosecuted by information filed by the attorney-general for forging a release of acquittance on a sum of money, and it was objected, on his behalf, that the matter was not public in its nature, nor under seal. These objections were, however, over-ruled; and it was held, that forgery at common law might be committed in respect of any writing whatever by which another might be defrauded. A distinction, at the same time, was marked out between forgery and fraud; that the last must actually take effect: while the first was complete, though no one was actually injured, if the tendency and intent to defraud were manifest. The sentence of the defendant in this instance was, to pay a fine of 500*l.*, stand in the pillory, and be committed till payment of the sum imposed on him.

From the time of this decision the rule was established, that, at common law, writings of every description—whether of a public or private nature, whether written or printed, whether of record, under seal, or by parol, and whether invested with a legal character or not—are equally the subjects of forgery, being equally within the definition and mischief of the crime. The point has never arisen as to whether the forging impressions of seals are included; but, from what has been said, it may fairly be supposed that they will be found to be so.

Having sketched thus briefly the history of the crime at common law, we see clearly the reasons which tended to remove the fetters with which the civil actions might otherwise have controlled its definition when it came to be considered as a crime. And we cannot therefore wonder that the idea of its being merely "forging and publishing in another's name a deed relating to real property," should be lost in the more extensive one defined by Chief Baron *Comyns*, as "the fraudulently writing or publishing a false deed, or writing, to the prejudice of the right of another;" by the *twelve judges*, "the false making a note or other instrument with intent to defraud;" by Sir *Wm. Blackstone*, "the fraudulent making or alteration of a writing, to the prejudice of another's right;" by Mr. Serjeant *Hawkins*, "falsely and fraudulently making or altering;" by Mr. Justice *Buller*, "the making a false instrument with intent to deceive;" by Mr. Baron *Eyre*, "a false signature made with intent to deceive;" and by Sir *Edward East*, "a false making, a making *malò animò*, of any written instrument, for the purpose of fraud and deceit."

In these definitions it will be noticed, that a *fraudulent* intention seems to be regarded as necessary to the crime. Now, although the civil notions of the grievance were necessarily thus confined—property alone being the

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subject-matter—yet we cannot suppose that the criminal offence, extended, as we have seen, in every other respect, should be limited in this. An *evil* intention would, we apprehend, be sufficient; and the words “intent to deceive,” in the last three opinions, with Sir *Edward East’s* “making *male animus*,” strongly favour such a supposition.

It is an important thing in the consideration of any law to have previously discerned the causes from which it has arisen, and the means by which it was introduced. Thus far, what has been said above as to the state of the common law regarding this crime, will not be deemed altogether useless to magistrates, though it appears, from late decisions, that their jurisdiction does not extend to the offence. “It hath been settled of late” says Mr. *Hawkins*, “that they have no jurisdiction over forgery at the common law; the principal reason of which resolution, I apprehend, was, that inasmuch as the chief end of the institution of the office of these justices was for the preservation of the peace against personal wrongs and open violence, and the word *trespass* in its most proper and natural sense is taken for such kind of injuries, it shall be understood in that sense only in the commission, or, at the most, to extend to such other offences only as have a direct and immediate tendency to cause such breaches of the peace, as libels, and such like, which on this account have been adjudged indictable before justices of the peace.”

Any attempt to explain this extraordinary exception on the ground of *principle* must, we apprehend, fail. It cannot be asserted, that the terms of their commission are not large enough to cover the crime of forgery. Mr. *Hawkins*, himself, may be charged with inconsistency on this point, for, in commenting on the word “trespasses” he had stated it in a large sense to comprehend, not only all inferior offences directly against the peace, but also all others which are so only by *construction*; now all breaches of the law are said to be, constructively, breaches of the peace, and therefore, according to his own definition, forgery ought to be included. Lord Chief Baron *Comyns*, in his Digest, states, that “they may inquire of any thing done to the fraud or deceit of another;” and forgery is certainly of that kind, though it has no immediate tendency to a breach of the peace. No reason then seems to be assigned by *Hawkins* in point of *principle*; we must rest satisfied with the candid opinion of Lord *Kenyon* (in deciding the case of *The King v. Gibbs*), that he had always had a *general impression on his mind* that it was a *settled point*, that forgery was excepted from the jurisdiction of justices; *why excepted, he knew not*, but, having been expressly so adjudged, he was resolved not to interfere with the decision.

According to Mr. *Barlow*, however, it seems to be admitted that a justice of the peace may take an information of forgery, bind over the informers, examine the offender, certify his examination to the proper judges, and commit him to prison in order to abide his trial. *Barl.* 244.

## II. Of Forgery by Statute.

THE statute law, as has been remarked, could add nothing, so far as written instruments are concerned, to the list of offences already cognizable under the common law; but it distinguishes those which it has singled out, by different qualities, by different degrees of guilt, by different means of preventing their perpetration, and by different modes of executive justice.

Any very extended notice of this subject might not be considered judicious here, though we may be allowed to glance briefly at the statute law, more particularly for the purpose of introducing the recent act, which has excited so much public interest.

The first enactment against the crime of forgery, which was passed in the fifth year of the reign of Elizabeth, and which extended only to certain

documents connected with real property, did not make it capital. It was not till the reign of William the Third, that, on the establishment of the Bank of England, when the members of that corporation demanded a new and more secure protection for that species of property in which they were principally to deal, the legislature deemed it expedient to attach the punishment of death to the forging of bank securities. Since that period, no crime has been so fertile in statutes as this: and no crime, we believe, was ever visited with such cruel and indiscriminately severe enactments. Statute followed statute in quick and merciless succession, to the number of one hundred and twenty (or thereabouts), sixty-one of which imposed the penalty of death. We may in this place, availing ourselves of the excellent report from the House of Commons, dated 2nd of April, 1824, briefly condense these *capital* provisions, arranging them under their respective subjects, thus:

1. In General;—2. Bank of England;—3. Public Funds;—4. Exchequer Bills;—5. Stamps;—6. Excise and Customs;—7. Courts of Chancery, Exchequer, and Admiralty;—8. Public Offices;—9. East India and other Companies, Underwriters, and Bankers;—10. Army and Navy;—11. Land Tax.

1. IN GENERAL.—It shall be felony, and without clergy, in the principal, in aiders and abettors, and in accessories before the fact, to forge, or, knowing it to be forged, to utter a deed, will, bill of exchange, promissory note for payment of money, indorsement or assignment of such bill or note, acceptance of such bill, acquittance or receipt either for money or goods, accountable receipt for any security for payment of money, or warrant or order for payment of money or delivery of goods, with intent to defraud any person or corporation. 2 Geo. II. c. 25, s. 1; 7 Geo. II. c. 22; 31 Geo. II. c. 22, s. 78; 18 Geo. III. c. 18; 45 Geo. III. c. 89, s. 1, 8.

2 Geo. 2, c. 25, s. 1;  
7 Geo. 2, c. 22; 31  
Geo. 2, c. 22, s. 78;  
18 Geo. 3, c. 18;  
45 Geo. 3, c. 89, s.  
1, 8.

It shall be felony, and without clergy, in the principal, and in accessories before the fact, to acknowledge a fine, recovery, deed enrolled, statute, recognisance, bail or judgment in the name of another without his privity or consent. 21 Jac. I. c. 26, s. 2.

21 Jac. 1, c. 26, s. 2.

It shall be felony to represent, before any person empowered to take bail by an act of the fourth year of King William and Queen Mary, intitled *An Act for taking special bails in the country upon actions and suits depending in the Court of King's Bench, Common Pleas, and Exchequer, at Westminster*, or an act of the twenty-seventh year of King George the Third, intitled *An Act for taking and swearing affidavits to be made use of in the Court of session of the county palatine of Chester, and for taking of special bail in actions and suits depending in the same Court*; another, whereby he may be liable to pay any money for debt or damages to be recovered in the suit wherein he is represented, as if he had acknowledged and entered into the same. 4 Wm. & M. c. 4, s. 4; 27 Geo. III. c. 43, s. 4.

4 Wm. & M. c. 4,  
s. 4; 27 Geo. 3, c.  
43, s. 4.

2. BANK OF ENGLAND.—It shall be felony without clergy, to forge the seal of the Bank of England, or a bank note, bank bill of exchange, dividend warrant, or a bond under the bank seal, or an indorsement thereon, or to offer, dispose of, or put away, any such instrument or indorsement, or demand the contents or part thereof of the bank, their officers or servants, knowing the same to be forged, with intent to defraud any person or corporation. 45 Geo. III. c. 89, s. 2, 8; 8 & 9 Wm. III. c. 20, s. 36.

45 Geo. 3, c. 89, s.  
2, 8; 8 & 9 Wm. 3,  
c. 20, s. 36.

It shall be felony and without clergy in the principal, in aiders and assistants, and in accessories before the fact, for any one but the officers, workmen, servants, or agents of the Bank of England, to be appointed for that purpose by the Bank, and for the use of the Bank only, to make or use, or knowingly to have in his custody or possession, without excuse, the proof whereof shall lie upon the accused, any frame, mould, or instrument, for making paper with the words "Bank of England" visible in the substance of such paper, or to make paper with those words visible in its substance, or to cause those words to appear visible in the substance of paper. 13 Geo. III. c. 79, s. 1.

13 Geo. 3, c. 79,  
s. 1.

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4 & 9 Wm. 3, c. 20,  
s. 36.

It shall be felony without clergy to forge or counterfeit the common seal of the corporation of the Bank of England, or of any sealed bank bill, made or given out in the name of the said corporation, for the payment of any sum of money or of any bank note of any sort whatsoever, signed for the said corporation, or the altering or rasing any indorsement on any bank bill, or note of any sort, from any evil motive other than a fraudulent intention. 8 & 9 Wm. III. c. 20, s. 36.

4 Geo. 3, c. 25, s.  
15.

3. PUBLIC FUNDS]—It shall be felony and without clergy in the principal, in assistants, and in accessories before the fact, to forge a letter of attorney, or other authority or instrument to transfer, assign, sell, or convey any share or part thereof, of and in any capital stock or stocks of a corporation established or to be established by act of Parliament, or any share or part thereof, of and in annuities, in respect whereof the proprietors of such annuities have or shall have transferable shares in any capital stock or stocks established or to be established by act of Parliament, in proportion to their respective annuities or any share or part thereof, of or in any other transferable annuities established or to be established by act of Parliament, or to receive such annuity, or any dividend attending such share or part thereof; or to forge the name of the proprietor of such share in stock, or person entitled to such annuity or dividend, in or to such pretended letter of attorney, instrument, or authority; or fraudulently to demand or endeavour to have such share in stock or annuities, or part thereof, transferred, assigned, sold, or conveyed, or such annuity, or dividend, or part thereof, received by virtue of such forged letter of attorney, authority, or instrument; or falsely and deceitfully to personate the true proprietor of such share in stock, annuity or dividend, or part thereof, and thereby transfer or endeavour to transfer, the stock or annuity, or receive or endeavour to receive the money of such proprietor, as if such offender were the lawful owner thereof. 4 Geo. III. c. 25, s. 15.

33 Geo. 3, c. 30, s.  
1.

It shall be felony and without clergy in the principal, and in assistants, to make any transfer of any interest, part, or share of or in any stock, annuity, or other funds transferable at the Bank of England, in any of the bank books in which such transfers are made, in the name of one not the owner thereof, with intent to defraud any person or corporation. 33 Geo. III. c. 30, s. 1.

33 Geo. 3, c. 30, s.  
2.

It shall be felony and without clergy in the principal, in actors and assistants, and in accessories before the fact, to forge a transfer of any interest, part, or share, of or in any stock, annuity, or other funds, now or hereafter made transferable by act of Parliament at the Bank of England, or of or in the capital stock now or hereafter belonging to the Bank of England, or to utter as true such forged transfer, knowing it to be forged, with intent to defraud any person or corporation. 33 Geo. III. c. 30, s. 2.

33 Geo. 3, c. 30, s.  
3.

It shall be felony and without clergy in the principal, and in assistants, to make a false entry, or to alter an entry, in the books of account kept by the Bank of England, wherein the accounts of the owners of stock, annuity, or other funds transferable at the Bank are kept, or in any manner to falsify such accounts with intent to defraud any person or corporation. 33 Geo. III. c. 30, s. 3.

57 Geo. 3, c. 79, s.  
13; 1 & 2 Geo. 4,  
c. 79, s. 15.

It shall be felony and without clergy in the principal, in actors and assistants, and in accessories before the fact, to forge such certificate or duplicate certificate, as in an act passed in the fifty-seventh year of King George the Third, intituled *An Act to permit the transfer of capital from certain public stocks or funds in Great Britain, to certain public stocks or funds in Ireland*, or in an act passed in the first and second years of his late Majesty, intituled *An Act to permit for three years the transfer from certain public stocks or funds in Ireland, to certain public stocks or funds in Great Britain*, is mentioned, or to utter such certificate as true, knowing it to be forged, with intent to defraud any person or corporation. 57 Geo. III. c. 79, s. 13; 1 & 2 Geo. IV. c. 73, s. 15.

4. EXCHEQUER BILLS]—It shall be felony without clergy to forge an exchequer bill, indorsement, or writing thereupon or therein, or tender the same so forged, or with such forged indorsement or writing thereupon or therein, in payment, or to demand to have the same, so forged, or with such forged indorsement or writing thereupon or therein, exchanged for ready money, or for another exchequer bill, by any corporation obliged or required to exchange the same, or by any person, knowing such bill, indorsement, or writing to be forged, with intent to defraud any person or corporation. 48 Geo. III. c. 1, s. 9.

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48 Geo. 3, c. 1, s. 9.

5. STAMPS]—It shall be felony, and without clergy, in the principal, and in aiders, abettors, and assisters, privately and secretly to use any stamp provided in pursuance of any act of Parliament relating to stamp duty, with intent to defraud the King of any such duty. 52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 184, s. 7; c. 185, s. 6.

52 Geo. 3, c. 143, s. 7; 55 Geo. 3, c. 184, s. 7; c. 185, s. 6.

It shall be felony, and without clergy, in the principal, and in aiders, abettors, and assisters, privately and secretly to use any stamp provided in pursuance of any act of Parliament relating to duties on gold or silver plate, made or wrought in Great Britain, with intent to defraud the King. 55 Geo. III. c. 185, s. 7.

55 Geo. 3, c. 185, s. 7.

It shall be felony, and without clergy, in the principal, in aiders, abettors, and assisters, and in accessories before the fact, fraudulently to get off the impression of any die provided in pursuance of any act of Parliament, relating to stamp duty, from vellum, parchment, or paper, with intent to use the same for or upon any other vellum, parchment, or paper, or any instrument or writing chargeable with stamp duty. 55 Geo. III. c. 184, s. 7.

55 Geo. 3, c. 184, s. 7.

It shall be felony, and without clergy, in the principal, in aiders, abettors, and assisters, and in accessories before the fact, to transpose or remove from one piece of gold or silver plate to another, or to any vessel or ware of base metal, the impression of any stamp provided in pursuance of any act of Parliament relating to duty on gold or silver plate. 52 Geo. III. c. 143, s. 8; 55 Geo. III. c. 185, s. 7.

52 Geo. 3, c. 143, s. 8; 55 Geo. 3, c. 185, s. 7.

It shall be felony, and without clergy, in the principal, and in aiders, abettors, and assisters, to sell, exchange, expose to sale, or export out of Great Britain, gold or silver plate made in Great Britain, or vessel, or ware of base metal, having thereupon the impression of any mark, stamp, or die, provided in pursuance of any act of Parliament relating to duty on gold or silver plate, transposed or removed from any other piece of plate, knowing it to be transposed or removed. 52 Geo. III. c. 143, s. 8; 55 Geo. III. c. 185, s. 7.

52 Geo. 3, c. 143, s. 8; 55 Geo. 3, c. 185, s. 7.

It shall be felony, and without clergy, in the principal, in aiders, abettors, and assisters, and in accessories before the fact, to forge the whole, or part of any stamp provided in pursuance of any act of Parliament relating to stamp duty. 52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 184, s. 7.

52 Geo. 3, c. 143, s. 7; 55 Geo. 3, c. 184, s. 7.

It shall be felony, and without clergy, in the principal, in aiders, abettors, and assisters, and in accessories before the fact, to forge any stamp provided in pursuance of any act of Parliament relating to duty on gold or silver plate. 52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 185, s. 7.

52 Geo. 3, c. 143, s. 7; 55 Geo. 3, c. 185, s. 7.

It shall be felony, and without clergy, in the principal, and in aiders, abettors, and assisters, wilfully and without excuse, the proof whereof shall lie on the accused, to have or be possessed of any stamp forged in imitation of or to resemble any stamp provided in pursuance of any act of Parliament relating to duty on gold or silver plate. 52 Geo. III. c. 143, s. 8; 55 Geo. III. c. 185, s. 7.

52 Geo. 3, c. 143, s. 8; 55 Geo. 3, c. 185, s. 7.

It shall be felony, and without clergy, in the principal, and in aiders, abettors, and assisters, and in accessories before the fact, to mark any material with the whole, or part of a stamp, forged after any stamp provided in pursuance of any act of Parliament relating to stamp duty, with intent to defraud the King of such duty. 52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 184, s. 7; 55 Geo. III. c. 185, s. 6.

52 Geo. 3, c. 143, s. 7; 55 Geo. 3, c. 184, s. 7; 55 Geo. 3, c. 185, s. 6.

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52 Geo. 3, c. 143,  
s. 7; 55 Geo. 3, c.  
184, s. 7; 55 Geo.  
3, c. 185, s. 6.  
52 Geo. 3, c. 143,  
s. 7; 55 Geo. 3, c.  
184, s. 7; 55 Geo.  
3, c. 185, s. 6.

It shall be felony, and without clergy, in the principal, and in aiders, abettors, and assisters, to forge upon any material the whole, or part of the impression of any stamp provided in pursuance of any act of Parliament relating to stamp duty, with intent to defraud the King of such duty. 52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 184, s. 7; 55 Geo. III. c. 185, s. 6.

It shall be felony, and without clergy, in the principal, and in aiders, abettors, and assisters, to utter, sell, or expose to sale, any material, having thereupon the impression of the whole, or part of a stamp, forged after any stamp provided in pursuance of any act of Parliament relating to stamp duty, knowing the same to be forged, with intent to defraud the King of such duty. 52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 184, s. 7; 55 Geo. III. c. 185, s. 6.

52 Geo. 3, c. 143, s.  
7; 55 Geo. 8, c.  
184, s. 7; 55 Geo.  
3, c. 185, s. 6.

It shall be felony, and without clergy, in the principal, and in aiders, abettors, and assisters, to utter, sell, or expose to sale, any material, having thereupon the forged or resembled impression of the whole, or part of any stamp, provided in pursuance of any act of Parliament relating to any stamp duty, knowing the same to be forged or resembled, with intent to defraud the King of such duty. 52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 184, s. 7; 55 Geo. III. c. 185, s. 6.

52 Geo. 3, c. 143,  
s. 7; 55 Geo. 3,  
c. 185, s. 7.

It shall be felony, and without clergy, in the principal, in aiders, abettors, and assisters, and in accessories before the fact, to mark any material with a stamp, forged in imitation of, or to resemble, any stamp provided in pursuance of any act of Parliament relating to duty on gold or silver plate. 52 Geo. III. c. 143, s. 7, 8; 55 Geo. III. c. 185, s. 7.

52 Geo. 3, c. 143,  
s. 7; 55 Geo. 3, c.  
185, s. 7.

It shall be felony, and without clergy, in the principal, in aiders, abettors, and assisters, and in accessories before the fact, to forge or resemble upon any material, the impression of any stamp provided in pursuance of any act of Parliament relating to duty on gold or silver plate, with intent to defraud the King. 52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 185, s. 7.

52 Geo. 3, c. 143,  
s. 7; 55 Geo. 3, c.  
185, s. 7.

It shall be felony, and without clergy, in the principal, and in aiders, abettors, and assisters, to utter, sell, exchange, expose to sale, or export out of Great Britain, any material, having thereupon the impression of a stamp, forged after any stamp provided in pursuance of any act of Parliament relating to duty on gold or silver plate, knowing it to be forged, with intent to defraud the King of such duty. 52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 185, s. 7.

52 Geo. 3, c. 143, s.  
7; 55 Geo. 3, c. 185,  
s. 7.

It shall be felony, and without clergy, in the principal, and in aiders, abettors, and assisters, to utter, sell, exchange, expose to sale, or export out of Great Britain, any material, having thereupon a forged or resembled impression of any stamp, provided in pursuance of any act of Parliament, relating to duty on gold or silver plate, knowing it to be forged, with intent to defraud the King of such duty. 52 Geo. III. c. 143, s. 7; 55 Geo. III. c. 185, s. 7.

52 Geo. 3, c. 143,  
s. 10.

6. EXCISE AND CUSTOMS.—It shall be felony, and without clergy, in the principal, in assisters, and in accessories before the fact, to forge, in whole or in part, any debenture, or any certificate, for the payment or return of money, or any signature thereon, in any case in which such debenture or certificate is by any act of Parliament relating to the duties of excise directed to be given; or to utter or make use of any such, with intent to defraud the King. 52 Geo. III. c. 143, s. 10.

38 Geo. 3, c. 54, s.  
9.

It shall be felony, and without clergy, in the principal, and in accessories before the fact, to forge any debenture required by any act of Parliament relating to excise duties to be given, or knowingly to utter any such. 38 Geo. III. c. 54, s. 9.

52 Geo. 3, c. 143, s.  
9.

It shall be felony, and without clergy, in the principal, in aiders and assisters, and in accessories before the fact, without authority to make, or to have in his custody or possession, without cause, the proof whereof shall lie upon the accused, any frame, mould, or instrument, for the making of paper, with the words "Excise Office," visible in the substance of such paper; or to make paper in the substance of which those words shall be visible; or to

cause such words to appear visible in the substance of paper; or to make any device in imitation of, or to resemble, any device authorized to be used for making paper to be used as a permit to accompany exciseable commodities from one part of Great Britain to another, in pursuance of any act of Parliament requiring such permit. 52 Geo. III. c. 143, s. 9.

It shall be felony, and without clergy, in the principal, in aiders, and assistants, and in accessories before the fact, to forge the name or hand-writing of the receiver-general of the excise, the comptroller of the cash of the excise, or any person authorized in that behalf, to any instrument or writing, for, or in order to the receiving or obtaining money in the hands of the Bank of England, on account of the receiver-general; or to forge any draft, instrument, or writing, in form of a draft, made by such receiver-general or authorized person, or to utter such, knowing it to be forged, with intent to defraud any person. 46 Geo. III. c. 75, s. 8.

46 Geo. 3, c. 75, s. 8.

It shall be felony, and without clergy, in the principal, in actors and assistants, and in accessories before the fact, to forge the name or hand-writing of the receiver-general, or comptroller-general of the customs, or the person acting for them, to any instrument or writing, for, or in order to the receiving or obtaining money in the hands of the Bank of England, on account of the receiver-general; or to forge any draft, instrument, or writing in form of a draft made by such receiver-general or person; or to utter such, knowing it to be forged, with intent to defraud any person. 6 Geo. IV. c. 106, s. 27.

6 Geo. 4, c. 106, s. 27.

7. COURTS OF CHANCERY, EXCHEQUER, AND ADMIRALTY]—It shall be felony, and without clergy, in the principal, in aiders and assistants, and in accessories before the fact, to forge the name or hand of the accountant-general of the Court of Chancery, the register, the clerk of the report-office, or of a cashier of the Bank of England, to any instrument or writing, for or in order to the receiving or obtaining the money or effects of a suitor of that Court; or to forge any instrument or writing made by such accountant-general, register, clerk, or cashier, or to utter such, knowing it to be forged, with intent to defraud any person. 12 Geo. I. c. 32, s. 9.

12 Geo. 1, c. 32, s. 9.

It shall be felony, and without clergy, in the principal, in aiders and assistants, and in accessories before the fact, to forge the name or hand-writing of the accountant-general of the Court of Exchequer, or a baron of that Court, or the clerk of the reports, or a cashier of the Bank of England, or any officer of any other corporation, or company, whom it may concern, to any instrument or writing, for, or in order to the receiving or obtaining the money or effects of a suitor of that Court; or to forge any instrument or writing in form of an instrument or writing made or given by such accountant-general, clerk of the reports, or cashier; or to utter such, knowing the same to be forged, or to demand payment of any money therein mentioned, with intent to defraud any person or corporation. 1 Geo. IV. c. 35, s. 27.

1 Geo. 4, c. 35, s. 27.

8. PUBLIC OFFICES]—It shall be felony, and without clergy, in the principal, in aiders and assistants, and in accessories before the fact, to forge the name or hand-writing of the surveyor general of the woods and forests, or his deputy, to any instrument or writing for or in order to the receiving or obtaining any money in the custody of the Bank of England, on account of the surveyor general, or to forge any draft, instrument, or writing, in form of a draft, made by the surveyor general, his deputy, or authorized person, or to utter such, knowing it to be forged, with intent to defraud any person. 46 Geo. III. c. 142, s. 14.

46 Geo. 3, c. 142, s. 14.

It shall be felony, and without clergy, in the principal, in aiders and assistants, and in accessories before the fact, to forge the name or hand-writing of a commissioner of his Majesty's woods, forests, and land revenue, to any instrument or writing for or in order to the receiving or obtaining money in the custody of the Bank of England, on account of those commissioners; or to forge any draft, instrument, or writing in form of a draft, made by those commissioners, or any of them; or to utter such, knowing it to be forged, with intent to defraud any person or corporation. 50 Geo. III. c. 65, s. 18.

50 Geo. 3, c. 65, s. 18.



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46 Geo. 3, c. 83, s. 9; 47 Geo. 3, stat. 2, c. 59, s. 3.

It shall be felony, and without clergy, in the principal, in aiders and assistants, and in accessories before the fact, to forge the name or hand-writing of the receiver-general of the post office, or his clerk, or a person duly authorized by him, to any instrument or writing for or in order to the receiving or obtaining money in the custody of the Bank of England, on account of the receiver-general, or to forge any draft, instrument, or writing in form of a draft, made by such receiver-general, clerk, or person; or utter such, knowing it to be forged, with intent to defraud any person or corporation. 46 Geo. III. c. 83, s. 9; 47 Geo. III. st. 2, c. 59, s. 3.

46 Geo. 3, c. 45, s. 9.

It shall be felony, and without clergy, in the principal, in aiders and assistants, and in accessories before the fact, to forge the name or hand of the treasurer of the ordnance, or his deputy, or a person duly authorized, to any instrument or writing, for or in order to the receiving or obtaining money in the custody of the Bank of England, on account of the treasurer of the ordnance; or to forge any draft, instrument or writing in form of a draft, made by such treasurer, deputy, or person; or to utter such knowing it to be forged, with intent to defraud any person. 46 Geo. III. c. 45, s. 9.

52 Geo. 3, c. 143, s. 5.

It shall be felony, and without clergy, in the principal, and in accessories before the fact, to forge the mark or hand of the receiver of the prebends at the alienation office, upon a writ of covenant, whereby such receiver or any other person shall or may be defrauded or suffer loss. 52 Geo. III. c. 143, s. 5.

12 Geo. 1, c. 32, s. 9.

**9. EAST INDIA AND OTHER COMPANIES, UNDERWRITERS, AND BANKERS].**—It shall be felony, and without clergy, in the principal, in aiders and assistants, and in accessories before the fact, to forge an East India bond, or an indorsement or assignment thereon, or to utter such, knowing it to be forged, with intent to defraud any person. 12 Geo. I. c. 32, s. 9.

6 Geo. 1, c. 4, s. 56.

It shall be felony, without clergy, to forge the South Sea Company's seal, or their obligations, or to offer to dispose of, or pay away, or demand the contents, or part thereof, of the said company or their officers, of such forged bond, knowing it to be forged, with intent to defraud the said company, or any other person. 6 Geo. I. c. 4, s. 56.

12 Geo. 1, c. 32, s. 9.

It shall be felony, and without clergy, in the principal, in aiders and assistants, and in accessories before the fact, to forge indorsements or assignments on South Sea bonds, or to utter such knowing them to be forged, with intent to defraud any person. 12 Geo. I. c. 32, s. 9.

6 Geo. 1, c. 18, s. 13.

It shall be felony, without clergy, to forge the common seal of either of the corporations established pursuant to an act passed in the sixth year of King George the First, intituled *An Act for better securing certain powers and privileges intended to be granted by his Majesty, by two charters for assurance of ships and merchandises at sea, and for lending money upon bottomry, and for restraining several extravagant and unwarrantable practices therein mentioned*; or to forge any policy, bill, or obligation under such seal, or to offer to dispose of, or pay away, such forged policy, bill, or obligation, knowing it to be forged; or to demand the contents or part thereof, of such forged policy, bill, or obligation, of the corporation whose seal has been forged, or their officers, knowing the same to be forged, with intent to defraud such corporation or any other person. 6 Geo. I. c. 18, s. 13.

22 Geo. 3, c. 81, s. 9.

**10. ARMY AND NAVY].**—It shall be felony, and without clergy, in the principal, in actors and assistants, and in accessories before the fact, to forge the name or hand of the paymaster-general of the forces, or his deputy, to any instrument or writing, for or in order to receiving or obtaining money in the custody of the Bank of England, on account of the paymaster-general, or to forge any instrument or writing in form of a draft, made by the paymaster-general, or his deputy, or to utter such, knowing it to be forged, with intent to defraud any person. 22 Geo. III. c. 81, s. 9.

43 Geo. 3, c. 86, s. 43.

It shall be felony, and without clergy, in the principal, in aiders and assistants, and in accessories before the fact, to forge any letter of attorney, bill, ticket, order, certificate, assignment, last will, or other power or autho-

ity, in order to receive wages, pay, or other allowances of money or prize-money, due or supposed to be due for service done in the army, or willingly and knowingly to take a false oath to obtain probate of a will or letters of administration, in order to receive such money; or to utter, as true, any such forged instrument, in order to receive such money, with intent to defraud any person or corporation, knowing the same to be forged. 54 Geo. III. c. 86, s. 43.

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54 Geo. 3, c. 86, s.  
43.

It shall be felony and without clergy in the principal, and in accessories before the fact, to forge any bill, certificate, letter of attorney, ticket, assignment, will, or other power, authority, or document, in order to receive money due or supposed to be due, for or on account of any out pension granted by Greenwich Hospital, or to take a false oath in order to receive payment of money due, or supposed to be due, for or on account of any out pension granted by that hospital, or to utter as true any forged letter of attorney, bill, ticket, certificate, assignment, will, or other power or authority, in order to receive payment of money due, or supposed to be due, for or on account of any out pension. 54 Geo. III. c. 110, s. 6.

54 Geo. 3, c. 110,  
s. 6.

It shall be felony and without clergy in the principal, in aiders and assistants, and in accessories before the fact, to forge any letter of attorney, order, bill, ticket, certificate, assignment, will, or other power or authority, in order to receive or enable another to receive wages, pay, prize money, bounty money, pension money, or other allowances of money due or supposed to be due, for or in respect of services performed or supposed to have been performed, on board of any King's ship or vessel, with intent to defraud any person or corporation; or to utter as true any such forged instrument, knowing it to be forged, in order to receive such money, with intent to defraud any person or corporation; or to take a false oath to obtain probate of a will, or letters of administration, in order to receive or enable another to receive such money; or to demand or receive such money upon or by virtue of the probate of a will, or letters of administration, knowing the will, or the probate, or the letters of administration, to have been obtained by means of such false oath, with intent to defraud any person or corporation. 55 Geo. III. c. 60, s. 32; 59 Geo. III. c. 56, s. 18; 1 & 2 Geo. IV. c. 49, s. 4.

55 Geo. 3, c. 60, s.  
32; 59 Geo. 3, c.  
56, s. 18; 1 & 2  
Geo. 4, c. 49, s. 4.

11. LAND TAX]—It shall be felony and without clergy in the principal, in aiders and assistants, and in accessories before the fact, to forge any contract, assignment, certificate, receipt, or attested copy of any certificate, made out, or purporting to be made out, by any person authorized to make out the same, by any act of Parliament touching the redemption or sale of the land tax; or to utter such forged instrument, knowing it to be forged, with intent to defraud any person or corporation. 52 Geo. III. c. 143, s. 6.

52 Geo. 3, c. 143,  
s. 6.

In the enactment of these provisions (as appears from the foregoing merciless list), it does not seem to have been a matter worth much consideration, whether the forgery were that of thousands, or of the receipt of a petty bill, which might have been prevented by ordinary caution. Such a course, repugnant as it was to humanity, was soon felt however to be equally repugnant to the interests of justice. Experience did not prove that a system of such extreme rigour was attended with the most salutary effects. The severity of the law defeated its own objects. When a punishment disproportionate to the crime engages, (and it seldom fails to engage), for the offender, the sympathies of society—their justice and good feeling combine to save him from its infliction. And thus it was in the present matter—men were better contented quietly to endure the loss of property, than to prosecute to the death for what they considered an inadequate cause. When, for offences comparatively trifling, prosecutions were brought, few witnesses were found who would not prevaricate—few juries who would not commit what Sir *Wm. Blackstone* has well termed a “pious perjury,” rather than convict the offender. In short, that which is the end of all punishment—public utility—suffered in too many instances from this state of the law. The aphorism of *Bacon* is true—“Express statute cannot regularly

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be voided by disuse; it falls out that through a disestimation of obsolete laws, the authority of the rest is somewhat embased, and Mezentius' torture ensues, that laws alive are killed with the embracements of laws dead." It became absolutely necessary for the prevention of crime, for the due administration of justice, for the maintenance of that respect still due to some of the laws, that this indiscriminate severity of punishment should be diminished."

1 Wm. 4, c. 66.

The recent statute introduced by Sir Robert Peel, and which is founded on the admirable report, drawn up, we believe, by Mr. Hammond, has done something towards the accomplishment of this humane task, so often and so vainly attempted by many wise and excellent men. That act (the 1st Wm. IV. c. 66), is termed *An Act for reducing into one act all such forgeries as shall henceforth be punished with death, and for otherwise amending the laws relative to forgery*, was passed 23d July, 1830, and introduces many unequivocal and acknowledged improvements.

Repeal of 25 Edw.  
3, stat. 5, c. 2.

1 Mar. stat. 2, c. 6.

5 Eliz. c. 14.

21 Jac. 1, c. 26.

4 Wm. & M. c. 4,  
s. 4.

8 & 9 Wm. 3, c. 20,  
s. 26.

7 Anne, c. 21, s. 9.

8 Geo. 1, c. 22, s. 1.

12 Geo. 1, c. 32,  
s. 9.

The 31st section contains a salutary provision, which clears away many disgraceful enactments from the statute book, and repeals "So much of a statute made in the twenty-fifth year of the reign of King Edward the Third, as relates to counterfeiting the King's great or privy seal, and so much of an act passed in the first year of the reign of Queen Mary, intituled "An Act that the counterfeiting of strange coins being current within this realm, the Queen's highness' sign manual, signet, or privy seal, be adjudged treason," as relates to forging or counterfeiting the Queen's sign manual, privy signet, or privy seal; and an act passed in the fifth year of the reign of Queen Elizabeth, intituled "An Act against forgers of false deeds and writings;" and an act passed in the twenty-first year of the reign of King James the First, intituled "An Act against such as shall levy any fine, suffer any recovery, acknowledge any statute, recognizance, bail, or judgment in the name of any other person or persons not being privy and consenting thereto;" and so much of an act passed in the fourth year of the reign of King William and Queen Mary, intituled "An Act for taking special bails in the country upon actions and suits depending in the Courts of King's Bench, Common Pleas, and Exchequer at Westminster," as relates to any offence thereby made felony; and so much of an act passed in the eighth and ninth years of the reign of King William the Third, intituled "An Act for making good the deficiencies of several funds therein mentioned, and for enlarging the capital stock of the Bank of England, and for raising the public credit," as relates to forging or counterfeiting the common seal of the governor and company of the Bank of England, or any sealed bank bill, or any bank note, or altering or raising any indorsement on any bank bill or note; and so much of an act passed in the seventh year of the reign of Queen Anne, intituled "An Act for improving the union of the two kingdoms, as relates to counterfeiting her Majesty's seals, appointed by the twenty-fourth article of the union to be kept, used, and continued in Scotland; and so much of an act passed in the eighth year of the reign of King George the First, intituled "An Act to prevent the mischiefs by forging powers to transfer such stocks or to receive such annuities or dividends as are therein mentioned, or by fraudulently personating the true owners thereof; and to rectify mistakes of the late managers for taking subscriptions for increasing the capital stock of the South Sea Company, and in the instrument founded thereupon," as relates to any forgery or other capital felony therein mentioned; and so much of an act passed in the twelfth year of the same reign, intituled "An Act for better securing the monies and effects of the suitors of the Court of Chancery, and to prevent the counterfeiting of East India bonds and indorsements thereon, as likewise indorsements on South Sea bonds," as relates to any person who shall forge or counterfeit, or procure to be forged or counterfeited, or wilfully act or assist in forging or counterfeiting, any bond or obligation of the East India Company, or any indorsement or assignment thereon, or on any bond or obligation of the South Sea Company, or shall

utter or publish the same knowing the same to be forged or counterfeited; and the whole of an act passed in the second year of the reign of King George the Second, intituled "An Act for the more effectual preventing and further punishment of forgery, perjury, and subornation of perjury, and to make it felony to steal bonds, notes, or other securities for payment of money," except so far as relates to perjury and subornation of perjury; and an act passed in the seventh year of the same reign, intituled "An Act for the more effectual preventing the forging the acceptance of bills of exchange, or the numbers or principal sums of accountable receipts for notes, bills, or other securities for payment of money, or warrants or orders for payment of money or delivery of goods;" and so much of an act passed in the fifteenth year of the same reign, intituled "An Act for establishing an agreement with the governor and company of the Bank of England for advancing the sum of 1,600,000*l.* towards the supply for the service of the year 1742," as relates to any person who shall forge, counterfeit, or alter any bank note or other matter specified in the said act, or shall knowingly offer, dispose of, or put away such forged, counterfeit, or altered note or other matter, or knowingly demand the money therein contained or pretended to be due thereon, or any part thereof, as in the said act is mentioned; and so much of an act passed in the thirty-first year of the same reign, intituled "An Act for granting to his Majesty several rates and duties upon offices and pensions, and upon houses, and upon windows or lights; and for raising the sum of 5,000,000*l.* by annuities and a lottery, to be charged on the said rates and duties," as relates to any forgery or other capital felony therein mentioned; and so much of an act passed in the fourth year of the reign of King George the Third, intituled "An act for establishing an agreement with the governor and company of the Bank of England for raising certain sums of money towards the supply for the service of the year 1764; and for more effectually preventing the forging powers to transfer such stock or receive such dividends or annuities as are therein mentioned, and the fraudulent personating the owners thereof," as relates to any forgery or other capital felony therein mentioned; and an act passed in the thirteenth year of the same reign, intituled "An Act for the more effectual preventing the forging of the notes or bills of the governor and company of the Bank of England, and for the preventing the obtaining a false credit by the imitation of the notes or bills of the said governor and company;" and an act passed in the eighteenth year of the same reign, intituled "An Act to explain an act passed in the seventh year of the reign of his late Majesty King George the Second, intituled "An Act for the more effectual preventing the forging the acceptance of bills of exchange, or the numbers or principal sums of accountable receipts for notes, bills, or other securities for payment of money, or warrants or orders for payment of money or delivery of goods;" and so much of an act passed in the twenty-seventh year of the reign of King George the Third, intituled "An Act for taking and swearing affidavits to be made use of in the court of session of the county palatine of Chester, and for taking of special bail in actions and suits depending in the same court," as relates to any offence thereby made felony; and an act passed in the thirty-third year of the reign of King George the Third, intituled "An Act for the better preventing forgeries and frauds in the transfers of the several funds transferable at the Bank of England;" and an act passed in the thirty-seventh year of the same reign, intituled "An Act for the better preventing the forging or counterfeiting the names of witnesses to letters of attorney or other authorities, or instruments for the transfer of stocks or funds which now are, or by any act or acts of Parliament shall hereafter be made transferable at the Bank of England, or for the transfer of any part of the capital stock of the governor and company of the Bank of England, called bank stock, or for the transfer of any part of the capital stock, or any stocks or funds under the management of the South Sea Company, or for the transfer of any part of the capital stock of the East India Company, or for the receipt of dividends upon any of such stocks or funds;" and an act passed in the forty-first year of the same reign,

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2 Geo. 2, c. 26, except a. 2.

7 Geo. 2, c. 22.

15 Geo. 2, c. 13, a. 11.

31 Geo. 2, c. 22, a. 77 & 78.

4 Geo. 3, c. 25, a. 15.

13 Geo. 3, c. 79.

18 Geo. 3, c. 18.

27 Geo. 3, c. 43, a. 4.

33 Geo. 3, c. 30.

37 Geo. 3, c. 122.

41 Geo. 3, (U. K.) c. 30.

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41 Geo. 3, c. 57.

43 Geo. 3, c. 139,  
s. 1 & 2.

45 Geo. 3, c. 89.

48 Geo. 3, c. 1, s. 9.

52 Geo. 3, c. 138.

52 Geo. 3, c. 146,  
s. 14.

4 Geo. 4, c. 76, s.  
29.

intituled "An Act for the more effectually preventing the forgery of bank notes, bank bills of exchange, and bank post bills;" and an act passed in the same year, intituled "An Act for the better prevention of the forgery of the notes and bills of exchange of persons carrying on the business of bankers;" and so much of an act passed in the forty-third of the same reign, intituled "An Act for preventing the forging and counterfeiting of foreign bills of exchange, and of foreign promissory notes and orders for the payment of money; and for preventing the counterfeiting of foreign copper money," as in anywise relates to any foreign bill of exchange, or foreign promissory note, undertaking, or order for the payment of money; and an act passed in the forty-fifth year of the same reign, intituled "An Act to alter and extend the provisions of the laws now in force for the punishment of the forgery of bank notes, bills of exchange, and other securities, to every part of Great Britain;" and so much of an act passed in the forty-eighth year of the same reign, intituled "An Act for regulating the issuing and paying off of exchequer bills," as relates to any forgery or other capital felony therein mentioned; and an act passed in the fifty-second year of the same reign, intituled "An Act for the further prevention of the counterfeiting of silver tokens issued by the governor and company of the Bank of England, called dollars, and of silver pieces issued and circulated by the said governor and company, called tokens; and for the further prevention of frauds practised by the imitation of the notes or bills of the said governor and company;" and so much of an act passed in the same year, intituled "An Act for the better regulating and preserving parish and other registers of births, baptisms, marriages, and burials in England," as relates to any felony therein mentioned; and so much of an act passed in the fourth year of the reign of his late Majesty King George the Fourth, intituled "An Act for amending the laws respecting the solemnization of marriages in England, as relates to any person who shall knowingly and wilfully insert in the register book any false entry of any matter relating to any marriage, or shall falsely make, alter, forge, or counterfeit any such entry in the register, or any licence of marriage, or shall utter or publish as true any false, altered, forged, or counterfeited register of marriage, or a copy thereof, or any false, altered, forged, or counterfeited licence of marriage, knowing such register or licence of marriage respectively to be false, altered, forged, or counterfeited, or shall wilfully destroy any register book of marriages, or any part thereof, or shall cause or procure or assist in the commission of any of the said several offences."

The 5th Eliz. c. 14, having been for obvious reasons repealed, the 23rd section of this stat. of 1 Win. IV. c. 66, provides that the punishments imposed by that act, so far as they had been adopted by other acts, should also be repealed—reciting thus:

The punishments of 5 Eliz. c. 14, so far as they have been adopted by other acts, shall be repealed, and other punishments substituted.

Sect. 23. 'And whereas, by an act passed in the fifth year of the reign of Queen Elizabeth, intituled "An Act against forgers of false deeds and writings," it is, amongst other things, provided, that every person convicted of any of the offences first enumerated in that act shall pay to the party grieved his double costs and damages, and shall forfeit to the crown the whole issues of his lands and tenements during his life, and shall also suffer imprisonment during his life: and whereas there are certain acts by which persons convicted of certain offences, mentioned in those acts, are subjected to the same pains and penalties as are imposed by the said act of Queen Elizabeth for the offences first enumerated in that act: and whereas the said act of Elizabeth is hereinafter repealed; and it is expedient to substitute other punishments in lieu of the punishments of that act, so far as the same have been adopted by any other acts; it is therefore enacted, "That every person who shall after the commencement of this act be convicted of any offence which is now subjected, by any act or acts, to the same pains and penalties as are imposed by the said act of Queen Elizabeth for any of the offences first enumerated in that act, shall be guilty of felony, and shall, in lieu of such pains and penalties, be liable, at the discretion of the Court, to be transported beyond the seas for any term not exceeding fourteen years,

nor less than seven years, or to be imprisoned for any term not exceeding three years nor less than one year."

Among the improvements by this statute may be noticed in especial, that section which supplies a very important omission which had previously been felt in the law. We allude to that which provides for the forging or altering in England documents purporting to be made or actually made out of England, and for the forging or uttering in England bills of exchange, promissory notes, bonds, &c. purporting to be payable out of England. The state of the law relative to venue is also judiciously altered, and certain changes are made in the nature of the evidence required. These improvements will be found embodied in the following sections:—

Sec. 24 enacts, "That if any person shall commit any offence against this act, or shall commit any offence of forging or altering any matter whatsoever, or of offering, uttering, disposing of, or putting off any matter whatsoever, knowing the same to be forged or altered, whether the offence in any such case shall be indictable at common law or by virtue of any statute or statutes made or to be made, the offence of every such offender may be dealt with, indicted, tried, and punished, and laid and charged to have been committed, in any county or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that county or place; and every accessory before or after the fact to any such offence, if the same be a felony, and every person aiding, abetting, or counselling the commission of any such offence, if the same be a misdemeanor, may be dealt with, indicted, tried, and punished, and his offence laid and charged to have been committed in any county or place in which the principal offender may be tried."

Sec. 25 enacts, "That in the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death, or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall, on conviction, be liable to be imprisoned for any term not exceeding two years."

Sec. 26 enacts, "That where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, with or without hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for his whole or any portion or portions of such imprisonment, as to the Court in its discretion shall seem meet."

Sec. 27 enacts, "That where any offence punishable under this act shall be committed within the jurisdiction of the admiralty, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other offence committed within that jurisdiction."

Sec. 28 declares and enacts, "That where the having any matter in the custody or possession of any person is in this act expressed to be an offence, any person shall have any such matter in his personal custody or possession, or shall knowingly and wilfully have any such matter in any dwelling house or other building, lodging, apartment, field, or other place, open or closed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or for the use or benefit of another, every such person shall be deemed and taken to have such matter in custody or possession within the meaning of this act; and where the committing any offence with intent to defraud any person whatsoever is made punishable by this act, in every such case the word "person" shall throughout this act be deemed to include his Majesty or any foreign prince, state, or any body corporate, or any company or society of persons not incorporated, or any person or number of persons whatsoever who may be intended to be defrauded by such offence, whether such body corporate, company, society, person, or number of persons shall reside or carry on business in England or elsewhere, in any place or country, whether under

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1 WILL. 4. c. 66.

All forgers and utterers may be tried in the county where they are apprehended or are in custody.

As to principals in the second degree and accessories.

The Court may order hard labour, or solitary confinement for offences against this act.

As to offences committed at sea.

Rule of interpretation as to criminal possession, and as to parties intended to be defrauded.

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1 Will. 4, c. 66.

This act not to extend to Scotland or Ireland;

but to apply to the forging or uttering in England documents purporting to be made, or actually made, out of England;

and to the forging or uttering in England bills of exchange, promissory notes, bonds, &c. purporting to be payable out of England.

Punishment of death.

No forgeries, or other kindred offences, which are now capital, shall continue so, unless expressly made capital by this act.

the dominion of his Majesty or not; and it shall be sufficient in any indictment to name one person only of such company, society, or number of persons, and to allege the offence to have been committed with intent to defraud the person so named, and another or others, as the case may be."

Sect. 29 enacts, "That this act shall not extend to any offence committed in Scotland or Ireland."

Sect. 30 provides, declares, and enacts, "That where the forging or altering any writing or matter whatsoever, or the offering, uttering, disposing of, or putting off any writing or matter whatsoever, knowing the same to be forged or altered, is in this act expressed to be an offence, if any person shall, in that part of the united kingdom called England, forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any such writing or matter, in whatsoever place or country out of England, whether under the dominion of his Majesty or not, such writing or matter may purport to be made or may have been made, and in whatever language or languages the same or any part thereof may be expressed, every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this act, and shall be punishable thereby in the same manner as if the writing or matter had purported to be made or had been made in England; and if any person shall in England forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any bill of exchange or any promissory note for the payment of money, or any indorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, or order for the payment of money, or any deed, bond, or writing obligatory for the payment of money, (whether such deed, bond, or writing obligatory shall be made only for the payment of money, or for the payment of money together with some other purpose), in whatever place or country out of England, whether under the dominion of his Majesty or not, the money payable or secured by such bill, note, undertaking, warrant, order, deed, bond, or writing obligatory may be or may purport to be payable, and in whatever language or languages the same respectively or any part thereof may be expressed, and whether such bill, note, undertaking, warrant, or order be or be not under seal, every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this act, and shall be punishable thereby in the same manner as if the money had been payable or had purported to be payable in England."

This statute of 1 Wm. IV. c. 66, does not, however, as had been expected, abolish the capital punishment. Its only purpose is, according to its title, to reduce into one act all such forgeries as shall henceforth be punished with death, and otherwise to amend the laws relative to forgery.

The 1st section recites, "Whereas several offences relating to forged writings, and to other forged and counterfeit matters, and to false personation, false oaths, false entries, and other false matters, are now by virtue of several statutes punishable with death: and whereas it is expedient that none of those offences shall hereafter be punishable with death, unless the same shall be made punishable with death by this act; and also that the statutes concerning such of those offences, whether punishable with death or otherwise, as may more frequently or seriously affect the interests of his Majesty or his subjects, should be amended, and consolidated into this act:" it is therefore enacted, "That where, by any acts now in force, any person falsely making, forging, counterfeiting, erasing, or altering any matter whatsoever, or uttering, publishing, offering, disposing of, putting away, or making use of any matter whatsoever, knowing the same to be falsely made, forged, counterfeited, erased, or altered, or any person demanding or endeavouring to receive or have any thing, or to do or cause to be done any act, upon or by virtue of any matter whatsoever, knowing such matter to be falsely made, forged, counterfeited, erased, or altered, would, according to the provisions contained in any of the said acts, be guilty of felony, and liable to suffer death as a felon; or where by any

acts now in force any person falsely personating another, or falsely acknowledging any thing in the name of another, or falsely representing any other person than the real party to be such real party, or wilfully making a false entry in any book, account, or document, or in any manner wilfully falsifying any part of any book, account, or document, or wilfully making a transfer of any stock, annuity, or fund, in the name of any person not being the owner thereof, or knowingly taking a false oath, or knowingly making a false affidavit or false affirmation, or demanding or receiving any money or other thing by virtue of any probate or letters of administration, knowing the will on which such probate shall have been obtained to have been false or forged, or knowing such probate or letters of administration to have been obtained by means of any false oath or false affirmation, would, according to the provisions contained in any of the said acts, be guilty of felony, and liable to suffer death as a felon; or where by any acts now in force any person making or using, or knowingly having in his custody or possession, any frame, mould, or instrument for the making of paper, with certain words visible in the substance thereof, or any person making such paper, or causing certain words to appear visible in the substance of any paper, would, according to the provisions contained in any of the said acts, be guilty of felony, and liable to suffer death as a felon; then, and in each of the several cases aforesaid, if any person shall, after the commencement of this act, be convicted of any such felony as is hereinbefore mentioned, or of aiding, abetting, counselling, or procuring the commission thereof, such person shall not suffer death for the same, unless the same shall be made punishable with death by this act; and if the same shall not be made punishable with death by this act, in such case every person who shall, after the commencement of this act, be convicted of any such felony, or of aiding, abetting, counselling, or procuring the commission thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years: provided always, that nothing herein contained shall affect or alter any acts relating to the coin of this realm, or to any coin of any other realm lawfully current within this realm."

We shall here set out the sections which have consolidated all the capital enactments; they are as follows, and may be advantageously contrasted with the previous code.

Sect. 2 enacts, "That if any person shall forge or counterfeit, or shall utter, knowing the same to be forged or counterfeited, the great seal of the united kingdom, his Majesty's privy seal, any privy signet of his Majesty, his Majesty's royal sign manual, any of his Majesty's seals appointed by the twenty-fourth article of the union to be kept, used, and continued in Scotland, the great seal of Ireland, or the privy seal of Ireland, every such offender shall be guilty of high treason, and shall suffer death accordingly: provided always, that nothing contained in an act passed in the seventh year of the reign of King William the Third, intituled 'An Act for regulating of trials in cases of treason and misprision of treason,' or in an act passed in the seventh year of the reign of Queen Anne, intituled 'An Act for improving the union of the two kingdoms,' shall extend to any indictment, or to any proceedings thereupon, for any of the treasons hereinbefore mentioned.

Sect. 3 enacts, "That if any person shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any exchequer bill or exchequer debenture, or any indorsement on or assignment of any exchequer bill or exchequer debenture, or any bond under the common seal of the united company of merchants of England trading to the East Indies, commonly called an East India bond, or any indorsement on or assignment of any East India bond, or any note or bill of exchange of the governor and company of the Bank of England, commonly called a bank note, a bank bill of exchange, or a bank post bill, or any indorsement on or assignment of any bank note, bank bill of exchange, or bank post bill, or

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1 Will. 4, c. 66.

All forgeries heretofore capital, and not declared so by this act, shall be punished with transportation.

Saving of acts relating to coin.

Forging the great seal, privy seal, privy signet, royal sign manual, &c. treason, and capital.

Forging an exchequer bill, exchequer debenture, East India bond, bank note, will, bill of exchange, promissory note, or warrant for payment of money, capital.



**FORGERY BY  
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1 III. 4, c. 66.

If any instrument, however designated, is in law a bill of exchange, &c., the forger of such instrument may be indicted under this act.

Making false entries in the books in which the accounts of public stock are kept; or transfer of public stock in any other name than the true owner's; capital.

Forging a transfer of any public stock or of certain other stock; power of attorney to transfer the same, or to receive dividends thereon; transfer of stock or receipt of dividends by false personation; capital.

any will, testament, codicil, or testamentary writing, or any bill of exchange or any promissory note for the payment of money, or any indorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, or order for the payment of money, with intent, in any of the cases aforesaid, to defraud any person whatsoever, every such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon."

Sect. 4 declares and enacts, "That where by any act now in force any person is made liable to the punishment of death for forging or altering, or for offering, uttering, disposing of, or putting off, knowing the same to be forged or altered, any instrument or writing designated in such act by any special name or description, and such instrument or writing, however designated, is in law a will, testament, codicil, or testamentary writing, or a bill of exchange or a promissory note for the payment of money, or an indorsement on or assignment of a bill of exchange or promissory note for the payment of money, or an acceptance of a bill of exchange, or an undertaking, warrant, or order for the payment of money, within the true intent and meaning of this act, in every such case the person forging or altering such instrument or writing, or offering, uttering, disposing of, or putting off such instrument or writing, knowing the same to be forged or altered, may be indicted as an offender against this act, and punished with death accordingly."

Sect. 5 enacts, "That if any person shall wilfully make any false entry in, or wilfully alter any word or figure in, any of the books of account kept by the governor and company of the Bank of England, or by the governor and company of merchants of Great Britain trading to the South Seas and other parts of America, and for encouraging the fishery, commonly called the South Sea Company, in which books the accounts of the owners of any stock, annuities, or other public funds, which now are or hereafter may be transferrable at the Bank of England or at the South Sea House, shall be entered and kept, or shall in any manner wilfully falsify the accounts of such owners in any of the said books, with intent in any of the cases aforesaid to defraud any person whatsoever; or if any person shall wilfully make any transfer of any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferrable at the Bank of England or at the South Sea House, in the name of any person not being the true and lawful owner of such share or interest, with intent to defraud any person whatsoever; every such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon."

Sect. 6 enacts, "That if any person shall forge or alter, or shall utter, knowing the same to be forged or altered, any transfer of any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferrable at the Bank of England or at the South Sea House, or of or in the capital stock of any body corporate, company, or society which now is or hereafter may be established by charter or act of Parliament, or shall forge or alter, or shall utter, knowing the same to be forged or altered, any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock as is hereinbefore mentioned, or to receive any dividend payable in respect of any such share or interest, or shall demand or endeavour to have any such share or interest transferred, or to receive any dividend payable in respect thereof, by virtue of any such forged or altered power of attorney or other authority, knowing the same to be forged or altered, with intent in any of the several cases aforesaid to defraud any person whatsoever; or if any person shall falsely and deceitfully personate any owner of any such share, interest or dividend as aforesaid, and thereby transfer any share or interest belonging to such owner, or thereby receive any money due to such owner as if such person were the true and lawful owner; every such offender shall be guilty of felony, and, being convicted thereof, shall suffer death as a felon."

Before concluding this title we shall have a few remarks to make, not

perhaps at the present time irrelevant, on the great question of penal jurisprudence, which, since the introduction of this measure, has been so warmly discussed by the two great branches of our legislature, and concerning which they are unfortunately at variance. In the mean time we shall insert the remainder of this act, an act doubtless in very many respects advantageous, and for which—as for many other improvements in the criminal code, embodied in the present work—thanks are due to Sir Robert Peel. On this subject, however, it ought never to be forgotten, that gratitude is preeminently due to a highly enlightened and not less virtuous man, Sir Samuel Romilly, who, by his unwearied and benevolent exertions, gave to public opinion an impulse which will assuredly, at no distant period, establish that enlightened system of justice, for which, even in his life time, he laboured not altogether in vain.

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The remainder of the act is as follows:—

Sect. 7 enacts, “That if any person shall falsely and deceitfully personate any owner of any share or interest of or in any stock, annuity, or other public fund which now is or hereafter may be transferrable at the Bank of England, or at the South Sea House, or any owner of any share or interest of or in the capital stock of any body corporate, company, or society, which now is or hereafter may be established by charter or act of Parliament, or any owner of any dividend payable in respect of any such share or interest as aforesaid, and shall thereby endeavour to transfer any share or interest belonging to any such owner, or thereby endeavour to receive any money due to any such owner, as if such offender were the true and lawful owner, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years.”

1 Will. 4, c. 66.

Personating the owner of any public stock or certain other stock, and endeavouring to transfer or to receive the dividends; transportation for life, &c.

Sect. 8 enacts, “That if any person shall forge the name or hand-writing of any person as or purporting to be a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock as is hereinbefore mentioned, or to receive any dividend payable in respect of any such share or interest, or shall utter any such power of attorney or other authority, with the name or hand-writing of any person forged thereon as an attesting witness, knowing the same to be forged, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years nor less than one year.”

Forging the attestation to any power of attorney for transfer of stock, &c., transportation for seven years, &c.

Sect. 9 enacts, “That if any clerk, officer, or servant of, or other person employed or intrusted by, the governor and company of the Bank of England, or the governor and company of merchants commonly called the South Sea Company, shall knowingly make out or deliver any dividend warrant for a greater or less amount than the person or persons on whose behalf such dividend warrant shall be made out is or are entitled to, with intent to defraud any person whatsoever, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years nor less than one year.”

Clerks of the bank wilfully making out dividend warrants for a greater or less sum than what is really due, transportation for seven years, &c.

Sect. 10 enacts, “That if any person shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any deed, bond, or writing obligatory, or any court roll or copy of any court roll relating to any copyhold or customary estate, or any acquittance or receipt either for money or goods, or any accountable receipt either for money or goods, or for any note, bill, or other security for payment of money, or any warrant, order, or request for the delivery or transfer of goods, or for the delivery of any note, bill, or other security for payment of money, with intent to defraud any person whatsoever, every such offender shall be guilty

Forging a deed, bond, receipt for money or goods, or an accountable receipt, or an order for delivery of goods; transportation for life, &c.

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41 Geo. 3, c. 57.

43 Geo. 3, c. 139,  
s. 1 & 2.

45 Geo. 3, c. 89.

48 Geo. 3, c. 1, s. 9.

52 Geo. 3, c. 138.

52 Geo. 3, c. 146,  
s. 14.

4 Geo. 4, c. 76, s.  
29.

intituled "An Act for the more effectually preventing the forgery of bank notes, bank bills of exchange, and bank post bills;" and an act passed in the same year, intituled "An Act for the better prevention of the forgery of the notes and bills of exchange of persons carrying on the business of bankers;" and so much of an act passed in the forty-third of the same reign, intituled "An Act for preventing the forging and counterfeiting of foreign bills of exchange, and of foreign promissory notes and orders for the payment of money; and for preventing the counterfeiting of foreign copper money," as in anywise relates to any foreign bill of exchange, or foreign promissory note, undertaking, or order for the payment of money; and an act passed in the forty-fifth year of the same reign, intituled "An Act to alter and extend the provisions of the laws now in force for the punishment of the forgery of bank notes, bills of exchange, and other securities, to every part of Great Britain;" and so much of an act passed in the forty-eighth year of the same reign, intituled "An Act for regulating the issuing and paying off of exchequer bills," as relates to any forgery or other capital felony therein mentioned; and an act passed in the fifty-second year of the same reign, intituled "An Act for the further prevention of the counterfeiting of silver tokens issued by the governor and company of the Bank of England, called dollars, and of silver pieces issued and circulated by the said governor and company, called tokens; and for the further prevention of frauds practised by the imitation of the notes or bills of the said governor and company;" and so much of an act passed in the same year, intituled "An Act for the better regulating and preserving parish and other registers of births, baptisms, marriages, and burials in England," as relates to any felony therein mentioned; and so much of an act passed in the fourth year of the reign of his late Majesty King George the Fourth, intituled "An Act for amending the laws respecting the solemnization of marriages in England, as relates to any person who shall knowingly and wilfully insert in the register book any false entry of any matter relating to any marriage, or shall falsely make, alter, forge, or counterfeit any such entry in the register, or any licence of marriage, or shall utter or publish as true any false, altered, forged, or counterfeited register of marriage, or a copy thereof, or any false, altered, forged, or counterfeited licence of marriage, knowing such register or licence of marriage respectively to be false, altered, forged, or counterfeited, or shall wilfully destroy any register book of marriages, or any part thereof, or shall cause or procure or assist in the commission of any of the said several offences."

The 5th Eliz. c. 14, having been for obvious reasons repealed, the 23rd section of this stat. of 1 Wm. IV. c. 66, provides that the punishments imposed by that act, so far as they had been adopted by other acts, should also be repealed—reciting thus:

The punishments of 5 Eliz. c. 14, so far as they have been adopted by other acts, shall be repealed, and other punishments substituted.

Sect. 23. 'And whereas, by an act passed in the fifth year of the reign of Queen Elizabeth, intituled "An Act against forgers of false deeds and writings," it is, amongst other things, provided, that every person convicted of any of the offences first enumerated in that act shall pay to the party grieved his double costs and damages, and shall forfeit to the crown the whole issues of his lands and tenements during his life, and shall also suffer imprisonment during his life: and whereas there are certain acts by which persons convicted of certain offences, mentioned in those acts, are subjected to the same pains and penalties as are imposed by the said act of Queen Elizabeth for the offences first enumerated in that act: and whereas the said act of Elizabeth is hereinafter repealed; and it is expedient to substitute other punishments in lieu of the punishments of that act, so far as the same have been adopted by any other acts;' it is therefore enacted, "That every person who shall after the commencement of this act be convicted of any offence which is now subjected, by any act or acts, to the same pains and penalties as are imposed by the said act of Queen Elizabeth for any of the offences first enumerated in that act, shall be guilty of felony, and shall, in lieu of such pains and penalties, be liable, at the discretion of the Court, to be transported beyond the seas for any term not exceeding fourteen years,

nor less than seven years, or to be imprisoned for any term not exceeding three years nor less than one year."

Among the improvements by this statute may be noticed in especial, that section which supplies a very important omission which had previously been felt in the law. We allude to that which provides for the forging or altering in England documents purporting to be made or actually made out of England, and for the forging or uttering in England bills of exchange, promissory notes, bonds, &c. purporting to be payable out of England. The state of the law relative to venue is also judiciously altered, and certain changes are made in the nature of the evidence required. These improvements will be found embodied in the following sections:—

Sect. 24 enacts, "That if any person shall commit any offence against this act, or shall commit any offence of forging or altering any matter whatsoever, or of offering, uttering, disposing of, or putting off any matter whatsoever, knowing the same to be forged or altered, whether the offence in any such case shall be indictable at common law or by virtue of any statute or statutes made or to be made, the offence of every such offender may be dealt with, indicted, tried, and punished, and laid and charged to have been committed, in any county or place in which he shall be apprehended or be in custody, as if his offence had been actually committed in that county or place; and every accessory before or after the fact to any such offence, if the same be a felony, and every person aiding, abetting, or counselling the commission of any such offence, if the same be a misdemeanor, may be dealt with, indicted, tried, and punished, and his offence laid and charged to have been committed in any county or place in which the principal offender may be tried."

Sect. 25 enacts, "That in the case of every felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death, or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act shall, on conviction, be liable to be imprisoned for any term not exceeding two years."

Sect. 26 enacts, "That where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, with or without hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, as to the Court in its discretion shall seem meet."

Sect. 27 enacts, "That where any offence punishable under this act shall be committed within the jurisdiction of the admiralty, the same shall be dealt with, inquired of, tried, and determined in the same manner as any other offence committed within that jurisdiction."

Sect. 28 declares and enacts, "That where the having any matter in the custody or possession of any person is in this act expressed to be an offence, any person shall have any such matter in his personal custody or possession, or shall knowingly and wilfully have any such matter in any dwelling house or other building, lodging, apartment, field, or other place, open or closed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or for the use or benefit of another, every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this act; and where the committing any offence with intent to defraud any person whatsoever is made punishable by this act, in every such case the word "person" shall throughout this act be deemed to include his Majesty or any foreign prince, state, or any body corporate, or any company or society of persons not incorporated, or any person or number of persons whatsoever who may be intended to be defrauded by such offence, whether such body corporate, company, society, person, or number of persons shall reside or carry on business in England or elsewhere, in any place or country, whether under

**FORGERY BY  
STATUTE.**

1 WILL. 4. c. 66.

All forgers and utterers may be tried in the county where they are apprehended or are in custody.

As to principals in the second degree and accessories.

The Court may order hard labour, or solitary confinement for offences against this act.

As to offences committed at sea.

Rule of interpretation as to criminal possession, and as to parties intended to be defrauded.

**FORGERY BY  
STATUTE.**

1 Will. 4, c. 66.

This act not to extend to Scotland or Ireland; but to apply to the forging or uttering in England documents purporting to be made, or actually made, out of England;

and to the forging or uttering in England bills of exchange, promissory notes, bonds, &c. purporting to be payable out of England.

Punishment of death.

No forgeries, or other kindred offences, which are now capital, shall continue so, unless expressly made capital by this act.

the dominion of his Majesty or not; and it shall be sufficient in any indictment to name one person only of such company, society, or number of persons, and to allege the offence to have been committed with intent to defraud the person so named, and another or others, as the case may be."

Sect. 29 enacts, "That this act shall not extend to any offence committed in Scotland or Ireland."

Sect. 30 provides, declares, and enacts, "That where the forging or altering any writing or matter whatsoever, or the offering, uttering, disposing of, or putting off any writing or matter whatsoever, knowing the same to be forged or altered, is in this act expressed to be an offence, if any person shall, in that part of the united kingdom called England, forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any such writing or matter, in whatsoever place or country out of England, whether under the dominion of his Majesty or not, such writing or matter may purport to be made or may have been made, and in whatever language or languages the same or any part thereof may be expressed, every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this act, and shall be punishable thereby in the same manner as if the writing or matter had purported to be made or had been made in England; and if any person shall in England forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any bill of exchange or any promissory note for the payment of money, or any indorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, or order for the payment of money, or any deed, bond, or writing obligatory for the payment of money, (whether such deed, bond, or writing obligatory shall be made only for the payment of money, or for the payment of money together with some other purpose), in whatever place or country out of England, whether under the dominion of his Majesty or not, the money payable or secured by such bill, note, undertaking, warrant, order, deed, bond, or writing obligatory may be or may purport to be payable, and in whatever language or languages the same respectively or any part thereof may be expressed, and whether such bill, note, undertaking, warrant, or order be or be not under seal, every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this act, and shall be punishable thereby in the same manner as if the money had been payable or had purported to be payable in England."

This statute of 1 Wm. IV. c. 66, does not, however, as had been expected, abolish the capital punishment. Its only purpose is, according to its title, to reduce into one act all such forgeries as shall henceforth be punished with death, and otherwise to amend the laws relative to forgery.

The 1st section recites, 'Whereas several offences relating to forged writings, and to other forged and counterfeit matters, and to false personation, false oaths, false entries, and other false matters, are now by virtue of several statutes punishable with death: and whereas it is expedient that none of those offences shall hereafter be punishable with death, unless the same shall be made punishable with death by this act; and also that the statutes concerning such of those offences, whether punishable with death or otherwise, as may more frequently or seriously affect the interests of his Majesty or his subjects, should be amended, and consolidated into this act: it is therefore enacted, "That where, by any acts now in force, any person falsely making, forging, counterfeiting, erasing, or altering any matter whatsoever, or uttering, publishing, offering, disposing of, putting away, or making use of any matter whatsoever, knowing the same to be falsely made, forged, counterfeited, erased, or altered, or any person demanding or endeavouring to receive or have any thing, or to do or cause to be done any act, upon or by virtue of any matter whatsoever, knowing such matter to be falsely made, forged, counterfeited, erased, or altered, would, according to the provisions contained in any of the said acts, be guilty of felony, and liable to suffer death as a felon; or where by any

Sect. 20 enacts, "That if any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any register of baptisms, marriages, or burials, which hath been or shall be made or kept by the rector, vicar, curate, or officiating minister of any parish, district-parish, or chapelry, in England, any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter in any such register any entry of any matter relating to any baptism, marriage, or burial; or shall utter any writing as and for a copy of an entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such writing to be false, forged, or altered; or if any person shall utter any entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such entry to be false, forged, or altered, or shall utter any copy of such entry, knowing such entry to be false, forged, or altered, or shall wilfully destroy, deface, or injure, or cause or permit to be destroyed, defaced, or injured, any such register or any part thereof; or shall forge or alter, or shall utter, knowing the same to be forged or altered, any licence of marriage; every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years nor less than two years."

Sect. 21 provides and enacts, "That no rector, vicar, curate, or officiating minister of any parish, district-parish, or chapelry, who shall discover any error in the form or substance of the entry in the register of any baptism, marriage, or burial respectively by him solemnized, shall be liable to any of the penalties herein mentioned, if he shall, within one calendar month after the discovery of such error, in the presence of the parent or parents of the child baptized, or of the parties married, or in the presence of two persons who shall have attended at any burial, or, in the case of the death or absence of the respective parties aforesaid, then in the presence of the churchwardens or chapelwardens, correct the entry which shall have been found erroneous, according to the truth of the case, by entry in the margin of the register wherein such erroneous entry shall have been made, without any alteration or obliteration of the original entry, and shall sign such entry in the margin, and add to such signature the day of the month and year when such correction shall be made; and such correction and signature shall be attested by the parties in whose presence the same are directed to be made as aforesaid: provided also, that in the copy of the register which shall be transmitted to the registrar of the diocese, the said rector, vicar, curate, or officiating minister, shall certify the corrections so made by him as aforesaid."

Sect. 22. 'And whereas copies of the registers of baptisms, marriages, and burials, such copies being signed and verified by the written declaration of the rector, vicar, curate, or officiating minister of every parish, district-parish, and chapelry in England, where the ceremonies of baptism, marriage, and burial, may lawfully be performed, are directed by law to be made and transmitted to the registrar of the diocese within which such parish, district-parish, or chapelry, may be situated;' it is therefore enacted, "That if any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any copy of any register so directed to be transmitted as aforesaid, any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter, or shall utter, knowing the same to be forged or altered, any copy of any register so directed to be transmitted as aforesaid, or shall knowingly and wilfully sign or verify any copy of any register so directed to be transmitted as aforesaid, which copy shall be false in any part thereof, knowing the same to be false, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be transported beyond the seas for the term of seven years, or to be imprisoned for any term not exceeding two years nor less than one year."

In the remarks we are about to make before concluding this subject, we would not willingly derogate from the unequivocal and decided improvements effected by the statute set out as above. It clears away from the pages

**FORGERY BY  
STATUTE.**

1 WILL. 4, c. 66.

Inserting any false entry in any register of baptisms, marriages, or burials; forging or altering any such entry; uttering any false or forged entry; destroying, &c., the register; forging any licence of marriage; transportation for life, &c.

Rector, &c., not liable to any penalty for correcting, in the mode prescribed, accidental errors in the register.

Inserting in any copy of a register of baptisms, marriages, or burials, transmitted to the registrar, any false entry; or forging or verifying any copy knowing it to be false; transportation for seven years, &c.

Concluding remarks.

FORGERY BY  
STATUTE.

of the statute books much that had disgraced them; it consolidates a great number of acts and reduces them into one; it describes and limits more satisfactorily than hitherto, the nature of the offence; supplies certain important omissions; alters advantageously the state of the law relative to venue; makes certain changes in the nature of the evidence required, and excepts a certain class of offences from the punishment of death. So far this is acknowledged improvement, and yet we are justified in saying that this statute is deficient in that matter, which, beyond every thing else, society had expected from it.

Certain offences, we have said, are excepted therein from the punishment of death; but in those particular instances society had already refused to prosecute for an offence attended with such a punishment. More than this had been demanded. Public feeling had long shewn itself strongly opposed to the punishment of death in any case of forgery, and it had become a question of principle, not of degree. They had begun to feel that in fact it was a question about which there was little need to dispute or argue; the end of all punishment is public utility,—and of two modes of punishment, they had a right to demand that most striking in point of public utility. Sir Robert Peel himself avowed, that the *certainty* and not the fluctuation of punishment, should be the principle of a criminal law; and it had long been clear to the dullest sense, that, whilst this extreme penalty existed, there could be no possible *certainty* of punishment. They had asked, therefore, justly, for a repeal of that obnoxious law; for they felt the extraordinary truth of the remark, that “where the consequences of crimes are problematical, additional force is given to the passions.” Few will deny that they had a right to ask for the repeal of a penalty so hurtful to the interests of public reparation; for nothing is more certain, than that society can never profit by laws which the sense and feeling of its members revolt from enforcing; and nothing so obvious as that, to effect their object, criminal laws *must* be in unison with public feeling. It is matter of regret, then, that the framer of the act did not surrender, in this particular instance, his own opinion to the general views of mere policy.

In what way, it may be asked, are we to suppose juries, in a capital case of forgery, will feel, after having heard the sense of one branch of the legislature expressed so decidedly—after having seen the tables of the House of Commons covered with petitions from bankers, and men chiefly interested in the prevention of this crime, praying for the abolition of the punishment of death as a means of such prevention? We think the question easy of answer; they will catch at the slightest, the most trifling pretence, on which to found an acquittal—they will perjure themselves by a “pious” verdict—and justice must be defeated. The maxim, *metus ad omnes, pavor ad paucos*, such a favourite with our English legislators, is nevertheless a bad one. We oppose to it a remark made by a certain magistrate, who, though not an eminent lawyer, will be recognized as one most deeply versed in human nature. Henry Fielding, in his *Treatise on the Causes of the Increase of Crime*, observes—that a “single pardon excites a greater degree of hope in the minds of criminals, than twenty executions do of fear.” This is too clearly evident from the experience of facts, and facts are the best arguments.

Thus then the question stands:—A law like the present can never be efficacious, for there is no agreement between that law and the general feeling of the society subject to its influence. They wish for the remission of this punishment, even as a means of creating a new and safer protection to their property. They have demanded it, not as a speculative good, but as a palpable practical advantage, recommended by common justice and common humanity. We are reminded of the words wherewith Cicero once exhorted the senate of Rome, but which our noble senators would meet, we suppose, with derision: “*Nolite Quirites hanc sævitiam diutius pati; quæ non modo tot cives atrocissime sustulit, sed humanitatem ipsam adimet consuetudine incommodorum.*”

III. *Forms, List of.*

COMMITMENT for Forging and Uttering a Bank Note, (No. 1).

THE like for having a Forged Note in his Possession, (No. 2).

THE like for Forging a Bill of Exchange, (No. 3).

THE like for Uttering a Forged Bill of Exchange, (No. 4).

THE like for Forging a Banker's Draft, (No. 5).

THE like for Forging a Receipt, (No. 6).

THE like for Forging a Will, (No. 7).

THE like for Uttering a Forged Will, (No. 8).

THE like for Forging a Bond, (No. 9).

THE like for Uttering a Forged Bond, (No. 10).

INDICTMENT for Forgery, general Form of, (No. 11).

## (No. 1).

Commencement as usual, as *ante*, p. 11.]—on &c., at &c., feloniously did falsely make, forge, and counterfeit a certain bank note, to wit, a bank note for the payment of pounds, [or, divers bank notes], and the said forged and counterfeited bank note then feloniously did offer, utter, dispose of, and put off, he the said C. D. then well knowing the same to be forged and counterfeited, with intent to defraud the Governor and Company of the Bank of England; against the form of the statute in that case made and provided. And you the said keeper, &c. [As usual, as *ante*, p. 11, to the end].

Commitment for forging and uttering a bank note (a).

## (No. 2).

Commencement as usual, as *ante*, p. 11.]—on &c., at &c., in the said county, feloniously, knowingly, and wittingly, and without lawful excuse, had in his possession a certain forged and counterfeited bank note, to wit, a bank note for the payment of pounds, [or, divers forged and counterfeited bank notes], he, the said C. D., well knowing the said bank note, [or, several bank notes] to be forged and counterfeited; against the form of the statute in that case made and provided. And you the said keeper, &c. [As usual, as *ante*, p. 11, to the end].

Commitment for having a forged bank note in his possession (b).

## (No. 3).

Commencement as usual, as *ante*, p. 11.]—on &c., at &c., in the said county, feloniously did falsely make, forge, and counterfeit, the acceptance of and upon a certain bill of exchange in writing, for the payment of money, purporting to be the acceptance of one A. B., [or, the indorsement of and upon a certain bill of exchange in writing, for the payment of money, purporting to be the indorsement of one C. D.], with intention to defraud one A. B.; against the form of the statute in that case made and provided. And you the said keeper, &c. [As usual, as *ante*, p. 11, to the end].

Commitment for forging a bill of exchange (c).

## (No. 4).

Commencement as usual, as *ante*, p. 11.]—on &c., at &c., feloniously did offer, utter, dispose of, and put off, a certain false, forged, and counterfeited acceptance of " [as in the form (No. 3), *supra*], with intention to defraud one A. B., he the said D. then well knowing the said acceptance [or, indorsement] to be false, forged, and counterfeited; against the form of the statute in that case made and provided. And you the said keeper, &c. [As usual, as *ante*, p. 11, to the end].

Commitment for uttering a forged bill of exchange (d).

(a) See *ante*, p. 833.  
(b) See *ante*, p. 836.

(c) See *ante*, p. 833.  
(d) See *ante*, p. 833.



## FORMS.

Commitment for  
forging a banker's  
draft (a).

(No. 5).  
Commencement as usual, as *ante*, p. 11.]—on &c., at &c., in the said county, feloniously did falsely make, forge, and counterfeit a certain warrant and order for payment of money, commonly called a check on a banker, purporting to be the order or draft of one A. B. upon Messieurs                      and Co., bankers, with intent to defraud one A. B.; against the form of the statute in that case made and provided. And you the said keeper, &c. [As usual, as *ante*, p. 11, to the end].

Commitment for  
forging a receipt  
(b).

(No. 6).  
Commencement as usual, as *ante*, p. 11.]—on &c., at &c., feloniously did falsely make, forge, and counterfeit, a certain acquittance and receipt for money, purporting to be the receipt of one A. B., with intention to defraud the said A. B.; against the form of the statute in that case made and provided. And you the said keeper, &c. [As usual, as *ante*, p. 11, to the end].

Commitment for  
forging a will (c).

(No. 7).  
Commencement as usual, as *ante*, p. 11.]—on &c., at &c., feloniously did falsely make, forge, and counterfeit a certain will and testament, purporting to be the last will and testament of one A. B., with intention to defraud one E. B.; against the form of the statute in that case made and provided. And you the said keeper, &c. [As usual, as *ante*, p. 11, to the end].

Commitment for  
uttering a forged  
will (d).

(No. 8).  
Commencement as usual, as *ante*, p. 11.]—on &c., at &c., feloniously did offer, utter, dispose of, and put off, a certain false, forged, and counterfeited will, purporting to be the last will and testament of one A. B., with intention to defraud one E. B., he the said C. D. then well knowing the said will to be false, forged, and counterfeited; against the form of the statute in that case made and provided. And you the said keeper, &c. [As usual, as *ante*, p. 11, to the end].

Commitment for  
forging a bond (e).

(No. 9).  
Commencement as usual, as *ante*, p. 11.]—on &c., at &c., feloniously did falsely make, forge, and counterfeit a certain bond for the payment of money, purporting to have been signed, sealed, and executed by one A. B., with intention to defraud the said A. B.; against the form of the statute in that case made and provided. And you the said keeper, &c. [As usual, as *ante*, p. 11, to the end].

Commitment for  
uttering a forged  
bond.

(No. 10).  
Commencement as usual, as *ante*, p. 11.]—on &c., at &c., feloniously did offer, utter, dispose of, and put off a certain false, forged, and counterfeited bond, for the payment of money, purporting to have been signed, sealed, and executed by one A. B., with intention to defraud the said A. B., he the said C. D. then well knowing the said bond to be false, forged, and counterfeited; against the form of the statute in that case made and provided. And you the said keeper, &c. [As usual, as *ante*, p. 11, to the end].

Indictment for  
forgery generally  
(f).

(No. 11).  
— THE jurors for our lord the King upon their oath present, that C. D., late of &c., [gentleman], on &c., at &c., feloniously did falsely make, forge, and counterfeit, and did cause and procure to be falsely made, forged, and counterfeited, and did willingly act and assist in the false making, forging, and counterfeiting a certain [name the instrument]; which said false, forged, and counterfeited [name it again]

(a) See *ante*, p. 833.

(b) See *ante*, p. 835.

(c) See *ante*, p. 833.

(d) See *ante*, p. 833.

(e) See *ante*, p. 835.

(f) See a variety of forms *Archbold's*  
C. L. 226, &c.

is as follows, that is to say—[set out the instrument verbatim], with intention to defraud one A. B.; against the form of the statute in such case made and provided, and against the peace of our lord the King, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said C. D. afterwards, to wit, on the day and year aforesaid, at &c., aforesaid, feloniously did offer, utter, dispose of, and put off, a certain other false, forged, and counterfeited, [name the instrument], which said last-mentioned false, forged, and counterfeited [name it again], is as follows, that is to say—[set out the instrument verbatim]; with intention to defraud the said A. B., (he the said C. D., at the time he so offered, uttered, disposed, and put off the said last-mentioned false, forged, and counterfeited [name the instrument] as aforesaid, then and there well knowing the same to be false, forged, and counterfeited); against the form of the statute in such case made and provided, and against the peace of our lord the King, his crown and dignity (a).

(a) In Mr. Archbold's work on the Criminal Law, 2nd ed. 227, there is the greater part of the following note on the form of an indictment for forgery:—

This is not intended as a general precedent, to serve in all cases of forgery; because the form, in each particular case, must depend upon the statute on which the indictment is framed. But with the assistance of it, and upon an attentive consideration of the operative words in the statute creating the forgery, the pleader can find no difficulty in framing an indictment in any case not particularly mentioned hereafter in this section.

The forgery should, in prudence, be alleged in the words of the statute on which the indictment is framed. But if the forgery consist of the alteration of a true instrument, the alteration may either be specially alleged (and this mode is advisable, at least in one set of counts) even where the word "alter" is not in the statute; *R. v. Elsworth*, 2 East, P. C. 986, 988; or the alteration may be given in evidence under, and will support, a count charging the forgery of the entire instrument.

Care must be taken to set out the forged instrument, in words and figures, correctly; the slightest variance will be fatal, and will entitle the defendant to an acquittal. An indictment for forgery at common law must state what the instrument is in respect of which the forgery was committed, and how the party forging it had authority to sign it. *R. v. Wilcox*, R. & R. 50. Where the indictment, in setting out the forged instrument, also set out the attestation at the foot of it, as part of the instrument, but appeared in evidence, that when the defendant subscribed the instrument, the attestation was not written on it; it was holden, nevertheless, to be no variance. *v. Dunn*, 3 East, P. C. 976. Where a forged instrument is actually within the meaning of the statute on which you end framing your indictment, but is not sufficiently appear to be so on the face of it, you must not only set out

a literal copy of it in the indictment, but you must also add such averments of extrinsic facts as may be necessary to make it appear, upon the face of the record, that the forged instrument is one of those intended by, and described in, the statute. See *R. v. Ravencroft*, R. & R. 161. Thus, for instance, where, by the usage of a public office, the bare signature of a party upon a navy bill operated as a receipt, an indictment for forging such a receipt, setting forth the navy bill and indorsement, and charging the defendant with having forged "a certain receipt for money, to wit, the sum of twenty-five pounds, mentioned and contained in the said paper, called a navy bill, which forged receipt was as follows, that is to say—'William Thornton, William Hunter,'" was holden bad, because it did not shew, by proper averments, that these signatures imported a receipt. *R. v. Hunter*, 2 Leach, 624; 2 East, P. C. 928. In like manner, it was holden, that an indictment for forging the word "settled," at the bottom of a bill, must shew, by proper averments, that it is a receipt. *R. v. Thompson*, 2 Leach, 910, and see *Arch. C. L.* 29. But where, upon an indictment for forging a receipt, it appeared that the receipt was written at the foot of an account, and the indictment stated the receipt thus, "8 March, 1773. Received the contents above by me. Stephen Withers," without setting out the account at the foot of which it was written, it was holden sufficient. *R. v. Testick*, 1 East, 181, n. In *R. v. Burton*, R. & M. C. C. 141, it was held, that an indictment for forging or uttering a receipt in the name of T. S. should shew that T. S. was a person to whom the money might have been paid. In an indictment for forging an instrument in a foreign language—in this case, a Prussian treasury note—a translation of the note must be set forth; and, for this omission, the judgment was arrested. *R. v. Goldstein*, 3 B. & B. 201; R. & R. 473, S. C.

The intent to defraud is described as

**Fornication.** See *Lechewiness*, Vol. III.; *Disorderly House*, Vol. I.

**Fortune Telling, Cheats by,** see *Cheat*, Vol. I. See also *Egyptians, ante*, Vol. II.

## Frame-Work Knitters.

[6 Geo. III. c. 29.]

AS to the offence of frame-breaking, see 7 & 8 Geo. IV. c. 30, s. 3, *Malignant Injuries to Property*, Vol. III. p. 727.

Pieces to be marked.

By stat. 6 Geo. III. c. 29, s. 1, all frame-work knitted pieces, and stockings made of thread, cotton, worsted, or yarn, or any mixture of all or any of the said materials, or of any other materials, except such as shall be made of silk only, which shall contain three or more threads, shall be marked with the same number of ileet-holes, and no more, as there are threads contained in each piece or pair; and such ileet-holes shall be made distinctly in one direct line, or in the same course, and shall not exceed the distance of three inches from the two extreme ileet-holes; and no such ileet-holes shall be made or placed within the distance of four inches of any letter, figure, mark, or other device, which shall be put or woven in any such goods or manufactures; and all such ileet-holes shall be made within four inches of the top or end of every such piece or pair; and no ileet-hole, or imitation thereof, shall be made or put in any frame-work knitted piece or pair of stockings, upon any account whatsoever, except as hereinbefore directed.

Sect. 2. Nothing herein shall prevent any manufacturers from using remnants, or materials of any sort, in the welts and tops of stockings only, at any distance not exceeding three inches from the top, although the same shall not contain so great a number of threads as are contained in the legs of such stockings.

Penalty on not marking.

Sect. 3. If any master frame-work knitter or master hosier, or any other person, shall make or work, or cause or procure to be made or wrought, any frame-work knitted goods of any of the materials aforesaid, or any mixture thereof (except such as shall be made of silk only), without being so

an ingredient of the offence, in all the statutes upon the subject of forgery; and must, consequently, be charged in the indictment. Where the intent mentioned in the statute is, to defraud any particular corporation, &c., it must of course be so laid in the indictment. But where the intent is described generally, to defraud any person or persons, it is prudent, in the indictment, to charge the offence, in different counts, to have been committed with intent to defraud each of the persons, partnerships, or corporations, that might have been defrauded by it if the forgery had succeeded; as, for instance, if the names of drawer, acceptor,

and indorser to a bill of exchange be forged, the indictment may charge it, in different sets of counts, to have been forged and uttered with intent to defraud the drawer, acceptor, indorser, and person to whom it was uttered, respectively.

As to the second count, for knowingly uttering the forged instrument, it is usual and prudent to add it in every case, lest the prosecutor should fail in proof of the actual forgery. But the forgery is of itself an offence, although the forged instrument have never been uttered. See *R. v. Elliot*, 1 *Lewch*, 173; and see 1 *Id.* 987.

marked, he shall forfeit the same, and also 5*l*. for each piece of such frame-work knitted goods, or pair of stockings.

Sect. 4, 5, 6. Provided that the said penalty of 5*l*. shall not extend to any journeyman, apprentice, servant, or person not making such goods or manufactures on his own account; but such person offending herein shall forfeit not exceeding 40*s*. nor less than 5*s*. for each piece or pair; but if he can prove that the goods by him unduly marked were so marked by direction of his master, or the person by whom he was employed, in that case he shall not be subject to any penalty.

Sect. 7. And if any frame-work knitter, hosier, or other person, shall sell or expose to sale any of the said goods, not duly and truly marked as aforesaid, he shall forfeit the same, and also 5*l*. for each piece or pair.

Sect. 8. Provided, that if the person prosecuted for selling or exposing the same to sale shall discover the vender or seller thereof, so as he may be convicted, such person shall be discharged from any penalty or forfeiture inflicted by this act.

Sect. 9. One justice where the offence shall be committed (not being a frame-work knitter, hosier, or proprietor of frames) may convict the offender, on the oath of one witness; and if on such conviction the penalties or forfeitures shall not be forthwith paid, the said justice shall issue his warrant to levy the same by distress, rendering the overplus, if any; and if no goods, or not sufficient, can be found, such justice shall, on oath thereof made to him by the person who shall have the execution of the warrant, commit the offender to the common gaol of the place where the offence shall be committed for any time not exceeding three months, unless the penalties and forfeitures shall be sooner paid and satisfied: all which penalties and forfeitures shall be applied half to the informer and half to the poor.

Sect. 10. Persons aggrieved may appeal to the sessions, giving ten days' notice in writing of his intent to the justice, and within two days after notice entering into recognizance before a justice with two sureties to try the appeal at such sessions; and the justices there, on due proof of such notice and recognizance, shall hear and determine the same, and award costs to either party, as they shall think fit; and their determination shall be final, binding, and conclusive, to all intents and purposes.

Sect. 12. Provided, that nothing herein shall extend to abridge or take away any rights or privileges of the master, wardens, and assistants of the company of frame-work knitters.

FRAME-WORK  
KNITTERS.

6 Geo. 3, c. 29.

Selling unmarked  
goods.

Penalties how to  
be recovered.

Appeal.

Act, not to affect  
rights, &c., of  
company of frame-  
work knitters.

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**Franks**, Franking of Letters, *see post*, Vol. V. p. 213;—Forger of, *Id.* 219.

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**Fraud**. *See Cheat*, Vol. I.;—Parol Evidence admissible to prove a Fraud, *see ante*, p. 28.

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**Freehold**, Larceny of Things of, *see Larceny*, Vol. III. p. 533;—Forcible Entry into, *see ante*, **Forcible Entry**, Vol. II.

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**Freemasons**, Assembly of, not unlawful, when, *see Riot*, Vol. V. p. 289.

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## Friendly Societies.

THE late act 10 Geo. IV. c. 56, repeals all the prior acts relative to friendly societies, at the same time re-enacting, consolidating, and amending the repealed provisions. The 40th section of the act requires all societies previously enrolled to conform to that act, within three years after the passing of the act, *viz.* the 19th June, 1829, otherwise their privileges are to cease. The act provides, that societies so previously enrolled, shall have the privileges given them by the prior acts, during the above space of three years, or until they sooner conform themselves to the new act.

It would be of little or no utility to incumber this work by inserting the prior acts. If there be any occasion to refer to them, they will be found in prior editions of this work, and in *Chitty's Collection of Statutes*, title "*Friendly Societies.*"

We will now proceed to set forth the provisions of the 10 Geo. IV. c. 56, with such notes thereon as may be useful, and within the object of this work.

10 Geo. 4, c. 56. The 10 Geo. IV. c. 56, is intituled *An Act to consolidate and amend the laws relating to Friendly Societies (a).*

By sect. 1 reciting, 'It is expedient to amend the laws relating to friendly societies, and to consolidate the same in one act, and to make other provisions respecting friendly societies; it is enacted, "That an act passed in the thirty-third year of his late Majesty's reign, intituled "An Act for the encouragement and relief of friendly societies;" and also so much of an act passed in the thirty-fifth year of his said late Majesty's reign, intituled "An Act for the more effectually carrying into execution an act made in the thirty-third year of the reign of his present Majesty, intituled 'An Act for the encouragement and relief of friendly societies, and for extending so much of the powers thereof as relates to the framing rules and regulations for the better management of the funds of such societies, and the appointment of treasurers, to other institutions of a charitable nature," as relates to friendly societies; and also an act passed in the Parliament of Ireland in the thirty-sixth year of his said late Majesty's reign, intituled "An Act for the encouragement and relief of friendly societies;" and also an act passed in the forty-third year of his said late Majesty's reign, intituled "An Act for enabling friendly societies, intended to be established under an act passed in the thirty-third year of the reign of his present Majesty, to rectify mistakes made in the registry of their rules;" and also an act passed in the forty-ninth year of his said late Majesty's reign, to explain and render more effectual the said recited act made in the Parliament of Ireland in the thirty-sixth year of his said late Majesty's reign; and also an act passed in the forty-ninth year of his said late Majesty's reign, intituled "An Act to amend an act made in the thirty-third year of his present Majesty, for the encouragement and relief of friendly societies;" and also an act passed in the fifty-ninth year of his said late Majesty's reign, intituled "An Act for the further protection and encouragement of friendly societies, and for preventing frauds and abuses therein;" and also so much of an act passed in the sixth year of the reign of his present Majesty, intituled "An Act for consolidating and amending the laws relating to conveyances and transfers of estates and funds vested in trustees who are infants, idiots, lunatics, or trustees of unsound mind, or who cannot be compelled or refuse to act, and the laws relating to stocks and securities belonging to infants, idiots, lunatics, and persons of unsound mind," as relates to friendly societies, for the better security, or for the application, receipt, payment, or transfer of any of the funds thereof; shall be and the same are hereby repealed, except so far as any of the said acts repeal the whole or any part of any other acts,

33 Geo. 3, c. 54.  
35 Geo. 3, c. 111.  
36 Geo. 3, (1.)  
43 Geo. 3, c. 111.  
49 Geo. 3, c. 58.  
49 Geo. 3, c. 126.  
59 Geo. 3, c. 122.  
6 Geo. 4, c. 74.

in part repealed except as herein stated.

(a) The act was passed on 19th July, 1829.

and except as hereinafter is excepted: provided nevertheless, that such repeal shall not invalidate or affect any thing which has been done before the passing of this act in pursuance of any of the said acts."

By sect. 2, reciting that 'Certain friendly societies have been established in Great Britain and Ireland, for raising, by voluntary subscription of the members thereof, separate funds for the mutual relief and maintenance of the said members in sickness, old age, and infirmity; and it is expedient to give protection to such societies and the funds thereby established, and to afford encouragement to other persons to form the like societies;' is enacted, "That it shall and may be lawful to and for any number of persons in Great Britain and Ireland to form themselves into and to establish a society for the purpose of raising from time to time, by subscriptions of the several members of every such society, or by voluntary contributions, or by donations, a stock or fund for the mutual relief and maintenance of all and every the members thereof, their wives or children, or other relations, in sickness, infancy, advanced age, widowhood, or any other natural state or contingency whereof the occurrence is susceptible of calculation by way of average (a); and to and for the several members of each society from time to time to assemble together, and to make, ordain, and constitute, such proper and wholesome rules for the better government and guidance of the same, as to the major part of the members of such society so assembled together shall seem meet, so as such rules shall not be repugnant to the laws of this realm, nor any of the express provisions or regulations of this act; and to impose and inflict such reasonable fines and forfeitures upon the several members of any such society who shall offend against such rules as shall be just and necessary for duly enforcing the same, to be respectively paid to such uses, for the benefit of such society, as such society by such rules shall direct; and also from time to time to alter and amend such rules as occasion shall require, or to annul and repeal the same, and to make new rules in lieu thereof, under such restrictions as are in this act contained."

Sect. 3 enacts, "That every such society so to be established as aforesaid, before any of the rules thereof shall be confirmed by the justices in the manner hereinafter directed, shall, in or by one or more of the rules to be confirmed by such justices, declare all and every the intents and purposes for which such society is intended to be established, and shall also in and by such rules direct all and every the uses and purposes to which the money, which shall from time to time be subscribed, paid, or given to or for the use or benefit of such society, or which shall arise therefrom, or in anywise shall belong to such society, shall be appropriated and applied, and in what shares and proportions, and under what circumstances, any member of such society, or other person, shall or may become entitled to the

## FRIENDLY SOCIETIES.

10 Geo. 4, c. 56.

Any number of persons may form themselves into a society, and raise a fund for their mutual benefit, and make rules, &c.

Power to alter and amend rules.

Societies, in their rules, to declare the purpose of their establishment, &c.

(a) The society should be for the purposes mentioned in the act, namely, for the charitable relief and maintenance of the old, sick, &c., members and their families. Mr. Evans, in his note on the statutes, title "*Friendly Societies*," says, "There are many societies established amongst journeymen in particular trades, ostensibly for the purposes of the Friendly Society Act, but really for the purpose of supporting illegal combinations; and I have seen the rules of such societies, (which have been inadvertently allowed), containing provisions which were evidently foreign from the purposes of the act. At some sessions, it is the practice not to allow the rules of any society, of which all the members are, by the

constitution of the society, to be of the same occupation."

In *R. v. The Justices of Staffordshire*, 12 East, 280, the Court of King's Bench refused a *writ* to the defendants, to allow the rules of a society of Roman Catholic secular clergy priests, as not being within the meaning of the act; the object of the society not being confined to the charitable relief and maintenance of its old, sick, and infirm members.

Where rules and principles of a friendly society, enrolled under the act, have been erroneously framed, so as to tend to exhaust its funds, the Court of Chancery will grant an injunction to restrain payments. *Reeve v. Parkins*, 2 Jac. & W. 390; see also *Pearce v. Piper*, 17 Ves. 1.

**FRIENDLY SOCIETIES.**  
 10 Geo. 4, c. 56.  
 Such purpose to be complied with.  
 Monies not to be misapplied.

Rules of the society to be submitted to a barrister, or other person, by whom they are to be certified;

and deposited with the clerk of the peace.

Rules, when certified, to be confirmed by justices at sessions, and a duplicate certified by clerk of the peace.

When not necessary to submit rules to barrister.

Manner of proceeding in case barrister shall refuse to certify.

Rules not to be allowed unless the justices are satisfied with the tables.

same, or any part thereof; provided that the application thereof shall not in anywise be repugnant to the uses, intents, and purposes, of such society, or any of them, so to be declared as aforesaid; and all such rules, during the continuance of the same, shall be complied with and enforced; and the monies so subscribed, paid, or given, or so arising, to or for the use or benefit of such society, or belonging thereto, shall not be diverted or misapplied, either by the treasurer, trustee, or any other officer or member of such society intrusted therewith, under such penalty or forfeiture as such society shall by any rule impose and inflict for such offence."

Sect. 4 enacts, "That a transcript, fairly written on paper or parchment, of all such rules, signed by three members, and countersigned by the clerk or secretary, with all convenient speed after the same shall be made, altered, or amended, and so from time to time after every making, altering, or amending thereof, shall be submitted, in England and Wales, and Berwick-upon-Tweed, to the barrister at law for the time being, appointed to certify the rules of saving banks (a), and in Scotland to the Lord Advocate, or any of his deputies, and in Ireland, to such barrister as may be appointed by his Majesty's Attorney-general in Ireland, for the purpose of ascertaining whether the said rules of such society, or alteration or amendment thereof, are in conformity to law and to the provisions of this act (b); and that the said barrister or advocate shall give a certificate thereof, or point out in what part or parts they are repugnant thereto; and that the fee payable to such barrister or advocate for perusing the rules, or alterations or amendments of the rules, of each respective society, and giving such certificate as aforesaid, shall not at any one time exceed the sum of one guinea, which, together with the expense of conveying the rules to and from the said barrister or advocate, shall be defrayed by each society respectively; and such transcript, when certified by the said barrister or advocate, shall be deposited with the clerk of the peace for the county wherein such society shall be formed, and by him laid before the justices for such county at the general quarter sessions, or adjournment thereof, next after the time when such transcript shall have been so certified and returned as aforesaid; and the justices then and there present are hereby authorized and required to allow and confirm the same; and such transcript shall be filed by such clerk of the peace with the rolls of the sessions of the peace in his custody; and a certificate of the enrolment thereof shall, within fourteen days after the end of the said sessions or adjournment thereof, be signed by such clerk of the peace on a duplicate copy, to be provided by and returned to such society, without fee or reward: provided always, that nothing herein contained shall be construed to require any rules, alterations, or amendments thereof, to be submitted to such barrister or advocate, if the same, when deposited with the clerk of the peace, are accompanied with an affidavit of being a copy of any of the rules, alterations, or amendments of any other society, which shall have been already enrolled under the provisions of this act in the same county."

Sect. 5 provides and enacts, "That in case any such barrister or advocate shall refuse to certify all or any of the rules so to be submitted for his perusal and examination, it shall then be lawful for any such society to submit the same to the court of quarter sessions, together with the reasons assigned by the said barrister or advocate, in writing, for any such rejection or disapproval of any one or more such rules; and that the justices at their said quarter sessions, shall and may, if they think fit, confirm and allow the same, notwithstanding any such rejection or disapproval by any such barrister or advocate."

Sect. 6 provides and enacts, "That no rules of any society hereafter to

(a) See as to Saving Banks, title *Banks for Savings*, Vol. I.

(b) As to what rules are so conform-

able, see the 2nd section, *ante*, 847, and notes thereon.

## Friendly Societies.

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be formed, shall be allowed, unless it shall appear to the justices to whom the same are tendered, that the tables of the payment to be made by the members, and of the benefits to be received by them, may be adopted with safety to all parties concerned."

Sect. 7 enacts, "That no such society as aforesaid shall have the benefit of this act, unless all the rules for the management thereof shall be entered in a book to be kept by an officer of such society appointed for that purpose, and which book shall be open at all seasonable times for the inspection of the members of such society, and unless all such rules shall be fairly transcribed, and such transcript deposited with the clerk of the peace for the county wherein such society shall be established as aforesaid; but nevertheless nothing contained herein shall extend to prevent any alteration in or amendment of any such rules so entered and deposited and filed as aforesaid, or repealing or annulling the same, or any of them, in the whole or in part, or making any new rules for the management of such society, in such manner as by the rules of such society shall from time to time be provided; but such new rules, or such alterations in or amendments of former rules, or any order annulling or repealing any former rules in the whole or in part, shall not be in force until the same respectively shall be entered in such book as aforesaid, and certified, when necessary, by such barrister or advocate as aforesaid, and until a transcript thereof shall be deposited with such clerk of the peace as aforesaid, who shall file and certify the same as aforesaid; and that no such rule, or alteration in or amendment of any former rule, shall be binding or have any force or effect until the same shall have been confirmed by such justices, and filed as aforesaid."

Sect. 8 enacts, "That all rules from time to time made and in force for the management of such society as aforesaid, and duly entered in such book as aforesaid, and confirmed by the justices as aforesaid, shall be binding on the several members and officers of such society, and the several contributors thereto, and their representatives, all of whom shall be deemed and taken to have full notice thereof by such entry and contribution as aforesaid; and the entry of such rules in such book as aforesaid, or the transcript thereof deposited with such clerk of the peace as aforesaid, or a true copy of such transcript, examined with the original and proved to be a true copy, shall be received as evidence of such rules respectively in all cases; and no *certiorari*, suspension, advocacy, reduction, or other legal process shall be brought or allowed to remove any such rules into any of his Majesty's Courts of record; and every copy of any such transcript deposited with any clerk of the peace as aforesaid shall be made without fee or reward, except the actual expense of making such copy."

Sect. 9 enacts, "That no rule confirmed by the justices of the peace in manner aforesaid shall be altered, rescinded, or repealed, unless at a general meeting of the members of such society as aforesaid, convened by public notice, written or printed, signed by the secretary or president or other principal officer or clerk of such society, in pursuance of a requisition for that purpose by seven or more of the members of such society, which said requisition and notice shall be publicly read at the two usual meetings of such society to be held next before such general meeting for the purpose of such alteration or repeal, unless a committee of such members shall have been nominated for that purpose at a general meeting of the members of such society convened in manner aforesaid, in which case such committee shall have the like power to make such alterations or repeal, and unless such alterations or repeal shall be made with the concurrence and approbation of three-fourths of the members of such society then and there present, or by the like proportion of such committee as aforesaid, if any shall have been nominated for that purpose."

Sect. 10 enacts, "That the rules of every society formed under the authority of this act shall specify the place or places at which it is intended such society shall hold its meetings, and shall contain provisions with respect to the powers and duties of the members at large, and of such com-

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10 Geo. 4, c. 56.

No society entitled to the benefit of this act, unless their rules have been confirmed.

Rules, when entered and deposited, to be binding on members and depositors.

Copy of transcript to be received in evidence.

No confirmed rule to be altered but at a general meeting of the society, &c.

Rules shall specify place of meeting and duties of officers.



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10 Geo. 4, c. 56.  
Societies may alter  
place of meeting.

Society may ap-  
point officers.

Securities to be  
given for offices of  
trust, if required.

Treasurer or trust-  
ees to give bond  
to the clerk of the  
peace.

Appointment of  
committees.

Powers of standing  
committees to be  
declared in the  
rules of the society,  
and of particular  
ones entered in a  
book.

mittees or officers as may be appointed for the management of the affairs of such society: provided always, that it shall and may be lawful for any such society to alter their place or places of meeting, whenever they may consider it necessary, upon giving notice thereof in writing to the clerk of the peace for the county within which such society shall be held, the said notice to be given within seven days before or after such removal, and signed by the secretary or other principal officer, and also by three or more of the members of the said society; and provided that the place or places at which such society intend to hold their meetings shall be situate within the county in which the rules of the said society are enrolled."

Sect. 11 enacts, "That every such society shall and may from time to time, at any of their usual meetings, or by their committee, if any such shall be appointed for that society, elect and appoint such person into the office of steward, president, warden, treasurer, or trustee of such society, as they shall think proper (a), and also shall and may from time to time elect and appoint such clerks and other officers as shall be deemed necessary to carry into execution the purposes of such society, for such space of time and for such purposes as shall be fixed and established by the rules of such society, and from time to time to elect and appoint others in the room of those who shall vacate or die; and such treasurer, trustee, and all and every other officer or other person whatever who shall be appointed to any office in any-wise touching or concerning the receipt, management, or expenditure of any sum of money collected for the purpose of any such society, before he, she, or they shall be admitted to take upon him, her, or them, the execution of any such office or trust, (if required so to do by the rules of such society to which such officer shall belong), shall become bound in a bond, according to the form prescribed in the schedule to this act annexed (b), with two sufficient sureties, for the just and faithful execution of such office or trust, and for rendering a just and true account according to the rules of such society, and in all matters lawful to pay obedience to the same, in such penal sum of money as by the major part of such society at any such meeting as aforesaid shall be thought expedient, and to the satisfaction of such society; and that every such bond to be given by or on the behalf of such treasurer or trustee, or of any other person appointed to any other office or trust, shall be given to the clerk of the peace of the county where such society shall be established, for the time being, without fee or reward; and in case of forfeiture it shall be lawful to sue upon such bond in the name of the clerk of the peace for the time being, for the use of the said society, fully indemnifying and saving harmless such clerk of the peace from all costs and charges in respect of such suit; provided that such bond shall have in Scotland the same force and effect as a bond in the form in use in Scotland containing a clause of registration."

Sect. 12 enacts, "That every such society shall and may from time to time elect and appoint any number of the members of such society to be a committee, the number thereof to be declared in the rules of every such society, and shall and may delegate to such committee all or any of the powers given by this act to be executed, who, being so delegated, shall continue to act as such committee, for and during such time as they shall be appointed, for such society, for general purposes, the powers of such committee being first declared in and by the rules of such society, confirmed by the justices of the peace at their sessions, and filed in the manner hereinbefore directed; and in all cases where a committee shall be appointed for any particular purpose, the powers delegated to such committee shall be re-

(a) In order to constitute a treasurer within the meaning of this act, he must be appointed and have accepted the office. *Ex parte Ashley*, 6 Ves. 444; *Ex parte Ross*, 6 Ves. 803, S. P.

Where, by the articles of a benefit

club, the society were empowered to appoint a treasurer, it was holden, that an appointment of two persons to be treasurers, was within the power. *Sharp v. Warren*, 6 Price, 131.

(b) See form (No. 3), post, 863.

duced into writing and entered into a book by the secretary or clerk of such society, and a majority of the members of such committee shall at all times be necessary to concur in any act of such committee; and such committee shall, in all things delegated to them, act for and in the name of such society, and all acts and orders of such committee, under the powers delegated to them, shall have the like force and effect as the acts and orders of such society at any general meeting thereof could or might have had in pursuance of this act: provided always, that the transactions of such committee shall be entered in a book belonging to such society, and shall be from time to time and at all times subject and liable to the review, allowance, or disallowance and control of such society, in such manner and form as such society shall by their general rules, confirmed by the justices and filed as aforesaid, have directed and appointed, or shall in like manner direct and appoint."

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10 Geo. 4, c. 56.

Committee con-  
trollable by so-  
ciety.

Sect. 13 enacts, " That it shall and may be lawful to and for the treasurer or trustee for the time being of any such society, and he, she, and they is and are hereby authorized and required, from time to time, by and with the consent of such society, to be had and testified in such manner as shall be directed by the general rules of such society, to lay out or dispose of such part of all such sums of money as shall at any time be collected, given, or paid to and for the beneficial ends, intents, and purposes of such society, as the exigencies of such society shall not call for the immediate application or expenditure of, either on real or heritable securities or heritable property, to be approved of as aforesaid, (such securities to be taken in the name of such treasurer or trustee for the time being), or to invest the same in the public stocks or funds, savings banks, or government securities, or in any of the chartered banks in Scotland, or in the bank of the commercial banking company of Scotland, and not otherwise, in the proper name of such treasurer or trustee; and from time to time, with such consent as aforesaid, to alter and transfer such securities and funds, and to make sale thereof respectively; and that all the dividends, interests, and proceeds which shall from time to time arise from the monies so laid out or invested as aforesaid shall from time to time be brought to account by such treasurer or trustee, and shall be applied to and for the use of such society, according to the rules thereof."

Treasurer or trustee to lay out surplus of contributions;

and to bring the proceeds to account.

Sect. 14 enacts, " That every person who shall have or receive any part of the monies, effects, or funds of or belonging to any such society, or shall in any manner have been or shall be intrusted with the disposal, management, or custody thereof, or of any securities, books, papers, or property relating to the same, his or her executors, administrators, and assigns respectively, shall, upon demand made, or notice in writing given or left at the last or usual place of residence of such persons, in pursuance of any order of such society, or committee to be appointed as aforesaid, for that purpose, give in his or her account at the usual meeting of such society, or to such committee thereof as aforesaid, to be examined and allowed or disallowed by such society or committee thereof, and shall, on the like demand or notice, pay over all the monies remaining in his or her hands, and assign and transfer or deliver all securities and effects, books, papers, and property, taken or standing in his or her name as aforesaid, or being in his or her hands or custody, to the treasurer or trustee for the time being, or to such other person as such society or committee thereof shall appoint; and in case of any neglect or refusal to deliver such account, or to pay over such monies, or to assign, transfer, or deliver, such securities and effects, books, papers, and property, in manner aforesaid, it shall and may be lawful, to and for every such society, in the name of the treasurer or trustee, or other principal officer thereof, as the case may be, to exhibit a petition in the Court (a) of Exchequer in England or Ireland, or in the

Treasurers, &c. to render accounts, and pay over balances, &c. :

and in case of neglect, application may be made to the Court of Exchequer, &c. (a).

(a) It is to be observed, that this section, which is in other respects like the 8th section of the prior act of 33 Geo.

III. c. 54, expressly excepts a petition to the Court of Chancery.

Upon such prior act it was held, that

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10 Geo. 4, c. 56.

Where trustees, &c. are out of jurisdiction of Court, or it be uncertain whether they are alive, or they refuse to convey, &c. Court of Exchequer may appoint a person to convey.

When trustees shall be absent, &c. Courts may order stock to be transferred and dividends paid.

\* Sic.

Court of Session in Scotland, or the Courts of Great Sessions in Wales, respectively, who shall and may proceed thereupon in a summary way, and make such order therein, upon hearing all parties concerned, as to such Court in their discretion shall seem just, which order shall be final and conclusive; and all assignments, sales, and transfers made in pursuance of such order, shall be good and effectual in law to all intents and purposes whatsoever."

Sect. 15 enacts, "That when and so often as any person seized or possessed of any lands, tenements, or hereditaments, or other property, or any estate or interest therein, as a trustee of any such society, shall be out of the jurisdiction of, or not amenable to the process of the Court of Exchequer in England or Ireland, or the Court of Session in Scotland, or of the Court of Great Sessions in Wales, or shall be idiot, lunatic, or of unsound mind, or it shall be unknown or uncertain whether he or she be living or dead, or such person shall refuse to convey or otherwise assure such lands, tenements, hereditaments, or property, or estate or interest, to the person duly nominated as trustee of such society in their stead, either alone or together with any continuing trustee, as occasion shall require, then and in every or any such case, it shall be lawful for the judges of the said Courts respectively to appoint such person, as to such Court shall seem meet, on behalf and in the name of the person seized or possessed as aforesaid, to convey, surrender, release, assign, or otherwise assure the said lands, tenements, hereditaments, or property, or estate or interest, to such trustee so duly nominated as aforesaid; and every such conveyance, release, surrender, assignment, or assurance, shall be as valid and effectual to all intents and purposes, as if the person being out of the jurisdiction or not amenable to the process of the said Courts, or not known to be alive, or having refused, or as if the person being idiot, lunatic, or of unsound mind, had been, at the time of the execution thereof, of sane mind, memory, and understanding, and had by himself or herself executed the same."

Sect. 16 enacts, "That when and as often as it shall happen, that all and every person in whose name any part of the several stocks, annuities, and funds, transferrable, or which hereafter shall be made transferrable at the Bank of England, or in the books of the governor and company of the Bank of England, is, are, or shall be standing, as a trustee of any such society, shall be absent, out of the jurisdiction, or not amenable to the process of the said Court of Exchequer in England or Ireland, or the Court of Session in Scotland, or the Courts of Great Session\* in Wales, or shall be a bankrupt, insolvent, or lunatic, or it shall be uncertain or unknown whether such trustee is living or dead, that then and in such case it shall and may be lawful, to and for the judges of the said Courts respectively, to order and direct that the accountant general, or the secretary or deputy secretary, or other proper officer for the time being, of the governor and company of the Bank of England, do transfer in the book of the said company such stock, annuities, or funds standing as aforesaid, to and into the name of such person as such society may appoint, and also pay over to such person as aforesaid, the dividends of such stock, annuities, or funds; and when and as often as it shall happen that one or more only, and not all or both of such trustees as aforesaid, shall be so absent, or not amenable to such process as aforesaid, or a bankrupt, insolvent, or lunatic, or it be uncertain or unknown whether any one or more of such trustees is or are living or dead, that then, and in all and every such last-mentioned case and cases, it shall and may be lawful to and for the judges of the said Courts respectively, to order and direct that the other and others of such trustees who shall be forthcoming, and ready and qualified to act, do transfer such stock, annuities, or funds, to and into the name of such person as aforesaid, and also that such forthcoming trustee do also receive and pay over the dividends of

after one order upon *petition*, the subsequent orders might be obtained upon *motion*. *Ex parte Friendly Society*, 10 Ves. 287; *Ex parte Slewings's Charity*,

3 Mer. 707. See further as to the former mode of suing these societies in equity, 16 Ves. 321; 17 Ves. 317; 6 Pric. 405.

such stock, annuities, or funds, as such society shall direct; and that all such transfers and payments so made shall be, and are hereby declared to be, valid and effectual to all intents and purposes whatsoever, any former statute, law, usage, or custom, to the contrary thereof in anywise notwithstanding."

Sect. 17 enacts, "That no fee, reward, emolument, or gratuity whatsoever, shall be demanded, taken, or received, by any officer or minister of such Courts for any matter or thing done in such Courts, in pursuance of this act; and that upon the presenting of any such petition, it shall be lawful for the judges of the said Courts respectively, to assign counsel learned in the law, and to appoint a clerk or practitioner of such Court, to advise and carry on such petition on the behalf of such society, who are hereby respectively required to do their duties therein without fee or reward."

Sect. 18 provides and enacts, "That in all cases in which orders shall be made by any of the Courts aforesaid for the transfer of stocks or funds transferrable at the Bank of England, the persons to be named in such orders respectively for making such transfers, shall be the secretary, deputy secretary, or accountant general, of the governor and company of the Bank of England for the time being, or one of them, except in cases where one or more of the trustees in whose name such stocks or funds shall stand, shall be ordered to transfer the same without the concurrence of any other or others of such trustees; any thing herein contained to the contrary thereof in anywise notwithstanding."

Sect. 19 enacts, "That this act shall be, and is hereby declared to be, a full and complete indemnity and discharge to the governor and company of the Bank of England, and their officers and servants, for all acts and things done or permitted to be done, pursuant thereto; and that such acts and things shall not be questioned or impeached in any Court of law or equity, to their prejudice or detriment."

Sect. 20 enacts, "That if any person appointed to any office by any such society, and being intrusted with, or having in his or her hands or possession, by virtue of his or her said office, any monies or effects belonging to such society, or any deeds or securities relating to the same, shall die, or become a bankrupt or insolvent, his or her executors, or administrators, or assignees, or other persons having legal right(a), shall, within forty days after demand made by the order of any such society or committee thereof, or the major part of them assembled at any meeting thereof, deliver over all things belonging to such society to such person as such society shall appoint, and shall pay, out of the estates, assets, or effects of such person, all sums of money remaining due which such person received by virtue of his or her said office, before any of his or her other debts are paid or satisfied; and all such assets, estates, and effects, shall be bound to the payment and discharge thereof accordingly."

Sect. 21 enacts, "That all real and heritable property, monies, goods, chattels, and effects whatever, and all titles, securities for money, or other obligatory instruments and evidences or muniments, and all other effects whatever, and all rights or claims belonging to or had by such society, shall be vested in the treasurer or trustee of such society for the time being, for

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10 Geo. 4, c. 56.

No fee to be taken for any proceeding in such Courts, &c.

Who shall be named in the orders of the Court for making transfers.

Act to be an indemnity to the bank.

Executors, &c. to pay money due to societies before any other debts (a).

Effects of societies to be vested in the trustees or treasurers for the time being, who may bring and defend actions, &c.

(a) The preference given to these societies over other creditors is confined to debts in respect of money received by their officers *officially*, and independently of contract; *Ex parte Buckland*, 1 *Buck*, 214; and therefore, if a society, instead of resting on the security which the legislature gives them, lend money to one of their officers; (*Stamford Friendly Society*, 15 *Ves*. 280; *Amicable Society of Lancaster*, 6 *Ves*. 98); or to any other person (*Ex parte Ashley* and *Ex parte*

*Cooper*, 6 *Ves*. 441; and *Ex parte Ross*, *Id.* 802), upon special contract, as a promissory note, that seems not within the provision of the act. But the mere taking a security subsequently, where no money can be obtained from such officers, would not, it seems, take away such liability and preference. 2 *Mad. Ch.* 718; *Chit. Col. Civ. Stat.* 394, n.; *Eden's B. L.* and *Arch. Bank. Law*, 162; 6 *Mad. Rep.* 98.

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the use and benefit of such society, and the respective members thereof, their respective executors or administrators, according to their respective claims and interests; and, after the death or removal of any treasurer or trustee, shall vest in the succeeding treasurer or trustee, for the same estate and interest as the former treasurer or trustee had therein, and subject to the same trusts, without any assignment or conveyance whatever, except the transfer of stocks and securities in the public funds of Great Britain and Ireland; and also shall, for all purposes of action or suit, as well criminal as civil, in law or in equity, in anywise touching or concerning the same, be deemed, and taken to be, and shall in every such proceeding, (where necessary), be stated to be, the property of the person appointed to the office of treasurer or trustee of such society for the time being, in his or her proper name, without further description; and such person shall, and he or she is hereby respectively authorized to bring or defend, or cause to be brought or defended, any action, suit, or prosecution, criminal as well as civil, in law or in equity, touching or concerning the property, right, or claim aforesaid, of or belonging to or had by such society (a); provided such person shall have been thereunto duly authorized by the consent of the majority of members present at any meeting of the society or committee thereof; and such person so appointed shall and may, in all cases concerning the property, right, or claim, aforesaid, of such society, sue and be sued, plead and be impleaded, in his or her proper name, as treasurer or trustee of such society, without other description; and no such suit, action, or prosecution, shall be discontinued or abate by the death of such person, or his or her removal from the office of treasurer or trustee, but the same shall and may be proceeded in by the succeeding treasurer or trustee, in the proper name of the person commencing the same, any law, usage, or custom to the contrary notwithstanding; and such succeeding treasurer or trustee shall pay or receive like costs as if the action or suit had been commenced in his or her name, for the benefit of, or to be reimbursed from the funds of such society."

Limitation of  
responsibility of  
treasurers or trust-  
ees.

Treasurer, &c.  
liable for money  
actually received  
(b).

Sect. 22 enacts, "That the treasurer or trustee, or any other officer of any society established under the authority of this act, shall not be liable to make good any deficiency which may arise in the funds of such society, unless such persons shall have respectively declared by writing under their hands, deposited and registered in like manner with the rules of such society, that they are willing so to be answerable; and it shall be lawful for each of such persons, or for such persons collectively, to limit his, her, or their responsibility to such sum as shall be specified in any such instrument or writing: provided always, that the said treasurer, trustee, and every other the officer of any such society, shall be and they are hereby declared to be personally responsible and liable for all monies actually received by him, her, or them on account of or to and for the use of the said society (b).

(a) To enable a treasurer or trustee to sue under this act, the old, as well as new regulations, under which he has been elected, must have been duly confirmed. *Batley v. Townrow*, 4 Camp. 5. But the treasurer or trustee, or other person, to whom a bond, note, or other contract is made, may recover thereon at common law, though he could not on the statute. *Sharp v. Warren*, 6 Price, 131; *Jones v. Woollam*, 5 B. & A. 769; 1 D. & R. 393; 2 Chit Rep. 322, S. C.; *Wyberg v. Ainley*, M'Clell. 669. Where B., as treasurer of a friendly society, declared on a bond to A., then being the treasurer, and the defendant pleaded *non est factum*, and the bond given in evidence was to A., without stating him to

be treasurer, it was held that B. was entitled to recover. *Cartridge v. Griffith*, 1 B. & A. 57. *Assumpsit* for money had and received may be maintained against one who had been a member of a benefit club, for money intrusted to his keeping by the rest of the society, in the name of the officers properly appointed for managing their affairs under the rules of such society. *Sharp v. Warren*, 6 Price, 131.

(b) By the rules of a friendly society, a medical attendant was entitled to three shillings *per annum* from every member; and a committee of the society was authorized to settle all disputes, grievances, &c., relative to the affairs of the society, subject to an appeal to two magistrates.

Sect. 23 enacts, "That whenever the trustees of any society established under this act, at any time after the decease of any member, have paid and divided any sum of money to or amongst any person or persons who shall at the time of such payment appear to such trustees to be entitled to the effects of any deceased intestate member, the payment of any such sum or sums of money shall be valid and effectual with respect to any demand of any other person or persons as next of kin of such deceased intestate member, or as the lawful representative or representatives of such member, against the funds of such society, or against the trustees thereof; but nevertheless such next of kin or representatives shall have remedy for such money so paid as aforesaid against the person or persons who shall have received the same."

Sect. 24 enacts, "That in case any member of any society shall die, who shall be entitled to any sum not exceeding twenty pounds, it shall be lawful for the trustees or treasurer of such society, and they are hereby authorized and permitted, if such trustees or treasurer shall be satisfied that no will was made and left by such deceased member, and that no letters of administration or confirmation will be taken out, of the funds, goods, and chattels of such depositor, to pay the same at any time after the decease of such member according to the rules and regulations of the said institution; and in the event of there being no rules and regulations made in that behalf, then the said trustees or treasurer are hereby authorized and permitted to pay and divide the same to and amongst the person or persons entitled to the effects of the deceased intestate, and that without administration in England or Ireland, and without confirmation in Scotland."

Sect. 25 enacts, "That for the more effectually preventing fraud and imposition on the funds of such societies, if any officer, member, or any other person being or representing himself or herself to be a member of such society, or the nominee, executor, administrator, or assignee of any member of such society, or any other person whatever, shall in or by any false representation or imposition fraudulently obtain possession of the monies of such society, or any part thereof, or, having in his or her possession any sum of money belonging to such society, shall fraudulently withhold the same, and for which offence no especial provision is made in the rules of such society, it shall be lawful for any one justice of the peace residing within the county within which such society shall be held, upon complaint made on oath or affirmation by an officer of such society appointed for that purpose, to summon such person against whom such complaint shall be made, to appear at a time and place to be named in such summons; and upon his or her appearance, or, in default thereof, upon due proof, upon oath or affirmation, of the service of such summons, it shall and may be lawful for any two justices residing within the county aforesaid to hear and determine the said complaint according to the rules of the said society, confirmed as directed by this act; and, upon due proof of such fraud, the said justices shall convict the said party, and award double the amount of the money so fraudulently obtained or withheld to be paid to the treasurer, to be applied by him to the purposes of the society so proved to have been imposed upon and defrauded, together with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings; and in case such person against whom such complaint shall be made shall not pay the sum of money so awarded to the person, and at the time specified in the said order, such jus-

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10 Geo. 4, c. 56.

Payment to persons appearing to be next of kin declared valid.

For payment of sums not exceeding 20*l.* where members die intestate.

Justices may hear cases of fraud, and punish by fine or imprisonment.

Warrant of distress.

The plaintiff, who had been duly appointed medical attendant, was dismissed by the committee, without any meeting of the members of the society at large, and another appointed. Upon an application to magistrates, they recommended a public meeting, which being convened accordingly, a large majority of the members voted for the plain-

tiff, who thereupon sued the defendant, the treasurer, for the three shillings received to the use of the medical attendant, and it was held the plaintiff was entitled to recover, and that the defendant was not exonerated by an order of the committee not to pay. *Garner v. Shelley*, 5 Bingh. 477.

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10 Geo. 4, c. 56.

**Commitment.**

**Proceeding by in-  
dictment, &c.**

**Proceedings neces-  
sary for the disso-  
lution of any so-  
ciety.**

**Stock not divisible  
but for general  
purposes of the  
society.**

**Penalties for ille-  
gal dissolution or  
division of funds.**

**Rules to be made  
directing how dis-  
putes shall be set-  
tled (a).**

**Appointment of  
arbitrators.**

tices are hereby required, by warrant under their hands and seals, to cause the same to be levied by distress and sale of the goods of such person on whom such order shall have been made, or by other legal proceeding, together with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings, and also the costs and charges attending such distress and sale, or other legal proceeding, returning the overplus (if any) to the owner; and in default of such distress being found, the said justices of the peace shall commit such person so proved to have offended, to the common gaol or house of correction, there to be kept to hard labour for such a period, not exceeding three calendar months, as to them shall seem fit: provided, nevertheless, that nothing herein contained shall prevent the said society from proceeding by indictment or complaint against the party complained of; and provided also, that no party shall be proceeded against by indictment or complaint, if a previous conviction has been obtained for the same offence under the provisions of this act."

Sect. 26 enacts, "That it shall not be lawful for any such society, by any rule at any general meeting, or otherwise, to dissolve or determine such society, so long as the intents or purposes declared by such society, or any of them, remain to be carried into effect, without obtaining the votes of consent of five sixths in value of the then existing members of such society, to be ascertained in manner hereinafter mentioned, and also the consent of all persons then receiving or then entitled to receive relief from such society, either on account of sickness, age, or infirmity, to be testified under their hands individually and respectively; and for the purpose of ascertaining the votes of such five sixths in value, every member shall be entitled to one vote, and an additional vote for every five years that he may have been a member; provided also, that no one member shall have more than five votes in the whole; and in all cases of dissolution, the intended appropriation or division of the funds or other property of such society shall be fairly and distinctly stated in the proposed plan of dissolution, prior to such consent being given; nor shall it be lawful for such society by any rule to direct the division or distribution of such stock or fund, or any part thereof, to or amongst the several members of such society, other than for carrying into effect the general intents and purposes of such society, declared by them, and confirmed by the justices of the peace as aforesaid, according to the directions of this act; but that all such rules for the dissolution or determination of any such society, without such consent as aforesaid, or for the distribution or division of the stock or fund of such society, contrary to the rules which shall have been confirmed by the said justices at their sessions, and filed in pursuance of this act, shall be void and of none effect; and in the event of such division or misappropriation of the funds of such society, without the consent hereby declared to be requisite, the trustee, or other officer or person aiding or abetting therein, shall be liable to the like penalties as are hereinbefore provided for in cases of fraud."

Sect. 27 provides and enacts, "That provision shall be made by one or more of the rules of every such society, to be confirmed as required by this act, specifying whether a reference of every matter in dispute between any such society, or any person acting under them, and any individual member thereof, or person claiming on account of any member, shall be made to such of his Majesty's justices of the peace as may act in and for the county in which such society may be formed, or to arbitrators to be appointed in manner hereinafter directed; and if the matter so in dispute shall be referred to arbitration, certain arbitrators shall be named and elected at the first meeting of such society, or general committee thereof, that shall be held after the enrolment of its rules, none of the said arbitrators being beneficially interested, directly or indirectly, in the funds of the said society, of whom a certain number, not less than three, shall be chosen by ballot in

(a) It is to be observed, that the provisions contained in this section materially differ from the prior ones in the repealed statutes.

each such case of dispute, the number of the said arbitrators and mode of ballot being determined by the rules of each society respectively, the names of such arbitrators shall be duly entered in the book of the said society in which the rules are entered as aforesaid; and in case of the death, or refusal, or neglect, of any or all of the said arbitrators to act, it shall and may be lawful to and for the said society, or general committee thereof, and they are hereby required, at their next meeting, to name and elect one or more arbitrator or arbitrators as aforesaid, to act in the place of the said arbitrator or arbitrators so dying, or refusing or neglecting to act as aforesaid; and whatever award shall be made by the said arbitrators, or the major part of them, according to the true purport and meaning of the rules of such society, confirmed by the justices according to the directions of this act, shall be in the form to this act annexed, and shall be binding and conclusive on all parties, and shall be final, to all intents and purposes, without appeal, or being subject to the control of one or more justices of the peace, and shall not be removed or removable into any Court of law, or restrained or restrainable by the injunction of any Court of equity; and should either of the said parties in dispute refuse or neglect to comply with, or conform to the decision of the said arbitrators, or the major part of them, it shall and may be lawful for any one justice of the peace residing within the county within which such society shall be held, upon good and sufficient proof being adduced before him of such award having been made, and of the refusal of the party to comply therewith, upon complaint made by or on behalf of the party aggrieved, to summon the person against whom such complaint shall be made, to appear at a time and place to be named in such summons; and upon his or her appearance, or in default thereof, upon due proof, upon oath, of the service of such summons, any two justices of the peace may proceed to make such order thereupon as to them may seem just; and if the sum of money so awarded, together with the sum for costs, not exceeding the sum of ten shillings, as to such justices shall seem meet, shall not be immediately paid, then such justices shall, by warrant under their hands and seals, cause such sum and costs as aforesaid to be levied by distress, or by distress and sale, of the monies, goods, chattels, securities, and effects, belonging to the said party, or to the said society, or other legal proceeding, together with all further costs and charges attending such distress and sale, or other legal proceeding, returning the overplus (if any) to the said party, or to the said society, or to one of the treasurers or trustees thereof; and in default of such distress being found, or such other legal proceeding being ineffectual, then to be levied by distress and sale of the proper goods of the said party, or of the officer of the said society, so neglecting or refusing as aforesaid, by other legal proceedings, together with such further costs and charges as aforesaid, returning the overplus (if any) to the owner: provided always, that whatever sums shall be paid by any such officer, so levied on his or her property or goods in pursuance of the award of arbitrators or order of any justices, shall be repaid, with all damages accruing to him or her, by and out of the monies belonging to such society, or out of the first monies which shall be thereafter received by such society."

Sect. 28 enacts, "That if by the rules of any such society it is directed that any matter in dispute as aforesaid shall be decided by justices of the peace (a), it shall and may be lawful for any such justice, on complaint being made to him of any refusal or neglect to comply with the rules of such society by any member or officer thereof, to summon the person against

**FRIENDLY SOCIETIES.**

10 Geo. 4, c. 54.

Justices shall enforce compliance with the decision of arbitrators.

By order.

By warrant of distress.

Reference of disputes to justices, if so directed by the rules of the society.

(a) From this enactment, it seems, magistrates have no jurisdiction to decide the matter in dispute, unless it be given by the express rules of the society. In *Pike v. Carter*, 3 Bing. 78; 10 Moore, 376; 4 D. & R. M. C. 145, S. C., it was held, on the prior act, 33 Geo. III. c. 54, s. 15, 16, that, to render a justice liable for overstepping his jurisdiction, where the

rules of the society provided for a settlement of all disputes by arbitration, it was necessary that the objection to the jurisdiction should be made when the justice heard the charge.

It is clear, the magistrates have no jurisdiction, if the rules of the society have not been duly confirmed and filed. See 8 B. & C. 443.



FRIENDLY  
SOCIETIES.

10 Geo. 4, c. 56.

Orders of justices  
to be final.Funds may be sub-  
scribed into sav-  
ings banks;

9 Geo. 4, c. 92 (b).

or into the bank of  
England, on re-  
ceipts.

whom such complaint shall be made, to appear at a time and place to be named in such summons; and upon his or her appearance, or, in default thereof, upon due proof, on oath or affirmation, of the service of such summons, it shall and may be lawful for any two justices to proceed to hear and determine the said complaint according to the rules of the said society (a); and in case the said justices shall adjudge any sum of money to be paid by such person against whom such complaint shall be made, and such person shall not pay such sum of money to the person and at the time specified by such justices, they shall proceed to enforce their award in the manner hereinbefore directed to be used, in case of any neglect to comply with the decision of the arbitrators appointed under the authority of this act."

Sect. 29 enacts, "That every sentence, order, and adjudication, of any justices under this act, shall be final and conclusive to all intents and purposes, and shall not be subject to appeal, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity, and that no suspension, advocacy, or reduction, shall be competent."

Sect. 30 enacts, "That it shall be lawful for any society established under the authority of this act, from time to time to subscribe the whole or any part of the funds of such society, into the funds of any institution which shall have taken the benefit of an act passed in the last session of Parliament, intituled *An Act to consolidate and amend the laws relating to savings banks* (b), subject to the provisions in the said last-recited act contained, relating to friendly societies."

Sect. 31 enacts, "That it shall be lawful for any society established under authority of this act, to pay directly into the Bank of England any sum of money not being less than fifty pounds, to the account of the commissioners for the reduction of the national debt, upon the declaration of the treasurers or trustees of such society, or any two or more of them, that such monies belong exclusively to the society for which such payment is intended to be made; and the cashier or cashiers of the Bank of England are hereby required to receive all such monies, and to place the same to the ac-

(a) The jurisdiction of the magistrates is wholly confined to the subject matter of the complaint laid before them; and therefore, where it appeared that a party had complained to them that he had been deprived of the relief to which he was entitled, and the justices awarded, not only that the steward should give him such relief, but also that the party should be continued a member of the society, it was held that the latter part of the order was illegal. *R. v. Soper*, 3 B. & C. 857; 5 D. & R. 669, S. C.

By the constitution of the society, it must appear the magistrates had power to make the order. Therefore, it seems, upon an indictment for not obeying an order of two justices, commanding the defendants, as stewards and principal officers of a friendly society, to restore A. B. as a member, it must be shewn, that, by the constitution of the society, the defendants had the power to restore him. *R. v. Inge*, 2 Smith, 56.

Upon a complaint made on the prior acts by an excluded member, A. and B., the then stewards, were duly summoned, and an order was made by two justices, that such stewards and other members of

the society should forthwith reinstate the complainant. The order was served upon A. and B. after they had ceased to be stewards, but it was held still obligatory on them as members of the society, to attempt to reinstate the complainant; and their having ceased to be stewards was no justification of entire neglect on their part. *R. v. Gash*, 1 Stark. N. P. C. 441.

An order of justices requiring the stewards of a friendly society to re-admit A. B., who had been expelled, recited, that it had appeared to the justices that the rules of the society had been enrolled at the quarter sessions; on the trial of an indictment against the stewards for disobeying such order, it was held, that the recital was not evidence of the enrolment of the rules. *R. v. Gilkes and others*, 8 B. & C. 439.

If the parties disobey the justices' order when duly made, and due notice thereof given, they might be indicted. See *post*, *Order*, Vol. III.; 4 T. R. 202; 2 Burr. 799; 1 T. R. 316. See form of indictment, *post*, (No. 14), p. 867.

(b) See the act *ante*, title *Banks for Savings*, Vol. I.

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count raised in the names of the said commissioners for the time being, in the books of the Bank of England, denominated 'The Fund for the Friendly Societies;' and in case any such declaration shall not be true, then, and in every such case, the sum so paid shall be forfeited to the said commissioners; and all the clauses and provisions of an act passed in the ninth year of his present Majesty's reign, intituled *An Act to consolidate and amend the laws relating to savings banks*, with respect to the accounts of banks for savings, and the regulation of receipts, certificates, or order concerning the same, shall be applicable to the monies so paid into the Bank of England, under the authority of this act, as if the same had been repeated herein: provided nevertheless, that every society formed and enrolled previous to the 28th day of July, 1828, under the provisions of an act made and passed in the said fifty-ninth year of his late Majesty's reign, intituled *An Act for the further protection and encouragement of friendly societies, and for preventing frauds and abuses therein*, shall, on paying money directly into the Bank of England as aforesaid, be entitled to receive receipts bearing interest at the rate of threepence *per centum per diem*, any thing in this act contained to the contrary thereof notwithstanding: provided also, that no friendly society which already has invested, or may hereafter invest, any money with the said commissioners, shall be entitled to re-deposit any sum or sums of money with them, without the consent of the said commissioners, or, on their behalf, by the comptroller general, or assistant comptroller general under the said commissioners."

Sect. 32 enacts, "That a minor may become a member of any such society, and shall be empowered to execute all instruments, give all necessary acquittances, and enjoy all the privileges, and be liable to all the responsibilities appertaining to members of matured age, notwithstanding his or her incapacity or disability in law to act for himself or herself: provided always, that such minor be admitted into such society by and with the consent of his or her parents, masters, or guardians."

Sect. 33 enacts, "That the rules of every such society shall provide, that the treasurers, trustees, stewards, or other principal officer thereof, shall, once in every year at least, prepare, or cause to be prepared, a general statement of the funds and effects of or belonging to such society, specifying in whose custody or possession the said funds or effects shall be then remaining, together with an account of all and every the various sums of money received and expended by or on account of the said society since the publication of the preceding periodical statement; and every such periodical statement shall be attested by two or more members of such society appointed auditors for that purpose, and shall be countersigned by the secretary or clerk of such society; and every member shall be entitled to receive from the said society a copy of such periodical statement, on payment of such sum as the rules of such society may require, not exceeding the sum of 6d."

Sect. 34 reciting, 'It is desirable, for the better security of such societies, that correct calculations of tables of payment and allowances, dependant on the duration of sickness and the probabilities of human life, may be constructed for their assistance: and whereas, the present existing data on these subjects have been found imperfect and inefficient;' further enacts, "That every such society established, or to be established, under the authority of this act shall, within three months after the expiration of the month of December, 1835, and so again within three months after the expiration of every further period of five years, transmit to the clerk of the peace for the county wherein such society is held, a return of the rate of sickness and mortality experienced by the said society within the before-mentioned period of five years, according to the form prescribed in the schedule appended to this act, a copy whereof shall be annexed to the rules of each society respectively."

Sect. 35 enacts, "That the said clerks of the peace shall, within one month after the expiration of the month of March, 1836, and so again with-

### FRIENDLY SOCIETIES.

10 Geo. 4, c. 56.

Societies enrolled under 50 Geo. 3, c. 128, prior to 28th July, 1828, entitled to 3d. per cent. per diem.

Minors may be members, and have legal authority to act.

Societies shall make annual audits and statements of the funds to the members.

Returns to be made to the clerks of the peace at certain periods.

Returns to be transmitted to secretary of state.

*Friendly Societies.***FRIENDLY SOCIETIES.**

10 Geo. 4, c. 56.  
and laid before  
Parliament.

in one month after the expiration of every further period of five years, transmit to one of his Majesty's principal secretaries of state a list of the societies which have been enrolled during such period under this act, specifying their names, the places where they have been established, and date of enrolment, and time of ceasing to exist, if such case should arise, and also a copy of the returns of sickness and mortality herein-before directed to be made to them according to the schedule (A) (a); a copy of which list, with the schedule attached to it, shall be laid before both houses of Parliament within one month then next ensuing, if Parliament shall be sitting, or within one month after the time when Parliament shall next sit."

Penalty on societies not making returns.

Sect. 36 enacts, "That should any such society refuse or neglect to transmit, or cause to be transmitted, the aforesaid returns of sickness and mortality in the manner and within the time hereinbefore directed, the clerk of the peace within each county shall give immediate notice to such society, that unless the said return is made within twenty-one days from the date of such notice, the said society will, and thereupon shall, cease to be entitled to the privileges of this act, unless good and sufficient cause be shewn to the justices, at their then next ensuing general or quarter sessions, why such returns could not be made."

Exemption from stamp duties.

Sect. 37 enacts, "That no copy of rules, power, warrant, or letter of attorney, granted or to be granted by any persons as trustee of any society established under this act, for the transfer of any share in the public funds standing in the name of such trustee, nor any receipts given for any dividend in any public stock or fund, or interest of Exchequer bills, nor any receipt, nor any entry in any book of receipt, for money deposited in the funds of any such society, nor for any money received by any member, his or her executors or administrators, assigns or attornies, from the funds of such society, nor any bond nor other security to be given to or on account of any such society, or by the treasurer or trustee or any officer thereof, nor any draft or order, nor any form of assurance, nor any appointment of any agent, nor any certificate or other instrument for the revocation of any such appointment, nor any other instrument or document whatever required or authorized to be given, issued, signed, made, or produced in pursuance of this act, shall be subject or liable to or charged with any stamp duty or duties whatsoever (b)."

Construction of act.

Sect. 38 enacts, "That the word 'society' in this act shall be understood to include friendly society or societies, institution or institutions; the word 'rules' to include rules, orders, and regulations; the word 'county' to include county, riding, division, or place; and the words 'treasurer or trustee' to include treasurers or trustees; and the word 'person' to include persons; and the word 'book' to include books; and the word 'bond' to include bonds; 'name' to include names; 'account' to include accounts; 'member' to include members and honorary members; 'clerk of the peace' to include town clerk; unless it be otherwise specially provided."

Act to extend to all present and future societies.

Sect. 39 enacts, "That this act shall extend to all friendly societies hereafter to be established, and also to societies already established, as soon as they shall think fit to conform to the provisions thereof."

Societies already enrolled to conform to this act within three years.

Sect. 40 enacts, "That, provided societies already enrolled shall not conform to the provisions of this act within the space of three years from the passing of this act, the said societies shall then cease to be entitled to the privileges and provisions of any or either of the hereinbefore repealed acts: provided nevertheless, that the provisions of the hereinbefore repealed acts shall continue in force as to all societies established under any or either of them before the passing of this act for the said space of three years, or until they shall sooner conform to the provisions of this act."

Public act.

Sect. 41 enacts, "That this act shall be deemed a public act, and shall

(a) See form, (No. 1), *post*, 862. (b) See *Carter v. Bond*, 4 *Exp. Rep.* 253.

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extend to Great Britain and Ireland and Berwick-upon-Tweed, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without the same being specially shewn or pleaded."

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SOCIETIES.**  
10 Geo. 4, c. 56.

### **Forms, List of.**

**LIST of Members as prescribed by Schedule (A), 10 Geo. IV. c. 56, (No. 1).**

**AWARD under like Act, (No. 2).**

**BOND to be given by Officer of Trust under the Society, (No. 3).**

**INFORMATION on 10 Geo. IV. c. 56, s. 25, by Member of Friendly Society, in Case of Fraud on Society, (No. 4).**

**SUMMONS thereon, (No. 5).**

**CONVICTION thereon, (No. 6).**

**WARRANT of Distress, or Commitment thereon, (No. 7).**

**INFORMATION on the 10 Geo. IV. c. 56, s. 26, in Order to enable Justices to enforce Performance of an Award under the Act, (No. 8).**

**SUMMONS thereon, (No. 9).**

**ORDER of Justices thereon, (No. 10).**

**WARRANT of Distress thereon, (No. 11).**

**INFORMATION on 10 Geo. IV. c. 56, s. 27, where Matter in Dispute is referred to a Magistrate, (No. 12).**

**JUSTICES' Adjudication thereon, (No. 13).**

**INDICTMENT against the Stewards, &c., of a Friendly Society, for Disobeying an Order of Justices made on the 10 Geo. IV. c. 56, s. 27, (No. 14).**



## (No. 2).

*WE, the major part of the arbitrators duly appointed by the society, established at , in the county of , do hereby award and order, That A. B. [specifying by name the party or the officer of the society] do, on the day of , pay to C. D. the sum of , [or, we do hereby reinstate in, or, expel A. B. from the said society, as the case may be]. Dated this day of , 18 .*

Award (a).

E. F.  
G. H.

## (No. 3).

*KNOW all men by these presents, That we, A. B., of , treasurer [or, trustee, &c.] of the society, established at , in the county of , and C. D., of , and G. H., of , (as sureties on behalf of the said A. B.), are jointly and severally held and firmly bound to E. F., the present clerk of the peace [or, town clerk] for the county [or, county of a city, or, county of a town, riding, division, or, place, as the case may be], of , in the sum of , to be paid to the said E. F., as such clerk of the peace, [or, town clerk], or his successor, clerk of the peace [or, town clerk] of the said county [or, county of a city, &c.] for the time being, or his certain attorney; for which payment well and truly to be made, we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated the day of , in the year of our Lord, 18 .*

Bond to be given by an officer of trust under the society (b).

*Whereas the above-bounden A. B. hath been duly appointed treasurer [or, trustee, &c.] of the society established as aforesaid, and he, together with the above-bounden C. D., and G. H., as his sureties, have entered into the above-written bond, subject to the condition hereinafter contained; now, therefore, the condition of the above-written bond is such, that if the said A. B. shall and do justly and faithfully execute his office of treasurer [or, trustee] of the said society established as aforesaid, and shall and do render a just and true account of all monies received and paid by him, and shall and do pay over all the monies remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers, and property of or belonging to the said society in his hands or custody, to such person or persons as the said society shall appoint, according to the rules of the said society, together with the proper or legal receipts or vouchers for such payments, and likewise shall and do in all respects well and truly and faithfully perform and fulfil his office of treasurer [or, trustee, &c.] to the said society, according to the rules thereof, then the above-written bond shall be void and of no effect, otherwise shall be and remain in full force and virtue.*

## (No. 4.)

*BE it remembered, That, on &c., at &c., A. B., of &c., personally cometh to wit. } before me J. P., esquire, one of his Majesty's justices of the peace, acting in and for and residing in the said county, and on his oath complaineth unto me the said justice, for that he the said A. B. is an officer of a certain friendly society, called , held at the parish of B., in the said county, and duly appointed by the said society for the making of this complaint, and that the said society was and is established and held by virtue of and according to the statute in that case made and provided, and made and passed in the tenth year of the reign of his late Majesty King George the Fourth, and that the rules, orders, and regulations of the said society were and are duly confirmed and filed according to the said statute, and also for that on the &c., at the parish aforesaid, in the county aforesaid, one C. D., late of &c., being a member, [the words of the act are, ante, 855, "if any officer, member, or any other person being or representing himself or herself to be a member of such society, or the nominee, executor, administrator, or assignee of any member of such society, or any other person whatever" shall &c., describe the party accordingly] did [here state the offence according to the fact; see the words of the act, ante, 855; if the offence be for fraudulently obtaining money by a false representation, it may be described thus:] then and there fraudulently and falsely represent to the said A. B. [according to the fact] that &c., [here state concisely the false representation as in an indictment for obtaining money by false pretences], and by such fraudulent and false representation the said C. D. did then and there fraudulently obtain possession from the said A. B. [according to the fact], of the sum of shillings, part of the monies of the said society, whereas in truth and in fact the said &c. [negating the truth of the re-*

Information on 10 Geo. 4, c. 56, s. 26, by member, &amp;c., of friendly society in a case of fraud on society.

(a) This form is also given by the act. (b) This form is given by the act, ante, 850.  
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## Friendly Societies.

## FORMS.

presentation in the negative words thereof], and that for such offence there is no especial provision made in the rules of the said society, contrary to the form of the said statute;\* wherefore the said A. B. prays the judgment of me the said justice in the premises, and that the said C. D. may be summoned to answer this complaint, according to the directions of the said statute.

A. B.

Exhibited before me, on the day and year first above named. J. P.

(No. 5).

Summons thereon. To Mr. C. D., a member [according to the fact, ante, 855, 863] of the friendly society, called \_\_\_\_\_, at \_\_\_\_\_, in the county of \_\_\_\_\_.

— } WHEREAS A. B., of &c., an officer duly appointed by the said society to wit. } in that behalf, hath this day made complaint upon oath before me, one of his Majesty's justices of the peace acting in and for and residing in the said county, that on &c., [here state the offence as in preceding precedent to the asterisk, and conclude thus:]—these are, therefore, in his Majesty's name, to summon you to appear before me and such other justices as may then and there be assembled at \_\_\_\_\_, in the said county, on &c., at the hour of \_\_\_\_\_ in the forenoon, to answer the said complaint; and you are hereby also required to bring with you and produce before me and them, the rules, orders, and regulations of the said society. Given under my hand and seal, this \_\_\_\_\_ day of &c.

J. P.

(No. 6).

Conviction thereon.

— } BE it remembered, That, on &c., at &c. [as in the information, ante, 863], A. B., to wit. } of &c., personally came before me [or, one] J. P., one of his Majesty's justices of the peace, acting in and for the said county, and residing therein, and on his oath informed and complained to [me] the said J. P., that he the said A. B., &c. [here set forth the facts as stated in the information, ante, 863, to the asterisk]: whereupon the said C. D., after being duly summoned to answer &c., [here set forth the appearance or default, the evidence and the award according to the fact, and see the form, ante, Vol. I. p. 851, given by the 3 Geo. IV. c. 23, for convictions in general. The form, if costs be awarded, will be found ante, Vol. I. p. 851; no more than 10s. costs can be so awarded].

(No. 7).

Warrant of distress or commitment thereon.

A warrant of distress may be readily framed according to the 25th section of the act, ante, 855, from the general form, ante, Vol. I. p. 1021, and the above conviction, and so may a commitment for want of distress, from the general form of commitment, ante, Vol. I. p. 1022, and the above conviction.

(No. 8).

Information on the 10 Geo. 4, c. 56, s. 2; in order to enable justices to enforce performance of an award under the act (a).

— } BE it remembered, That, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at \_\_\_\_\_, in the to wit. } said county, A. B., of the parish of \_\_\_\_\_, in the said county, [baker], personally cometh before me, J. P. esquire, one of his Majesty's justices of the peace, acting in and for the said county, and residing in the said county, and upon his oath complaineth unto me, the said justice, for that he the said A. B. is a member of a certain friendly society, called \_\_\_\_\_, established and held at the said parish of \_\_\_\_\_, in the said county, under and by virtue of the statute in such case made and provided, and made and passed in the tenth year of the reign of his late Majesty King George the Fourth; that by the rules and regulations of the said friendly society, duly allowed and confirmed, as required by and according to the said statute, it was and is specified that every matter in dispute between the said society or any person acting under them, and any individual member thereof, or person claiming on account of any member, should and shall be made to arbitrators to be appointed according to the provisions of the said statute: that a certain matter of dispute, that is to say, whether &c. [here state shortly the matter in dispute], did, on &c., at &c., arise between the said society [or, "E. F., a person acting under them"] and the said A. B., then being such member thereof as aforesaid [or, "G. H., a person claiming as executor of the said A. B., and on his account"], and that such matter in dispute was, on the said &c., at &c., referred to arbitration, according to the said rules and regulations and the said statute, to certain arbitrators, that is to say, I. J., K. L., M. N., and O. P., then and there named, chosen, and elected by the said society, according to the said act, and not being then or at

(a) See the act, ante, 857.

any other time beneficially interested, directly or indirectly, in the funds of the said society, and the names of the said arbitrators being then and there duly entered in the book of the said society, in which the rules were entered according to the said statute, and that the said I. J., K. L., and M. N., then and there took upon themselves the burthen of the said arbitration, and being the major part of the said arbitrators, did on the [date of award], at the parish aforesaid, in the county aforesaid, make their award in writing, bearing date that day and year, of and concerning the matters so referred to them as aforesaid, and as such arbitrators did then and there thereby award and order that R. S. should, on the &c., pay to the said A. B. the sum of &c., [according to the award as the case may be, see the form of the award, ante, 863], and of which said award the said R. S., then and there had notice; and the said A. B., on his oath aforesaid, giveth me the said justice further to understand and be informed that the said A. B., afterwards, on the day and year last aforesaid, there requested the said R. S. to pay him the said A. B. the said sum of pounds, [as in the award] according to the said award and decision, and comply with and conform to the said award and decision, which the said R. S. then and there wholly neglected and refused to do, and still neglects and refuses so to do, and the said sum of pounds still remains wholly due and unpaid from the said R. S. to the said A. B.:\* wherefore the said A. B. prays the judgment of me the said justice in the premises, and that the said R. S. may be summoned to answer to this complaint according to the directions of the statute in such case made and provided.

Exhibited before us, this day of , 13 . J. P.

A. B.

(No. 9).

To Mr. R. S., treasurer, &c. [according to the fact], of the Friendly Society, called Summons thereon.  
at &c., in the county of —.

— } WHEREAS A. B., of [baker], a member of your society, hath this  
to wit. } day made complaint upon oath before me, one of his Majesty's justices of the  
peace, acting in and for and residing in the said county, that, on &c., I. J., K. L., and  
M. N., being the major part of certain arbitrators duly appointed by the said society,  
did make their award in writing of and concerning certain matters in difference, and  
duly referred to them, and by which said award they did award and order that you  
the said R. S. should, on &c., pay to the said A. B. the sum of , [according to  
the award], and that you have refused to comply with the said award:—These are,  
therefore, in his Majesty's name, to summon you to appear before me, or other his Ma-  
jesty's justices in and for the said county, at , in the said county, on the day  
of , instant, at the hour of [eleven] in the forenoon, to answer the said complaint.  
Given under our hands and seals, at , in the said county, this day of  
18 . J. P.

S. P.

(No. 10).

To R. S., treasurer &c., [according to the fact], of the Friendly Society called , Order of justices  
held at , in the county of —. thereon.

— } WHEREAS A. B., of &c., [baker], personally came before [me], J. P., esq.,  
to wit. } one of the justices of our lord the King, assigned to keep the peace of our said  
lord the King, within the said county, and also to hear and determine divers felonies,  
trespasses, and other misdemeanors, within the said county committed, and residing in  
the said county, and made an information and complaint upon oath before [me], the  
said J. P., so being such justice, and which oath [I], the said J. P., did then and there  
administer to him, the said A. B., by which said information and complaint the said  
A. B., on his oath aforesaid, deposed and said, that he, the said A. B., was a member,  
&c., [here set forth the subject of the complaint, as ante, p. 864, (No. 8), in the past  
tense, to the asterisk], and thereupon he prayed the judgment of the said J. P. in the  
premises. And whereas, on this &c., at &c., the said R. S., pursuant to the summons of  
[me], the said J. P., issued for that purpose, appeared [according to the fact] before  
us, the said J. P. and S. P., two of the justices of our said lord the King, assigned  
to keep the peace of our said lord the King, within the said county of Kent, and also  
to hear and determine divers felonies, trespasses, and other misdemeanors, in the said  
county committed, and residing in the said county, and the said A. B. being then and  
there present, we, the said justices, did then and there proceed to hear and deter-  
mine, and did hear and determine, the matter of the said complaint, and make such  
order thereupon as to us seemed just, according to the statute in such case made and  
provided. And thereupon we do order and adjudge, by virtue of the said statute, that  
the said R. S. do pay &c., [according to the award, as the magistrates may think fit];  
and we do also award and adjudge that the said R. S. shall also pay to the said A. B.



## FORMS.

the sum of ten shillings, [or less], for costs, according to the statute in such case made and provided. Given under our hands and seals, at &c., this , day of , 18 .

J. P. (L. 2.)  
S. P. (L. 2.)

(No. 11).

Warrant of distress thereon.

This form may be readily framed according to the 27th section of the act, from the general form, ante, tit. *Distress by Warrant*, Vol. I. p. 1021, and the facts stated in the order itself.

(No. 12).

Information on 10 Geo. 4, c. 56, s. 27. where matter in dispute is referred to a magistrate.

BE it remembered, [as in the information, ante, p. 865], That he, the said A. B., is a member of the friendly society called , held at , in the county aforesaid, the rules whereof are duly enrolled and confirmed, and the said society being established agreeably to the statute in that case made and provided, and made and passed in the tenth year of the reign of his late Majesty King George the Fourth, and that he, the said complainant, was [“at a meeting of the said society, held on the day of , last, at , in the said parish of , in the county aforesaid, without any sufficient cause, unjustly, illegally, and contrary to the purport, true intent and meaning of the rules of the said society, by the members thereof then and there present, excluded from the said society, and all benefit and advantage which he hath a right to have, or claim therefrom,” according to the fact]; and that, by the rules of the said society, it is directed that the said matter in complaint and dispute shall be decided by justices of our lord the King, assigned to keep the peace of our said lord the King; and hereupon the said A. B. prayeth judgment of me in the premises, and that C. D. and E. F., the stewards of the said society, may be summoned to answer the said complaint.

Sworn before me, J. P., the day of &c.

A. B.

(No. 13).

Justices' adjudication thereon.

To C. D. and E. F., stewards of the Friendly Society called , held at , in the parish of , in the county of —.

BE it remembered, that A. B., of &c., [tailor], in his proper person, on &c., at &c., in the county aforesaid, made an information and complaint upon oath, before [me], J. P., esquire, one of the justices of our said lord the King, assigned to keep the peace of our said lord the King, within the said county of , and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and residing in the said county, and which oath the said justice did then and there administer to the said A. B., by which said information and complaint on oath aforesaid, the said A. B. deposed and said, that [he, the said A. B., then was a member of a certain friendly society called , held at &c., in the parish aforesaid, in the county aforesaid, the rules, orders, and regulations of which said society had been allowed and confirmed, and enrolled, and the said society being established pursuant to the statute in that case made and provided, and made and passed in the tenth year of the reign of his late Majesty King George the Fourth;] and that [he, the said A. B., had been a member of the said society for the space of years and upwards, and that he had for years then past, or thereabouts, been lame, and thereby rendered incapable of working at his calling; that he then did continue so, and that he had, during the time he was so lame, received the allowance from the said society until the month of then and now last, on the club night of which month the members of the said society refused to pay him any further allowance, declined accepting his contribution money, and unjustly excluded him from the said society; [let this statement be according to the fact]; and that by the aforesaid rules and regulations, [here set forth shortly the rule or rules not complied with], and also that by the aforesaid rules it is directed, that the aforesaid subject matter of complaint and in dispute shall be decided by justices of our said lord the King, assigned to keep the peace of our said lord the King; and thereupon he prayed that justice might be done to him in the premises. And whereas, on &c., at &c., C. D. and E. F., two of the stewards of the said society, pursuant to the summons of me, the said J. P., issued for that purpose, and also G. H., a member of the said society, appeared before us the said J. P. and S. P., two of the justices of our said lord the King, assigned to keep the peace of our said lord the King within the said county of , and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said county committed, and also residing in the said county; and the said A. B. being also then and there present, we, the said justices aforesaid, did then and there proceed to hear and determine, and did

hear and determine the matter of the said complaint, according to the true purport and meaning of the said rules, orders, and regulations of such society, according to the direction of the said statute; and thereupon we do order and adjudge, by virtue of the said statute, that [the said A. B. be re-admitted into the said society, and into all the benefits and advantages arising therefrom]; and we do order and require you, the stewards and members of the said society, to re-admit the said A. B. into the said society, and unto all the benefits arising therefrom accordingly, [according to the facts ordered].

Given under our hands and seals, at &c., in the county aforesaid, the day of .

J. P. (L. s.)

S. P. (L. s.)

(No. 14).

— THE jurors for our lord the King upon their oath present, that one A. B., before the making of the order hereinafter mentioned, had been and was admitted a member of a certain friendly society, called &c., established and holden at &c., by virtue of a certain act of Parliament made and passed in the Parliament of our lord the late King, George the Fourth, holden at Westminster, in the county of Middlesex, in the tenth year of the reign of our said lord the late King, intituled "An Act to consolidate and amend the laws relating to friendly societies," the rules, orders, and regulations of which said society were duly confirmed and enrolled, according to the directions of the said act of Parliament. And the jurors aforesaid, on their oath aforesaid, do further present, that, according to one of the said rules, orders, and regulations, it was amongst other things ordained that &c., [here set forth the rule the society have broken, and concerning which the order was made]. And the jurors aforesaid, on their oath aforesaid, do further present, that, by the said rules, orders, and regulations, it was and is directed that any matter in dispute between the said society and any member thereof should and shall be decided by justices of our lord the King assigned to keep the peace of our said lord the King, in and for the county of . And the jurors aforesaid, on their oath aforesaid, do further present, that the said A. B., having been admitted a member of the said society, as aforesaid, before the making of the order hereinafter mentioned, had been, contrary to the said first-mentioned rule, order, and regulation, expelled from the said society, and deprived of certain relief and maintenance, to which he considered himself entitled according to the said first-mentioned rule, order, and regulation, by the stewards of the said society for the time being, and other officers and members thereof, and that the said [defendants] had neglected and refused to comply with the said first-mentioned rule, order, and regulation; and the said A. B. thought himself aggrieved thereby, and thereupon made complaint thereof to J. P., one of his Majesty's justices of the peace, assigned to keep the peace and hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, and residing in the said county, against E. F., late of &c., and C. D., late of &c., who then and from thence until and at the time of the disobedience of the order hereinafter mentioned, were stewards of the said society; and the said E. F. and C. D. were thereupon duly summoned by the said justice to appear before him or some other his Majesty's justices of the peace in and for the said county, at a convenient time and place named in such summons. And the jurors aforesaid, on their oath aforesaid, do further present, that thereupon, heretofore, to wit, on &c., at &c., the said E. F. and C. D. appeared pursuant to the said summons, before J. P. and S. P., being two of the justices of our lord the King assigned to keep the peace of our said lord the King in and for, and residing in the said county, the said A. B. being also then and there present: and the said J. P. and S. P., so being such justices as aforesaid, did then and there proceed to hear and determine the matter of the aforesaid complaint, according to the true purport and meaning of the rules, orders, and regulations of the said society, and the directions of the said act of Parliament, and did thereupon then and there make a certain order in writing, under their hands and seals, directed to the said E. F. and C. D., so being stewards of the said society, and all other persons whomsoever, being officers or members of the said society, whereby, after reciting, that &c. [set forth the recitals], it was ordered &c., [set forth the adjudicatory part of the order], as by the said order of justices fully appears; of which order the said E. F. and C. D., heretofore, to wit, on &c., at &c., had notice. And the jurors aforesaid, on their oath aforesaid, do further present, that the said E. F. and C. D., so being stewards of the said society, well knowing the premises, but not regarding the said order, nor the said act of Parliament, did not nor would, nor did nor would either of them &c., [deny fully the part of the order ordering

Indictment against the stewards, &c., of a friendly society for disobeying an order of justices made on the 10 Geo. 4, c. 56, s. 27 (a).

(a) Other precedents may be readily framed from this, if it be not precisely applicable to the facts.

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the act omitted to be complied with], or in any respect comply with, or obey, or regard the same order, as they could, and might, and ought to have done, but wholly refused and neglected so to do; and therein then and there wholly failed and made default, contrary to the form of the said order, and the said statute in such case made and provided, to the evil example of all others, and against the peace of our said lord the King, his crown and dignity.

(No. 15).

Indictment against the stewards, &c. of a friendly society, for disobeying an order of justices made on a society established before the 10 Geo. 4, c. 56 (a).

— *THE jurors for our lord the King upon their oath present, that one A. B., before the making of the order hereinafter mentioned, had been and was admitted a member of a certain friendly society, called the Royal Oak Society, established at , in the county of , by virtue of a certain act of Parliament made and passed in the Parliament of our lord the King, holden at Westminster, in the county of Middlesex, in the thirty-third year of the reign of our said lord the King, intituled "An Act," &c. [insert the title of the act of 33 Geo. III. c. 54], the rules, orders, and regulations of which society were duly confirmed, according to the directions of the said act of Parliament. And the jurors &c., that the said A. B. having been admitted a member of the said society as aforesaid, before the making of the order hereinafter mentioned, had been expelled from the said society, and deprived of certain relief and maintenance, to which he considered himself entitled from the stewards of the said society for the time being, and other officers and members thereof, and the said A. B. thought himself aggrieved thereby, and thereupon made complaint thereof to P. Q. and X. Y., esquires, two of his Majesty's justices of the peace, assigned &c., in the said &c., in which the said society was established as aforesaid, against M. M. late of &c., and W. W. late of &c., who then, and from thence until and at the time of the disobedience of the order hereinafter mentioned, were stewards of the said society, and O. O., late of the same place &c., who then, and during that time, was clerk to the said society; and the said defendants were thereupon duly summoned, according to their respective christian and surnames respectively, by the said justices, to appear before them at a convenient time and place named in such summons, they the said defendants, or some or one of them, appearing to such justices to have the custody of the said rules, orders, and regulations of the said society; and the said defendants had not appeared before the said justices, pursuant to the said summons, to wit, at &c. And the jurors &c., that thereupon, heretofore, to wit, on &c., at &c., the said defendants so being such justices as aforesaid, on proof upon oath of such summons as aforesaid being duly served, did proceed to hear and determine the matter of the aforesaid complaint, according to the true purport and meaning of the said rules, orders, and regulations of the said society, and the directions of the said act [or, acts] of Parliament, and did thereupon then and there make a certain order in writing, under their hands and seals, directed to the said, &c., so being stewards of the said society, and to the said &c., so being clerk thereof as aforesaid, and all other persons whomsoever, being officers or members of the said society, whereby, after reciting, amongst other things, that &c. [recite the order requiring the defendants to attend and produce books &c.], as by the said order of justices fully appears, with which order the said M. M. and W. W., heretofore, to wit, on &c., at &c., were personally served, and of which order they the said M. M., W. W., and O. O., then and there had notice. And the jurors &c., that the said M. M. and W. W., so being stewards of the said society, and the said O. O., &c. so being clerk thereof as aforesaid, well knowing the premises, but not regarding the said order, nor the said act [or, acts, as the case may require] of Parliament, did not nor would, nor did nor would either of them, personally, or otherwise, be or appear before the said justices at the time and place in that behalf above mentioned; nor did nor would then and there produce before them, the said justices, for their inspection, such books, papers, and writings, as aforesaid, or any or either of them, or in any respect comply with, or obey, or regard the same order, as they could, and might, and ought to have done, but wholly refused and neglected so to do, and herein then and there wholly failed and made default, contrary to the form of the said order, and against the peace, &c.*

(a) A similar form will be found in *Talf. Dick. Sess. 308*.

**Fruit and Fruit Trees.** See *Wood*, Vol. V.;—Stealing of, see *Larrenp*, Vol. III. p. 565, 566;—Malicious Injuries to, see *Malicious Injuries to Property*, Vol. III. p. 734, 736.

## Fuel.

[Stats. 43 Eliz. c. 14; 9 Ann. c. 15; 10 Ann. c. 6.]

By stat. 43 Eliz. c. 14, all faggots to be sold shall contain in compass, 43 Eliz. c. 14.  
besides the knot of the bond, twenty-four inches of assize; and every fag-  
got-stick within the bond shall contain full three feet of assize, except only  
one stick to be but one foot long, to stop or harden the binding.

By stat. 9 Ann. c. 15, s. 1, all billets (except those made of beech, 10 9 Ann. c. 15.  
Ann. c. 6), that lie exposed in public places where they are usually bought or  
sold, shall be assized, and cut or marked in manner following; that is to say,—  
All billets, of what scantling or denomination soever, shall contain in length  
three feet and four inches, and be of the following dimensions; viz.

Names of the Billets.	Round.		Half round.		Quarts cleft.		
	in.	gr.	in.	gr.	in.	gr.	
<i>A single</i> - -	7	2	0	0	0	0	<i>No notch.</i>
<i>A cast</i> - -	10	2	12	1	12	0	<i>One notch.</i>
<i>A trois</i> - -	13	0	15	0	14	3	<i>Three in the middle.</i>
<i>2 cast</i> - -	15	0	17	1	17	0	<i>Two notches.</i>
<i>3 cast</i> - -	18	1	21	1	21	0	<i>{ One at each end and one in the middle.</i>
<i>4 cast</i> - -	21	1	24	2	24	0	<i>4 notches.</i>
<i>5 cast</i> - -	23	3	27	2	27	0	<i>5 notches.</i>
<i>6 cast</i> - -	26	0	30	0	29	2	<i>6 notches.</i>
<i>7 cast</i> - -	28	0	32	2	32	0	<i>7 notches.</i>
<i>8 cast</i> - -	30	0	34	3	34	0	<i>8 notches.</i>
<i>9 cast</i> - -	31	3	36	3	36	1	<i>9 notches.</i>
<i>10 cast</i> - -	33	2	38	3	38	0	<i>10 notches.</i>
<i>11 cast</i> - -	35	1	-	-	-	-	<i>11 notches.</i>
<i>12 cast</i> - -	36	3	-	-	-	-	<i>12 notches.</i>
<i>13 cast</i> - -	38	1	-	-	-	-	<i>13 notches.</i>
<i>14 cast</i> - -	39	3	-	-	-	-	<i>14 notches.</i>
<i>15 cast</i> - -	41	0	-	-	-	-	<i>15 notches.</i>
<i>16 cast</i> - -	42	2	-	-	-	-	<i>16 notches.</i>
<i>17 cast</i> - -	43	3	-	-	-	-	<i>17 notches.</i>
<i>18 cast</i> - -	45	0	-	-	-	-	<i>18 notches.</i>
<i>19 cast</i> - -	46	1	-	-	-	-	<i>19 notches.</i>
<i>20 cast</i> - -	47	2	-	-	-	-	<i>20 notches.</i>

Sect. 2. And if they shall not be thus assized and marked, then on in-  
formation to a justice of the peace, mayor, or other head officer, he shall  
call before him six good and lawful men of the town, and shall swear them  
truly to inquire and present whether the same be of good and sufficient  
assize; and if they shall present that any of them is not sufficient, the same  
so being deficient shall be forfeited, and be delivered to the overseers, to be  
by them distributed to the poor.

And by stat. 43 Eliz. c. 14, the billets shall be measured within six 43 Eliz. c. 14.  
inches of the midst; and the surplusage which shall happen between any  
two next measures, being above the one and under the other, shall be taken  
for the benefit of the buyer.

**Fuller's Earth.** See **Woollen Manufacture**, Vol. V.

**Funds**, Forgery relating to, see *ante*, p. 834;—Conspiracy to  
raise Price of, see *ante*, Vol. I. p. 784;—Larceny of Stock,  
see **Larceny**, Vol. III. p. 569.

## Funeral.

IT is a vulgar error, prevalent among the lower classes, that when once a funeral procession with a corpse passes over another's land, it creates a right of way. Such a notion is both absurd and erroneous, and frequently tends to a breach of good feeling and decency.

As to when funerals are exempt from tolls, see Vol. III. p. 187.

## Furious Driving.

THE law, as to how far death occasioned by furious or negligent driving of carriages amounts to manslaughter or murder, will be found *post*, *Homicide*, Vol. III. p. 244.

Geo. 4, c. 4.

Persons occasioning accidents by furious driving, declared guilty of a misdemeanor.

Proviso for hackney coaches.

By the 1 Geo. IV. c. 4, intituled *An Act for punishing criminally drivers of stage coaches and carriages for accidents occasioned by their wilful misconduct*, after reciting that by the 50 Geo. III. c. 48, 'Divers regulations and penalties were established and imposed to carry into effect the useful and highly important purposes thereby intended: and whereas it is expedient to extend the provisions of the said act, and to punish criminally coachmen or persons having the care of stage coaches and other public carriages, carrying passengers for hire, for accidents occasioned by their wilful misconduct, as hereinafter mentioned,' it is enacted, "That if any person whatever shall be maimed or otherwise injured, by reason of the wanton and furious driving or racing, or by the wilful misconduct of any coachman or other person having the charge of any stage coach or public carriage, such wanton and furious driving or racing, or wilful misconduct of such coachman or other person, shall be, and the same is hereby declared to be, a misdemeanor, and punishable as such by fine and imprisonment: provided always, that nothing in this act contained shall extend, or be construed to extend, to hackney coaches, being drawn by two horses only, and not plying for hire as stage coaches."

See further the provisions of the 50 Geo. III. c. 48, against the misbehaviour of stage coach drivers, &c., title *Stage Coaches*, Vol. V. p. 547.

(No. 1).

Commitment on 1 Geo. 4, c. 4, for injuring a person by furious driving.

Commencement as usual, as *ante*, p. 11, form (No. 2).—on &c., at &c., the said C. D. being then the coachman and person having the charge of a certain stage coach and public carriage, not being a hackney coach, did wantonly and furiously drive and race the same, [or, wilfully misconduct himself, by then and there, &c., stating the misconduct shortly], and did thereby, and by reason thereof, then and there maim and otherwise injure one A. B., contrary to the form of the statute in such case made and provided. And you, &c. [Conclude as usual, as in form (No. 2), *ante*, p. 11, to the end].

(No. 2).

Indictment for a like offence.

—THE jurors for our lord the King upon their oath present, that C. D., late of &c., on &c., with force and arms, at &c., being then and there the coachman and person having the charge of a certain stage coach and public carriage, travelling towards , (and not being a hackney coach), did wantonly and furiously drive and race the same, [or, wilfully misconduct himself, by then and there, &c. stating shortly the mode in which defendant misconducted himself], and did thereby, and by reason thereof, then and there maim and otherwise injure one A. B., contrary to the form of the statute in such case made and provided, and against the peace of our said lord the King, his crown and dignity. [Add other counts as the case may suggest, and one count describing the defendant merely as "the person having the charge of a certain stage coach," omitting the words "travelling towards."]

**Furze, Burning it in Forests, see Burning, Vol. I.**

## Game. (a)

THE statutes relating to this title are very numerous, and the sense sometime a little perplexed, so that, perhaps, upon a view of the whole, it may seem that about four or five new acts, comprehending the several heads hereafter mentioned, and repealing all the preceding, would conduce to render this branch of our laws more intelligible and useful.

After having first premised (in order to avoid frequent repetitions throughout this title), that it is enacted by stat. 8 Geo. II. c. 19, that where any person for any offence against *any law in being at the making of the said act*, for the better preservation of the game, shall be liable to pay any pecuniary penalty or sum of money, on conviction before a justice of the peace, the prosecutor may either proceed to recover the same in such manner, or he may *sue* for the same (before the end of the second term after the offence committed, stat. 26 Geo. II. c. 2) *by action of debt*, or on the case, bill, plaint, or information, in any court of record at Westminster, wherein if he recover he shall have double costs: provided, that the offender shall not be prosecuted both ways; and in case of a second prosecution, he may plead in his defence the former prosecution pending, or the conviction or judgment thereupon had. And by stat. 2 Geo. III. c. 19, s. 5, whereas a moiety of the said penalty by several acts is directed to be applied to the use of the poor of the parish where the offence was committed, by reason whereof inhabitants of the said parish have been disallowed to give evidence, it is enacted, that it shall be lawful for any person to sue for *the whole of such penalty* to his own use, and if he recover he shall have double costs; such action to be brought within six months after the offence committed. But by stat. 27 Geo. III. c. 29, where any pecuniary penalty or part thereof is given to the poor, the inhabitants of every such parish or place shall be deemed competent witnesses to prove any offences committed therein, notwithstanding that the penalty incurred or any part thereof be given or applicable to the poor of such place, or for the benefit or use thereof; unless such penalty exceed 20*l.* (b). This being premised, we will proceed to treat of this subject under the following heads:—

### GAME.

8 Geo. 1, c. 19.  
Penalties how to  
be recovered in  
general.

26 Geo. 2, c. 2.

2 Geo. 3, c. 19.

Costs.  
27 Geo. 3, c. 29.  
Inhabitants may  
be witnesses.

#### I. *Property in Game in general*, 874.

*Tame Animals*, 874; *Wild Animals*, 874.

#### II. *Laws as to Game in particular Places*, 875 to 879.

(1.) *In Franchises, as Forests*, 875; *Purlicues*, 875; *Chases*, 876; *Parks*, 876; *Freewarrens*, 876; *General Observations as to*, 877.

(2.) *In Places not Franchises, as Manors*, 878; *Hare and Rabbit Warrens*, 878; *Decoys*, 878; *Preserves, &c.* 879; and *further as to the Property of Game therein*, 879.

#### III. *Who are Qualified to Kill Game, or use Dogs, &c. to kill it*, 879 to 890.

(a) As to Game in general see Chitty's *Game Laws*, Christian's *Game Laws*. Per *Villes J.*, *Jones v. Smart*, 1 T. R. 44, "The game laws are already sufficiently oppressive, and therefore ought not to be extended by implication;" and in the same case the game laws were styled an oppressive remnant of the ancient arbitrary forest laws, under which, in earlier ages, the killing of one of the

King's deer was equally penal with murdering one of his subjects;" *et per Ashhurst J.*, 1 T. R. 44, "the game laws are rather to be considered as positive rules than as founded on reason."

(b) The 52 Geo. III. c. 93, sched. L. post, 893, 894, contains particular provisions as to the recovery of penalties for offences relative to game certificates.

**Game.***Qualification.*

(1.) *By Estate of Inheritance*, 881; *Value of Estate for Life*, 883; *Leasehold Estate*, 883; *Evidence of, in General*, 883.

(2.) *By being Son and Heir Apparent of an Esquire, &c.* 884.

(3.) *By Ownership or Keeping a Franchise*, 885.

(4.) *By being Lord of a Manor*, 885.

(5.) *By being a Gamekeeper*, 885; *what Manor, &c. sufficient*, 889; *other points as to Gamekeepers*, 889.

13 Rich. II. st. 1, c. 13; 1 Jac. I. c. 27; 3 Jac. I. c. 13; 7 Jac. I. c. 11; 22 & 23 Car. II. c. 25; 5 Ann. c. 14; 9 Ann. c. 25; 25 Geo. III. c. 50; 48 Geo. III. c. 93; 55 Geo. III. c. 184; 59 Geo. III. c. 102.

IV. *Certificate to be taken out and Consequences of Omission*, 890 to 896.

62 Geo. III. c. 93; 54 Geo. III. c. 141; 7 & 8 Geo. IV. c. 49.

V. *Offences under 5 Ann. c. 14, s. 4, of Unqualified Persons in Keeping or Using Dogs, Guns, &c. to Kill Game*, 896 to 913.

*Enactments of 5 Ann. c. 14, s. 4, as to*, 896.

(1.) Who are subject to the Penalty, 897.—*What a Keeping*, 898.—*What a Using of Dogs, &c.* 900.—*How far Unqualified Person may Shoot with Qualified one*, 901.—*What Dogs, &c. are within the Act*, 903.—*What Game within it*, 904.

(2.) *The Amount of the Penalty, and how many be incurred*, 904.

(3.) *The Means of enforcing the Penalty*, 904.—*By action*, 904.—*By Information in the Superior Courts*, 905.—*By Information and Conviction before a Magistrate*, 905.—*Observations in General on such Proceeding*, 906.—*The Information*, 906; *the Hearing of the Case*, 906; *the Conviction, and its parts*, 907 to 912.—*Levying of Penalty*, 912.—*Imprisonment, Appeal, and Certiorari*, 912.

(4.) *When Punishable by Indictment*, 913.

VI. *Buying or Selling Game, or having it in Possession*, 913 to 920.

*Enactments as to*, 913; *Decisions, &c. on the Acts*, 917 to 920.

4 & 5 W. & M. c. 23, s. 3; 5 Ann. c. 14, s. 2; 9 Ann. c. 25; 28 Geo. II. c. 12; 58 Geo. III. c. 75.

VII. *Inferior Tradesmen, &c. Sporting, &c.* 921.

4 & 5 W. & M. c. 23, s. 10.

VIII. *Soldiers Killing Game*, 923.

IX. *Shooting in Cross Bows, &c.* 923.

33 Hen. VIII. c. 6.

X. *Penalties for Killing, &c. Game in the Night, or on Sunday, &c.* 923 to 926.

9 Ann. c. 25; 13 Geo. III. c. 80.

XI. *Offence of Night Poaching and going Armed at Night to Kill Game, under 9 Geo. IV. c. 69*, 926.

- (1.) *General Clauses of the Act*, 926.
- (2.) *Offences Punishable by Summary Conviction, &c.*, 927.
- (3.) *Offences Punishable by Indictment*, 930.  
9 Geo. IV. c. 69.

**XII. Laws relative to the Four-footed Game in particular, as—**

- (1.) *Deer, and herein of Deer Stealing, Assaulting Keepers, &c.*  
932; *Destroying Fences, &c.* 934.  
7 & 8 Geo. IV. c. 29, s. 26, 27, 28, 29; 7 & 8 Geo. IV. c. 30.
- (2.) *Hares, tracing in Snow; Killing, &c. in Warrens*, 934.  
14 & 15 Hen. VIII. c. 10; 1 Jac. I. c. 27; 48 Geo. III. c. 93;  
7 & 8 Geo. IV. c. 29, s. 30.
- (3.) *Conies*, 935.

**XIII. Laws relative to the Winged Game in particular, 936 to 943.**

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11 Hen. VII. c. 17; 3 Eliz. c. 21; 23 Eliz. c. 10.
- (2.) *Swans*, 937.  
22 Edw. IV. c. 6; 1 Jac. I. c. 27; 11 Hen. VII. c. 17.
- (3.) *Partridges and Pheasants*, 938.  
11 Hen. VII. c. 17; 1 Jac. I. c. 27; 7 Jac. I. c. 11; 23 Eliz.  
c. 10; 9 Ann. c. 25; 2 Geo. III. c. 19.
- (4.) *Pigeons*, 939.  
7 & 8 Geo. IV. c. 29, s. 33.
- (5.) *Wild Ducks, Wild Geese, and other Wild Fowl*, 939.  
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- (6.) *Heath Fowl, Grouse and Bustards*, 940.  
1 Jac. I. c. 27, s. 2; 9 Ann. c. 25; 13 Geo. III. c. 55; 13 Geo.  
III. c. 80; 43 Geo. III. c. 112.
- (7.) *Hérons*, 942.  
1 Jac. I. c. 27, s. 2; 19 Hen. VII. c. 11; 25 Hen. VIII. c. 11.
- (8.) *Other Wild Fowl*, 942.  
24 Hen. VIII. c. 10; 25 Hen. VIII. c. 11; 8 Eliz. c. 15.

**XIV. Power to Seize and Kill Dogs, Guns, &c. 943 to 947.**

- (1.) *Justices of the Peace*, 943.
- (2.) *Park-keepers*, 945.
- (3.) *Lords of Manors*, 945.
- (4.) *Gamekeepers*, 946.  
7 Jac. I. c. 11; 22 & 23 Car. II. c. 25; 4 & 5 W. & M. c. 23;  
5 Ann. c. 14; 9 Ann. c. 25.

**XV. Trespasses in General in pursuit of Game, 947 to 952.**

- (1.) *What a Trespass*, 947.
- (2.) *The Remedy for Trespasses: by Action at Law, Costs, Damages, &c.* 948; *by Suit in Equity*, 949; *by Agreement*, 949, or *by Indictment*, 950.
- (3.) *Mode of Preventing Trespasses: by Resisting Entry and Forcing off the Land, &c.* 950; *Seizing Dogs, &c.* 950; *Setting Dog Traps*, 951; *Spring Guns*, 951.  
11 Hen. VII. c. 17, s. 17; 4 & 5 W. & M. c. 23; 8 & 9 Will.  
III. c. 11; 23 Eliz. c. 10; 7 & 8 Geo. IV. c. 18; 7 & 8 Geo.  
IV. c. 30, s. 24.

**XVI. Forms, see List of, post, 952.**



PROPERTY IN  
GAME.

## I. Property in Game in General.

Before we take notice of the statutes made for the preservation of the game, it may be requisite to observe how the common law stood herein; which depends upon the difference between *tame* and *wild* animals.

## Tame animals.

The *tame* animals, such as *horses, cows, sheep*, and the like, are such creatures as by reason of their sluggishness and unaptness for motion do not fly the dominion of mankind, but generally keep within the same pastures and limits, and may be easily pursued and overtaken, if by accident they should escape; and therefore the owner hath the same kind of property in them as he hath in all inanimate chattels, and for the violation thereof may bring an action of trespass.

## Wild animals.

The *wild* animals, such as *deer, hares, foxes*, and such like, are those, which by reason of their swiftness or fierceness fly the dominion of man; and in these no person can have a property, unless they be tamed or reclaimed by him. And as property is the power that a man hath over any other thing for his own use, and the ability that he hath to apply it to the sustentation of his being, when that power ceaseth, his property is lost; and, by consequence, an animal of this kind, which after any seizure escapes into the wild common of nature, and asserts its own liberty by its swiftness, is no more mine than any creature in the *Indica*, because I have it no longer in my power or disposal. See 3 *Bac. Abr.* 324.

## Taking and killing them.

Hence it appears, that by the common law every man had an equal right to such creatures as were not naturally under the power of man, and that the mere caption of or seizure created a property in them. By immediate *taking and killing* them, they belong to such person in the same manner as any other chattels, and cannot be taken from him; since the first seizure and caption was sufficient to vest the property of them in him.

## Taking and taming them.

Also by *taking and taming* them, they belong to the owner, as do the other tame animals, so long as they continue in this condition, that is, as long as they can be considered to have the mind of returning to their masters; for while they appear to be in this state, they are plainly the owner's, and ought not to be violated; but when they forsake the houses and habitations of men, and betake themselves to the woods, they are then the property of any man. *Chit. G. L.* 6, 7.

## Inclosing them.

Another way of gaining property in them is by *inclosure*; and then the beasts must be understood to be mine, as the profits of the soil itself are; and they can no more be taken and carried off than any other profits of the land. Therefore if deer be enclosed in a park or paddock, or conies in a field or warren, they become so much a man's own that no one ought to kill or take them away. And since in this case it is the enclosure that retains them, (for take away the enclosure, and they are in their natural liberty,) therefore the party is said to have right as he hath to any other profits there inclosed, and a distinct and independent right in every animal. *Chit. G. L.* 6, 7. *Darke v. Powell, Will. Rep.* 46; 3 *Bac. Ab.* 325.

## Young ones, &amp;c.

Another way of gaining property in them is on account of their own *inability*, as when birds build in the trees upon a person's land, or rabbits or other creatures make their burrows or nests, and have young ones there, in which case he has a qualified property in the young ones till they can fly or run away, when the property expires. Till which time it is in some cases trespass, and in others felony, to take them away. 2 *Bla. Com.* 394; 2 *East, P. C.* 607.

## Ratione soli.

Again: every person has a qualified property in the game whilst upon his *own private ground, ratione soli*; and if a man start any game upon his own ground, and follow it upon another's, and kills it there, the property remains in himself, for the property consists in the possession, which possession commences by the finding of it on his own land, and is continued by the immediate pursuit. 11 *Mod.* 75; 2 *Bla. Com.* 419. So if a stranger starts game in one man's *chase, park, or free warren*, and hunts it into another's liberty, the property continues in the owner of the chase or warren, this property

arising from privilege and not being changed by the wrongful act of a mere stranger. 1 *Ld. Raym.* 251; 3 *Salk.* 290. Or if a man starts game on another's private grounds, and kills it there, the property belongs to him in whose ground it was killed, because it was started there, the property arising *ratione soli*. *Sutton v. Moody*, 1 *Ld. Raym.* 250. Whereas, if after being started there, it is killed on the ground of a third person, the property belongs not to the owner of the first grounds, because the property is local,—nor yet to the owner of the second, because it was not started on his soil,—but it vests in the person who started and killed it, though guilty of a trespass against both owners. 1 *Ld. Raym.* 251; 2 *Bla. Com.* 419.

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It is therefore a maxim of the common law that such goods, of which no one can claim any property, belong to the King by his prerogative; and hence it is said all those animals *feræ naturæ*, which come under the denomination of *game*, are styled in our laws his Majesty's game; and that which he hath, he may grant to another; and consequently another may prescribe to have the same within such a precinct or lordship. And from hence cometh the right of lords of manors or others unto the game within their respective liberties. But this doctrine, "that the sole property of all the game is vested in the King alone," is controverted by Mr. Christian in his comment on the commentator. 2 *Bla. Com.* 419, n. 10. See also *Chit. G. L.* 3; *Schulter's Aquatic Rights*, 18.

King's property

King's grants.

## II. Laws as to Game in Particular Places.

And herein—1st, as to Game in *Franchised Places*—and, 2dly, as to Game in *Places not Franchised*.

Game in particular places.

1st. IN FRANCHISES]—The franchises or royalties relating to game are ranked in the following order, viz—first, a forest—secondly, a free chase—next, a park—and, lastly, a free warren.

(1.) In franchises.

*Forests*]—A *forest* (*a*) is a certain territory of woody grounds and fruitful pastures, privileged for wild beast and fowls of forest, chase, and warren, to rest and abide there in the safe protection of the king for his delight and pleasure; which territory of ground so privileged is meered and bounded with unremovable marks, meers, and boundaries, either known by matter of record or by prescription; and also replenished with wild beasts of venery or chase, and with great coverts of vert for the succour of the said beasts there to abide; for the preservation and continuance of which, there are particular officers, laws, and privileges, belonging to the same, requisite for that purpose, and proper only to a forest and to no other place. *Mamv.* 143. (*a*)

Forests.

Vert comprehends every thing which bears green leaves in the forest. *Mamv.* 146.

And the lord having the wood in the tenant's land, which is still customary in many manors, was originally for preservation of the vert, for the sustentation of the lord's game there.

Beasts of forest are properly hart, hind, buck, hare, boar, and wolf; but legally all wild beasts of venery. 1 *In it.* 233.

As to the hunting, &c. deer in forests, see, *post*, 932, 933.

*Purlicu*]—*Purlicu* comes from the French *pur*, clear, entire, and exempt, *Purlicu* and *lieu* a place; that is, a place, entire, clear, or exempt from the forest: and signifies those grounds which Henry the Second, Richard the First, or King John, added to their ancient forests, over other men's grounds, and

(*a*) As to forests in general, see *Chit.* able to a subject. *Attorney General v. G. L.* 14; *Manwood*, tit. *Chase, Forests*; *Marquis Downshire*, 5 *Price*, 269; *Manw. Com. Dig. Chase*. It seems forestal Part II. c. 3, 4.

rights, properly so called, are not grant-

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## Particu.

were disafforested by the statute of *charta de foresta*. 4 Inst. 303; *Mann*. 242.

But nevertheless the *parlicu*, as to some purposes, is forest still, and is disafforested as to the particular owners of the land, and for their benefit, and not generally to give liberty to any man to hunt the wild beasts and spoil the vert. And if those beasts escape out of the forest into the *parlicu*, the king hath a property in them still against any man but against the owners of the woods and lands in which they are; and such owners have a special property in them *ratione loci*, but yet so that they hunt them fairly and not forestall them in their return towards the forest. *Mann*. 292.

But a *parlicu* man may not hunt in every man's lands within the *parlicu*, but in his own lands only; and therefore if he find the beasts of the forest in his woods or lands in the *parlicu*, in such case he hath property in them against any other man *ratione soli* (the king only excepted.) And if he begin the hunting in his own lands, then by reason of that property he may pursue his hunting through any man's woods or lands, so that he doth not enter into any forest, chase, park, or warren. And if he kill the beast in another man's land, and out of such privileged place, he may take and carry away the same by reason of the first property. But if the beast recover the forest, he must call back his dogs, for they are then the King's wild beasts again. And if he do not call back and rebuke his dogs, and they kill the beast in the forest, he is a trespasser, though himself never came within the bounds thereof. But if in hunting towards the forest the dogs fasten on it before it is within the bounds thereof, and the dogs still hanging on are drawn by the deer into the forest, and it is killed there, then by reason of the first property which he had *ratione soli*, and also by the pursuit and possession thereof before it entered the forest, he may lawfully enter and take it. *Mann*. 294.

## Chase.

*Chase*].—A chase (from *chasser*, to chase) is a privileged place for receipt of deer and beasts of the forest, and is of a middle nature betwixt a forest and park. It is commonly less than a forest and not endowed with so many liberties, as officers, laws, courts, and yet is of a larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differeth from a park in that it is not inclosed; for if it be inclosed, it is a good cause of forfeiture; though it must have certain metes and bounds, but it may be in other men's grounds as well as in one's own. *Mann*. 49, 147.

Beasts of chase are, the buck, doe, fox, martern, and roe. *Mann*. 144. And according to Lord Coke all beasts of venery are beasts of chase. *Co. Lit.* 233 a.

## Park.

*Park*].—A park (from the French word *parquer*, to inclose) is a large parcel of ground privileged for wild beasts of chase by the King's grant, or by prescription. *Read. Game*.

A park must be inclosed; for if it lie open, it is a good cause of seizure into the King's hands, as a thing forfeited; and the owner cannot have an action against those that hunt in his park, if it lies open. *Id.*; *sed quere*, if it be a ground of forfeiture. See *Leicester's case*, *Cro. Jac.* 755.

If any one erect a park without the King's grant, a *quo warranto* may be issued and the park destroyed. *Bro. Ab. tit. Action sur le Statute*, pl. 48. There may indeed be a park in reputation erected without lawful warrant, and the owner may bring his action against persons killing his deer. *Wood's Inst.* 207.

The beasts of park properly extend to the buck, doe, fox; but in a common and legal sense to all the beasts of the forest. *Read. Game*.

The owner or keeper of a lawful park may shoot any dog running after deer in it. 1 *Saund.* 84, n. 3.

As to chasing, &c. deer in parks, and breaking park palings, see, *post*, 932, 933.

Deer in a park shall go to the heir, and not to the executor. 1 *Inst.* 8.

## Free warren.

*Free Warren*].—A free warren is a place privileged by prescription or

grant of the King, for the preservation of the beasts and fowl of the warren, viz. hares, conies, partridges, and pheasants. *Manw.* 44.

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A free warren may lie open, there being no necessity of inclosing it. *Read. Game.*

Conies in a warren shall go to the heir, and not to the executor. 1 *Inst.* 8.

A free warren is not forfeited by nonuser; *Co. Lit.* 2a, 114b; *Cro. Jac.* 155; but it may be by misuser; *Keilw.* 148, n.; *Cro. Eliz.* 54.

In an action of trespass for entering a free warren, and which is sustainable even against the owner of the soil, though damages are under 40s., the plaintiff is entitled to full costs; for, as observed by *Blackstone*, J. "In actions, instituted merely for breaking free warren, it is impossible the title to the soil can ever come in question; for though both may concur in one person, yet the title to the free warren is always collateral to that of the land; for a man may have a free warren in *aliendo solo*." Besides, the hare which was hunted was the personal property of the owner of the free warren; and if any injury be done to personal property, that will take it out of the statute, and entitle the plaintiff to full costs. *Lord Dacre v. Tebb*, 2 *Black. Rep.* 1151; 2 *Chit. G. L.* 21, 1166.

The owner of a free warren may lawfully kill any dog which is used to haunt the warren. *Wadhurst v. Damone*, *Cro. Jac.* 45; *Wright v. Ramscot* 1 *Saund.* 84, n. 3; *Vere v. Lord Cavder*, 11 *East*, 568. And see further as to such powers, *post*, 945, 946.

An action lies for hunting in a free warren, though no game be taken. *Lord Dacre v. Jebb*, 2 *Bla. Rep.* 1151; 1 *Saund.* 346b; 5 *Taunt.* 442.

Trespass in a free warren will not lie for shooting grouse. *Duke of Devonshire v. Lodge*, 7 *B. & Cres.* 36.

*General Observations*—It is not lawful for any person to make any chase, park, or warren, in his own freehold, or elsewhere, to keep in it any wild beasts or birds of forest, chase, park, or warren, without the King's grant or warrant so to do; and if any man do, he is to be punished in a *quo warranto*, and the franchise to be seized into the King's hands. *Manw.* 56. In *Rex v. Sir William Lowther*, 2 *Ld. Raym.* 1409; 1 *Str.* 637; it was moved for leave to file an information in nature of a *quo warranto* against Sir William Lowther, to show by what authority he had made and set up a warren. But it was denied by the court: because they said it was of a private nature only. And the like motion had been denied before, in the case of the Lord Lisburne; and see, *supra*.

General observations as to these franchises.

Twenty years undisturbed exercise of a claim of free warren or park will afford presumptive evidence of right in the party so enjoying it. *Bealey v. Shaw*, 6 *East*, 215; *Weld v. Hornbay*, 7 *East*, 199; *Goodtitle v. Baldwin*, 11 *East*, 488; *Yard v. Ford*, 2 *Saund.* 175, n. 2; and see *Gray v. Bond*, 2 *B. & Ald.* 667; *Pickering v. Noyes*, 4 *B. & Cres.* 639; 7 *D. & R.* 49, *S. C.*

The interest in them is therefore affected by rules differing from those which regulate other real property. *Chit. G. L.* 22.

Franchises of the above description may be destroyed by a reunion with the crown from which they issued, or by the surrender of the person entitled to them, or by his forfeiture in consequence of a breach of trust upon which they were granted, as by misuser. 3 *Cruise*, 301; *Keilw.* 148; *Cro. Eliz.* 54; *Bro. Ab. Warren*, tit. *Extinguishment*. Unity of possession and grant does not destroy the prescriptive right. 3 *Dyer*, 326. See *Chit. G. L.* 23.

A person may have common in a chase, as well as in a forest, but a forest is governed by the forest law, and a chase and park by the common law. 1 *Inst.* 314; *Manw.* 52.

And by the common law (says *Blackstone*) no person is at liberty to take or kill any beasts of chase, but such as have an ancient chase or park; unless they be also beasts of prey. 2 *Bla. Com.* 416.

If I find a pheasant in my lands, and I let my hawk fly, I may follow the flight into another man's land by reason of the first property which I had in the pheasant *ratione soli*; and if my hawk kill the pheasant in another man's

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land, I may enter and take it, by reason of that property and pursuit: and in that case, I shall not be punished as a trespasser for taking and carrying away the pheasant, but only for entering the ground. But if the pheasant fly into a warren, (which is a privileged place for birds of warren,) and the hawk kill it there, the falconer shall not have the pheasant, but the owner of the warren. And the law is the same in the cases of all wild beasts of the forest and chase. *Manw.* 389.

If conies are hunted out of the warren, or deer out of the park, and the warrener or parker pursues them, he may retake them; for in parks and warrens, officers are established by authority to have an eye over the game, and to keep it within the boundaries; so that the property is not altered by driving it out of the inclosures, unless it be also out of the pursuit of the officers; for as long as he that is thus trusted doth pursue it, it is not in its natural liberty, but is still belonging to the park or warren. 3 *Bac. Abr.* 326.

(2.) In places not franchised.

2d. PLACES NOT FRANCHISED]—These places may consist of manors, warrens, decoys, preserves and private grounds in general.

## Manors.

*Manors*]—There are but very few privileges with respect to game in manors, and those privileges are allowed only by statute. See *Chit. G. L.* 23. The lord of a manor cannot sport in another's soil, whether a freeholder or copyholder, though within his manor, without being subject to an action of trespass. 2 *Bla. Com.* 39, 419; 11 *Mod.* 74; and see *Brown v. Taylor*, 10 *East*, 189.

The lord of a manor, as such, is authorised to kill game within it. 1 *Walk.* 45; *Mallock v. Eastly*, 7 *Mod.* 482.

By different statutes lords of manors are empowered to authorise game-keepers to preserve and kill game within the manor. See *post*, 885 to 890, and *Chit. G. L.* 24, 25.

The lord has no power, as such, to kill the dog of a qualified person running after game in the manor; *Vere v. Lord Canodor*, 11 *East*, 568; though he would have such power if the dog was used by an unqualified person. *Kingsworth v. Bretton and another*, 5 *Taunt.* 416; 1 *Marsh.* 106, S. C.

The lord cannot delegate the power he has under the 5 *Ann. c. 14, s. 4*, of taking game from an unqualified person to another person. *Bird v. Duke*, 7 *Taunt.* 560.

## Hare and rabbit warrens.

*Hare and Rabbit Warrens*]—A hare or rabbit warren, not being *free warrens*, have not any peculiar privileges as to game, except those given by statute.

We have already seen *such* a warren may be made without any license from the King, *ante*, 876. A person may keep as many hares or rabbits as he likes, though they may be injurious to his neighbour, for being animals *fera natura*, the latter may kill them when on his own land. 5 *Rep.* 105; *Cro. Eliz.* 547; *Moore*, 453; *Cro. Car.* 387; *Sir W. Jones*, 356, S. C.

The legislative provisions giving these warrens some privileges, or rather protecting them from depredations, will be found, *post*, 935.

## Decoys.

*Decoys*]—A decoy is a place set apart for the taking of wild fowl, and is it seems so far a privileged place, that a party may be sued for knowingly firing a gun or making a noise so near it as to frighten away the fowl, for it is maintained at considerable expense and trouble, and is a means of carrying on a trade. *Keble v. Hickringill*, 11 *Mod.* 74, 130; 11 *East*, 374. And in the case of *Carrington v. Taylor*, 2 *Camp.* 258; 11 *East*, 571, it was held, that firing at wild fowl, to kill and make profit of them, by one who was at the time in a boat on a public river or open creek where the tide ebbs and flows, so near to an ancient decoy on the shore, about 200 yards, as to make the birds there take flight, the defendant having before fired at a great distance from the decoy, which brought out some of the birds from thence, though he did not fire into the decoy pond, was evidence of wilful disturbance of and

damage to the decoy, for which an action on the case was maintainable by the owner. Such an action would not lie for frightening rooks from a rookery. *Hannam v. Mockett*, 2 B. & Cres. 934; 4 D. & R. 518, S. C.

IN PARTICULAR  
PLACES.

*Preserves and Private Grounds*].—Preserves and private grounds have no peculiar common law privileges relating to the game within them. It has therefore been held, that no action will lie for frightening game from a preserve against a person who shoots near it, but upon his own land. *Carrington v. Taylor*, 2 Camp. 258; 11 East, 514, n.

Preserves and private grounds.

We have already seen what property in general the owner of a preserve or private ground has in the game therein, *ante*, 874, 5. Such owner has in general a property in the game *ratione sole* whilst upon it, and if started and killed there by a third person, such property is not divested, *ante*, 874. But it would be otherwise if not killed there. And in a case where a sportsman and his dogs put up a hare in the grounds of one person and pursued it into the lands of another, and a labourer just before it would have been taken, being quite exhausted, took it for the benefit of the hunters, and the owner of the soil took it from the hands of the labourer and killed it, it was held that the sportsman might support an action of trespass against the owner of the soil, Lord Ellenborough observing, on a motion for discharging a rule for a new trial thereon, "I did not understand at the time the rule was granted that the plaintiff, through the agency of his dogs, had reduced the hare into possession; that makes an end of the question. Even though the labourer had first taken hold of it before it was actually caught by the plaintiff's dogs; yet it now appears that he took it for the benefit of the hunters, as an associate of them, which is the same as if it had been taken by one of the dogs. If, indeed, he had taken it up for the defendant before it was caught by the dogs, it would have been different, or even if he had taken it as an indifferent person in the nature of a stakeholder." *Churchyard v. Studdy*, 14 East, 247, 250.

Property in game.

The occupier of a private ground or preserve may in general prohibit every one, except the owner of a chase or free warren, or him to whom he has granted right of entry, from sporting over his grounds; and if he be himself not disqualified, he has the exclusive privilege of killing game thereon, *ante*, 874.

If a person give leave to another to hunt over his grounds, it would not give him the liberty of shooting there. *Per Gibbs, C. J. Moore v. Lord Plymouth*, 7 Taunt. 627; 1 Moore, 346, S. C.

### III. Who are Qualified to kill Game, or use Dogs, &c. to kill it.

By the common law any person might kill game, unless in the particular places as already noticed in the preceding section. But this general right was soon taken away by statute.

By common law.

By statute the qualification by estate for killing game in the reign of King Richard II. was 40s. a year; in the reign of King James I. it was advanced to 10*l.* a year, and after that in some instances to 40*l.* a year; and at last, in the reign of King Charles II., it was raised to 100*l.* a year. Not that the laws have become gradually more severe, but as the value of money decreased, the qualification was raised in proportion, the estate continuing nearly the same; for an estate of 40s. a year in the reign of King Richard II. was not much inferior to an estate of 100*l.* a year in the reign of King Charles II. and the penalty for destroying the game was even more severe then than it now.

Qualification.

As those ancient laws relating to the game are still in force, and are generally enacted so to be by the subsequent statutes, it will be necessary, in order to have a thorough knowledge of this matter, to insert them in their order, cause the penalties on each being different, the prosecutor or justices may choose upon which of them they will convict an offender. Thus, by stat.

WHO QUALIFIED  
TO KILL.

40s. a year.  
13 Rich. 2. st. 1,  
c. 13. (1333.)

10l. a year.  
1 Jac. 1, c. 27.  
(1604.)

40l. a year.  
3 Jac. 1, c. 13.  
(1605.)

40l. a year.  
7 Jac. 1, c. 11.

5 Anne, c. 14, hereafter following, if a person not having 100l. a year shall keep or use dogs or engines to destroy the game, he shall forfeit 5l.; but if such person have not 40s. a year, he may upon stat. 13 Rich. II. st. 1. c. 13. be punished by a year's imprisonment; and so of the rest: provided that no person be prosecuted upon more than one act for one offence.

The first qualification relating to the game was in the 13th year of the reign of Rich. II., by which it is enacted, that no layman which hath not lands or tenements of 40s. a year, nor clergyman if he be not advanced to 10l. a year, shall have or keep any greyhound, hound, nor other dog to hunt: nor shall use ferrets, hays, nets, hare-pipes, nor cords, nor other engines, for to take or destroy hares, nor conies, nor other gentlemen's game, on pain of a year's imprisonment. And the justices of the peace (that is, in their sessions) shall inquire of the offenders in this behalf, and punish them by the pain aforesaid. 13 Rich. II. st. 1, c. 13.

The next qualification by estate or degree to kill game was by statute 1 Jac. I. c. 27, s. 3, whereby it is enacted, "that all and every person and persons which from or after the 1st day of August (1604) shall have or keep any greyhound for coursing of deer or hare, or setting-dog or dogs, or net or nets, to take pheasants or partridges, except such person or persons which shall be seised in their own right, or in the right of their wives, of lands, tenements, or hereditaments of the clear yearly value of 10l. by the year or more, over and above all charges and reprises, of some estate of inheritance; or of lands, tenements, or hereditaments in his own right, or in the right of his wife, for term of life or lives, of the yearly value of 30l. over and above all charges and reprises, or be possessed of goods or chattels to the full value of 200l. to his own use; or be the son or sons of any knight, or of any baron of parliament, or of some person of higher degree, or the son and heir apparent of any esquire; and being thereof convicted, as aforesaid, shall by the said justices of the peace be committed and imprisoned in manner and form as in and by this present act before is expressed, specified and declared; except such person and persons so offending and thereof convicted as aforesaid do forthwith pay or cause to be paid to the churchwardens of the said parish where the said offence shall be committed, or the party apprehended to the use of the poor of the said parish, the sum of 40s. of good and lawful money of England;" (a) [or after one month after his commitment he become bound by recognizance with two sureties before two justices in 20l. a piece not to offend again in like manner.]

The next qualification relates to deer and conies only, and is provided for by the 3 Jac. I. c. 13, s. 5, by which it is enacted, "that if any person not having manors, lands, tenements, or hereditaments of the clear yearly value of 40l. or not worth in goods 200l., shall use any gun or bow, or cross-bow, to kill any deer or conies; or shall keep any buckstall or engine-hayes, gates, nets, purse-nets, ferrets, nets, or coney dogs, (except he have grounds inclosed, and used for the keeping of deer or conies, the increasing of which said conies shall amount to the clear yearly value of 40s., or keepers or warreners in their parks, warrens, or grounds belonging to their charge,) in such case any person having lands, tenements, or hereditaments of the clear yearly value of 100l. in fee simple, fee tail, or for life, in his own right or the right of his wife, may take from such person to his own use for ever such guns, bows, cross-bows, buckstalls," &c. &c.

The next qualification (which relates to pheasants and partridges only) is by stat. 7 Jac. I. c. 11, s. 7, and is as follows; "every free warrenor, every lord of a manor, and every freeholder seised in his own or his wife's right of lands, tenements, and hereditaments of the clear yearly value of 40l. of some estate of inheritance, or of lands, tenements, and hereditaments in his own or

(a) This latter paragraph is part of the section 2 of the same act, but it seems doubtful whether it refers only to the offences described in that section, viz. the shooting at, killing, and destroying the game therein described, or can be incorporated with the 3d section, inasmuch as the condition of the recognizance is to be "not to kill, &c. by any of the means in that section 2 aforesaid."

### III. (1.) Game—(Who are Qualified to Kill it, &c.)

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his wife's right, for term of life or lives, of the yearly value of 80*l.* clear, or worth in goods 400*l.*, may by him, or his menial and household servants sufficiently thereto by him authorised, take pheasants and partridges (in the day-time only) in his own or his master's free warren, manor, and freehold, betwixt Michaelmas and Christmas yearly."

WHO QUALIFIED  
TO KILL.

The last general qualification by estate or degree to kill game, and which is now most to be regarded, is in stat. 22 & 23 Car. II. c. 25, s. 3, by which it is enacted, "that all and every person and persons not having lands and tenements, or some other estate of inheritance in his own or his wife's right of the clear yearly value of 100*l.* per annum, or for term of life, or having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150*l.*, (other than the son and heir apparent of an esquire, or other person of higher degree, and the owners and keepers of forests, parks, chases, or warrens, being stocked with deer or conies, for their necessary use, in respect of the said forests, parks, chases, or warrens,) are hereby declared to be persons by the laws of this realm not allowed to have or keep for themselves, or any other person or persons, any guns, bows, greyhounds, setting-dogs, ferrets, coney-dogs, lurchers, hays, nets, lowbels, harepipes, gins, snares, or other engines aforesaid, but shall be and are hereby prohibited to have, keep, or use the same."

100*l.* a year.  
22 & 23 Car. 2,  
c. 25.

We will inquire into the construction put on these statutes as regards a qualification to kill game. 1st, By Possession of an Estate;—2d, By being Son and Heir Apparent of an Esquire, &c.;—3d, By Ownership, or Keeping of a Franchise;—4th, By being Lord of a Manor;—and 5th, By being a Gamekeeper.

#### (1.) QUALIFICATION BY ESTATE.

**ESTATE OF INHERITANCE]**—The words of the statute of 22 & 23 Car. II. c. 25, s. 3, are, "that all and every person and persons not having lands and tenements, or some other estate of inheritance, in his own or his wife's right, of the clear yearly value of 100*l.* per annum, or for term of life, or having lease or leases of 99 years, or for any longer term, of the clear yearly value of 150*l.* other than, &c." shall not be qualified, &c. The clause will be found more at length, *supra*.

1. Qualification by  
estate of inher-  
itance.

**Person and Persons]**—In order to qualify tenants in common and joint tenants, the clear yearly value of the estate must be sufficient to qualify every one separately, if the estate were divided. *Chit. G. L.* 50; *Mallock v. Eastley*, 7 Mod. 482; *Wetherell v. Hall*, Cald. 230.

Tenants in com-  
mon.

**Having]**—This word means an estate in possession, and not in reversion. *Mallock v. Eastley*, 7 Mod. 482.

Having in pos-  
session.

The circumstance of a deed having been made to give a colourable qualification, is no ground of objection to its validity. *Doe d. Roberts v. Roberts*, 2 B. & A. 367. It seems questionable whether a conveyance executed by a father to give his son a colourable qualification, and kept in the father's possession during his life without being used or made known to the son, is valid in law. *Id.* See *Cecil v. Butcher*, 2 J. & W. 565; and *Brackenbury v. Brackenbury*, 2 J. & W. 391; *Chit. G. L.* 58, n.

**Lands and Tenements, or other Estate of Inheritance]**—Under these words not only land, but property in which game cannot exist is included. *Chit. G. L.* 60; 2 Bla. Com. 16.

Lands and tene-  
ments, or other  
estate of inherit-  
ance.

The act does not expressly mention the nature of the tenure of the estate of inheritance; but as the object of the legislature was merely to require a certain interest in real property, a copyhold of inheritance of the clear yearly value of 100*l.* is a qualification within the act. *Wetherell v. Hall*, Cald. 230.

A rent charge will give the owner a qualification. *Id.*

An equitable estate of inheritance of the clear yearly value of 100*l.* is suf-



QUALIFICATION  
BY ESTATE.

ficient. *Id.*; and see *Chit. G. L.* 63, 64. Therefore a mortgagee, if he have that yearly value after payment of the mortgage, may have a qualification. *Id.* It should seem that lands in *Scotland* will not give a qualification. *Marwell v. Mayre*, 1 *Bla. Rep.* 271, 364.

In wife's right.

*In his Wife's Right*—*R. v. Earnshaw*, 15 *East*, 456. This was a conviction on stat. 5 Anne, c. 14, in which the information set out negatived amongst the other qualifications mentioned in stat. 22 & 23 Car. II. c. 25. s. 3, that the said John Earnshaw at the time of the offence committed had "lands or tenements, or any other estate of inheritance of the clear yearly value of £100, or for term of life," &c. or was "in any other manner qualified, employed, licensed, or authorised by the laws of this realm, either to take, kill, or destroy any sort of game whatsoever, or to keep or use any lurcher for that purpose;" but did not go on to negative that the defendant was qualified by having an estate of inheritance of 100*l.* a-year in right of his wife, which is one of the qualifications of the stat. of Car. II. Per Lord *Ellenborough*, C.J.—It has been settled that all the qualifications for killing game must be specifically negatived in the conviction, and that being so, there is no more reason for dispensing with the terms in which they may be aptly and certainly negatived. Here one of the qualifications mentioned in the statute is omitted to be negatived, namely, that the defendant had an estate of inheritance of the annual value of 100*l.* in right of his wife, we must presume, therefore, that it could not have been truly negatived. It is always safer in these cases to follow the words of the act. Conviction quashed.

Of the yearly value  
of £100.

*Of the clear Yearly Value of 100*l.* per annum*—Where the estate is mortgaged, if the interest of the sum for which it is mortgaged reduces the rent where the estate is let, or the value where it is in the hands of the mortgagor, under a 100*l.* a-year, the owner of the estate is not qualified to kill game. *Wetherell v. Hall*, *Calcl.* 230.

On an action of debt against the defendant for the penalty of 5*l.* for using a certain engine called a gun to kill and destroy the game, not being a person qualified so to do, the cause was tried at Durham assizes, 1782, when the jury found a verdict for the plaintiff, subject to the opinion of the Court of King's Bench on the following case. The defendant Hall having an estate of 103*l.* a-year, mortgaged a part of it, of the value of 14*l.* a-year, to Robert Kelsey, for 400*l.*; which part being copyhold, he surrendered the same, according to the custom of the manor, to the said Robert Kelsey, who thereupon was admitted tenant. But Kelsey never entered upon the premises, Hall continuing in possession, and paying interest of the mortgage regularly. The question for the opinion of the court was, whether the defendant was duly qualified to use engines to kill and destroy game. For the plaintiff it was contended, 1st, That a legal estate of 100*l.* per annum was necessary to constitute a qualification; whereas here the defendant had only an equitable estate as far as respected the part mortgaged; and 2dly, that the estate should be of the clear yearly value of 100*l.* after all charges on it. After argument, the court decided in favour of the plaintiff on the second ground, saying at the same time, that the first objection could not be supported. Lord *Mansfield*.—The privilege here is given to property, and the *cestui que trust*, the mortgagor, is really the owner; the trustee, the mortgagee, is merely nominal. We consider the defendant's interest in this court just as it would be considered in a court of equity; it is an interest subject to the payment of the mortgagee, it is a qualification of property; and though it is not necessary that he should have a legal estate, he must have such property in the land as shall produce a clear income of 100*l.* per annum; or it might be carried so far as that he might have nothing, and yet enjoy the privilege. What then are a mortgagor and mortgagee in chancery? one the owner, and the other as having a charge upon the land, and the charge goes along with it. *Buller*, J.—In the case of rent-charges the cognizance of the justice is admitted; and in many others they must inter-



QUALIFICATION  
AS SON AND  
HEIR APPA-  
RENT OF  
ESQUIRE, &c.

*Smyth v. Jeffries*, 9 Price, 257, the only evidence given by the defendant was the production of certain deeds of lease and release, under which the possession of the defendant's father, who was the purchaser, was proved in a vague and loose manner, but no attempt was made to prove possession by the son, nor were any particulars as to the payment of rent given in evidence, or to whom paid. The plaintiff did not show any evidence to rebut defendant's title, and it was held defendant's title was sufficiently proved by him, *post*, 889.

(2.) QUALIFICATION BY BEING SON AND HEIR APPARENT OF AN  
ESQUIRE, &c.

2. Qualification by  
being

The words of the act 22 & 23 Car. II. which give a qualification on this account, are, "*other than the son and heir apparent of an esquire, or other person of higher degree.*"

son and heir appa-  
rent

*Son and Heir Apparent*—The qualification extends only to the eldest son. See *Jones v. Smart*, 1 T. R. 44; *Cald.* 389.

The son can only be qualified whilst his father lives, because the words are *son and heir apparent*; he ceases to be heir apparent upon his father's death, and, therefore, that species of qualification is then at an end. *Christian's G. L.* 130. But this seems questionable.

of an esquire.

*Of an Esquire*—Esquire, *escuyer*, *scutarius*, called by the Saxons *schill*, *knaben*, or *knapen*, (from whence cometh the word *knave*, which anciently signified a servant,) is a name of dignity next above the common title of gentleman and below a knight. Heretofore he was attendant and had employment as a servant, waiting on such as had the order of knighthood, bearing their shields, and helping them to horse, or such like. And this title is of that nature with us now, that to whomsoever either by blood or place in the state, or other eminency, we conceive some higher attribute should be given than that sole title of gentleman, knowing yet that he hath no other honorary title legally fixed on him, we usually style him an esquire in such passages as require legally that his degree or state be mentioned. *Seld. Tit. of Hon.* 374, 362, 687.

With respect to who is an esquire, Mr. Justice *Blackstone* says, "it is indeed a matter somewhat unsettled what constitutes the distinction, or who is a real esquire; for it is not an estate, however large, that confers this rank upon its owner. *Camden*, who was himself a herald, distinguishes them the most accurately; and he reckons up four sorts of them.—1st, The eldest sons of knights, and their eldest sons in perpetual succession.—2d, The eldest sons of younger sons of peers, and their eldest sons in like perpetual succession; both which species of esquires Sir *Henry Spelman* entitles *armigeri natalitii*.—3rd, Esquires created by the King's letters-patent or other investiture, and their eldest sons.—4th, Esquires by virtue of their offices, as justices of the peace, and others who bear any office of trust under the crown. To these may be added the esquires of knights of the bath, each of whom constitutes three at his installation; and all Irish peers; for not only these, but the eldest sons of peers of Great Britain, though frequently titular lords are only esquires in the law, and must be so named in all legal proceedings." (a) 1 *Blac. Com.* 406; see *Chit. G. L.* 55.

Esquire (*Armiger*) is a name that is frequently used in divers acts of parliament to denote an estate and degree; all dukes, marquises, earls, viscounts, and barons of other nations, or which are not lords of parliament, are to be named esquires; if knights, they are to be termed *milites*. The sons of all the peers and lords of parliament are, in law, esquires in the life of their fathers. And the eldest son of a knight is an esquire. *Wood's Inst.* 41.

All persons who are styled esquires under the King's manual, as *sheriffs*

(a) See Mr. *Christian's* note upon this latter description of an esquire, *post*, Vol. III. p. 337, n.

### III. (3.) **Game—(Who are Qualified to Kill it, &c.)**

and captains in the army or navy, will be esquires, and their heirs apparent will be qualified to kill game. *Christian's G. L.* 132.

Every barrister is an esquire. 1 *Wils.* 245.

It should be observed that honours can only be conferred by the crown.

A commission signed by the lord lieutenant of a county, constituting a person captain commandant of a corps of volunteer infantry, and styling him an esquire, does not create such person an esquire so as to qualify his son and heir apparent to kill game; for the lord lieutenant cannot confer honours. *Talbot v. Eagle*, C. P. 1 *Tamst.* 510.

The esquire himself is not on account of his being an esquire qualified, see *infra*.

**Or other Person of Higher Degree**—It has been decided that these words confine the qualification (without estate) to the son and heir apparent of an esquire, or the son and heir apparent of a person of higher degree, but do not qualify such esquire or person of higher degree himself. *R. v. Utley*, 1 T. R. 413; *Jones v. Smart*, 1 T. R. 44.

*Jones v. Smart*, 1 T. R. 44. This was an action against the defendant to recover the penalty of 5*l.* for killing game, not being duly qualified. The defendant had a diploma from the University of St. Andrew's in Scotland, which it was contended gave him a qualification, and that a doctor of physic was of higher degree than an esquire, and therefore qualified; but Lord Mansfield, C. J. thought (in which opinion Ashurst and Buller, Js. concurred, dissentiente Willes, J.) that even if a physician, who had taken his degree in England, were entitled to the privilege contended for, a Scotch diploma does not constitute the person taking out the same a "person of higher degree," so as to qualify his son and heir apparent to kill game.

As to who are of higher degree to esquires, see 1 *Bla. Com.* 405.

QUALIFICATION  
BY OWNERSHIP  
OR KEEPING OF  
A FRANCHISE,  
&c.

Or of other persons of "higher degree."

#### (3.) QUALIFICATION BY OWNERSHIP OR KEEPING OF A FRANCHISE.

The words of the act of 22 & 23 Car. II. c. 25, s. 3, *ante*, 881, which give a qualification on this account, are, "the owners and keepers of forests, parks, chases or warrens."

As to such franchises in general, see *ante*, 875 to 878.

3. Qualification by ownership or keeping of franchise.

#### (4.) QUALIFICATION BY BEING LORD OF A MANOR.

**Lord of Manor**—It is to be observed, that the 3rd section of the 22 & 23 Car. II. c. 25, *ante*, 881, makes no mention of lords of manors. The 7 Jac. I. c. 11, s. 7, *ante*, 880, however, expressly provides, that every lord of a manor may by himself or his menial servants take pheasants or partridges on his manor; and in *Mallock v. Eastly*, 7 *Mod.* 482, it was considered that a lord of a manor *as such* was qualified to kill game *within* it.

4. Qualification by being a lord of a manor.

#### (5.) QUALIFICATION BY BEING A GAMEKEEPER.

**Gamekeeper, &c.**—The 7 Jac. I. c. 11, s. 7, *ante*, 880 empowers a person having a free warren, and a lord of a manor and freeholder of 40*l.* per annum, or for life of 80*l.* per annum, or having goods of 400*l.* value, to appoint his menial or household servant to take pheasants and partridges in the day time, upon his master's free warren, manor, or freehold between Michaelmas and Christmas.

The 22 & 23 Car. II. c. 25, s. 2, *post*, 943, empowers lords of manors, or other royalties, not under the degree of an esquire, by writing under their hands and seals, to appoint one or more gamekeepers in their respective manors or royalties to seize dogs, &c.

These statutes only authorised an appointment of gamekeeper to *preserve* the game, not to *kill* it. This occasioned the 5 Anne, c. 14, s. 4, which enacts, "that any lord or lady of his or her respective lordship or manor, by writing under his or her hand and seal, to empower his or her gamekeeper

4. Gamekeepers empowered to preserve game.

QUALIFICATION  
BY BEING A  
GAMEKEEPER.

5 Ann. c. 14, s. 4.  
Empowered to kill  
game.

9 Ann. c. 25, s. 1.  
Only one to be ap-  
pointed to kill  
game.

Name to be en-  
tered with clerk of  
peace.

Penalty for omis-  
sion.

To take out a cer-  
tificate on stamp.

Neglect to register  
or take out a  
certificate.

or gamekeepers, upon his or her own lordship or manor as aforesaid, to kill hare, pheasant, partridge, or any other game whatsoever; but if the said gamekeeper shall under colour or pretence of the said power and authority to kill game, or take the same for the use of such lord or lady, (a) and afterwards *sell and dispose thereof* to any person or persons whatsoever, without the consent or knowledge of the lord or lady of such manor or manors that hath given such power or authority in manner as aforesaid, and shall be thereof convicted upon the complaint of such lord or lady of any manor, and upon the oath of one or more credible witnesses, before any one or more of her Majesty's justices of the peace as aforesaid, upon such conviction such gamekeeper shall be committed to the house of correction for the space of three months, and there to be kept to hard labour."

But by stat. 9 Anne, c. 25, s. 1, after reciting and making perpetual the statute 5 Anne, c. 14, it is enacted, that "no lord or lady of a manor shall make, constitute, or appoint above one person to be a gamekeeper within any one manor, with power or authority to kill or destroy the game thereof; and that the name of such person so to be authorised to kill the game shall from time to time be entered with the clerk of the peace (b) for the time being of the county, riding, or division wherein such manor doth lie, such entry to be made and viewed without fee or reward, and a certificate thereof to be granted by the clerk of the peace, upon payment of one shilling for the same. And in case any other gamekeeper, whose name shall not be so entered as aforesaid, who shall not be otherwise qualified by the laws of this kingdom to kill game, shall presume to kill any hare, pheasant, partridge, moor, heath game, or grouse, or if any gamekeeper or gamekeepers, or other person or persons whatsoever, not being qualified in his own right to kill game, shall sell, or expose to sale, any hare, pheasant, partridge, moor, heath game, or grouse, the respective offender or offenders herein shall, for every offence, incur such forfeitures, pains, and penalties, as are inflicted by the said recited act upon higglers, carriers, innkeepers, or victuallers, forbuying or selling of game; such forfeitures to be recovered by such means, and in such manner and form, and within such time, and to such uses, as are prescribed by the said act; any thing in the said recited act, or in any other law or statute to the contrary thereof in anywise notwithstanding." Prosecution to be within three months after the offence committed. (See stat. 5 Anne, c. 14, s. 2, *post*, 913, 914.)

*Who shall not be otherwise Qualified*—From these words it seemeth clear that a gamekeeper who is qualified in his own right to kill game need not be entered with the clerk of the peace.

The 59 Geo. III. c. 100, s. 3, empowers the lords of extensive manors in Wales, and the stewards of the baron manors there, to appoint several gamekeepers for such manors, confining them to their respective districts, and entering their names with the clerk of the peace. See the provisions at length, *post*, 887.

By stat. 25 Geo. III. c. 50, s. 2, every deputation of a gamekeeper shall be registered with the clerk of the peace (b) of the county or place where the manor shall lie, and such gamekeeper shall take out a certificate thereof annually.

The amount of the duty on such certificate will be found specified in stat. 52 Geo. III. c. 93, Sch. (L.), *post*, 891.

Sect. 9. "If any person to whom any deputation or appointment of a gamekeeper shall have been, or at any time thereafter shall be, granted by any lord or lady of a manor in England, or the dominion of Wales, or by any proprietor of land in Scotland, shall, for the space of twenty days next after the said first day of July, 1785, or for the space of twenty days next after such deputation or appointment shall thereafter be first granted, neglect or refuse to register the same, and take out a certificate thereon, in the manner herein before directed, every such person, not having obtained some certificate

(a) So in the original.

(b) It seems a deputation, unless so registered, is no evidence of a qualification. *Rushworth v. Crazen*, 1 Mac. & Y. 417.

### III. (5.) Game—(Who are Qualified to Kill it, &c.)

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as aforesaid, in pursuance of this act, shall forfeit and pay the sum of 20*l.*, to be recovered and applied as herein after mentioned."

Sect. 14. "That if any lord or lady of a manor in England or Wales, or proprietor of land in Scotland, shall make any new deputation or appointment of a gamekeeper for any manor or lands in the room of the person already appointed, and to whom any such certificate as aforesaid hath been issued, and shall register such new deputation or appointment with the clerk of the peace, or his deputy, or sheriff or steward clerk of the county, riding, shire, stewartry, or place, in which the manor or lands shall be situate, and shall obtain a new certificate thereon, the first certificate granted shall be, and the same is hereby declared to be null and void; and the person acting under the same, after notice to him given of such new and other certificate, shall be liable to the penalties prescribed by this act, in the same manner as if no certificate had been granted to such person."

Sect. 17. "That no certificate, obtained under any deputation or appointment of a gamekeeper, shall be pleaded or given in evidence in any case whatsoever, where the person having such certificate shall have used or shall use any greyhound, hound, pointer, setting dog, spaniel, or other dog, or any gun, net, or other engine for the taking or destruction of game, out of or beyond the precincts or limits of the manor or lands for or in respect of which such deputation or appointment was given and made."

By stat. 48 Geo. III. c. 93, after repealing stat. 1 Jac. I. c. 27, s. 2, and stat. 3 Geo. I. c. 11, by which no lord of a manor could appoint any person to be a gamekeeper, with power to kill game, unless he was qualified, or a domestic servant, or immediately employed to kill game only for the use of his lord or lady, it is enacted, (sect. 2,) "that it shall be lawful for any lord or lady of any manor to appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, or whether a qualified person or not, to be a gamekeeper to any such manor, with authority to such person as gamekeeper to kill game within the same for his own use, or for the use of any other person or persons whatever, to be specified in such appointment or deputation, whether qualified or not; and no person so appointed gamekeeper as aforesaid and empowered to kill game for his own use, or for the use of any other person so specified as aforesaid, and not killing any game for the use of the lord or lady of the manor for which such deputation shall be given, shall be deemed or taken to be, or entered or paid for as the gamekeeper or male servant of the lord or lady making such appointment or giving such deputation as aforesaid; any thing in any act or acts of parliament to the contrary notwithstanding."

And by sect. 3, "that any person appointed gamekeeper under the authority of this act to kill game for his own use or the use of any other person, shall have the same rights, privileges, power and authority as if he had been legally qualified and appointed to act as gamekeeper, to kill game for the use of the lord or lady of the manor appointing such gamekeeper, under any laws force immediately before the passing of this act."

And by stat. 59 Geo. III. c. 102, "for further regulating the appointment of gamekeepers in Wales," reciting that "whereas there are now several districts and lands, within the principality of Wales, which are not known to be comprehended within the boundaries of any manors, lordships or royalties; and there are also several other districts and lands within the principality, which formerly belonged to or formed part or parts of such manors, lordships, royalties, but which have been alienated therefrom or enfranchised by the lord or lords for the time being of such manors, lordships, or royalties, and any of such districts and lands are very extensive: and whereas the owners of such districts and lands cannot, nor can any other person or persons appoint any gamekeeper or other servant to kill game on such lands for the use of the owner or owners thereof, without subjecting such gamekeeper or other servant to the penalties imposed by divers acts of parliament made for the preservation of the game; which regulations and enactments have tended greatly to the encouragement of poachers and other idle and disorderly persons."

QUALIFICATION  
BY BEING A  
GAMEKEEPER.

25 Geo. 3, c. 56.

Not to extend  
beyond the  
manor.

48 Geo. 3, c. 93.  
Lords of manors  
may appoint  
gamekeepers,  
whether qualified  
or not, &c.

Gamekeepers so  
appointed to  
have the same  
rights as if  
qualified.

59 Geo. 3, c. 102.  
Appointment  
of gamekeepers  
in Wales.

QUALIFICATION  
BY BEING A  
GAMEKEEPER.

59 Geo. 3, c. 102.

Persons possessing certain property may appoint gamekeepers.

† *Sic.*

Gamekeepers not subject to penalties under former acts.

Lords of extensive manors may appoint gamekeepers for districts.

persons, to destroy the game within such districts of the said principality:" it is enacted, "that from and after the first day of August next, it shall and may be lawful to and for all and every persons and person, being seised in fee or as of freehold, or otherwise beneficially entitled in his, her, or their own right, of and in any lands situate and being within the said principality, of the full and clear annual rent of 500*l.*, and not being within the bounds of any manor, lordship, or royalty, or being within the precinct or bounds of any manor, lordship, or royalty, shall have been or shall be enfranchised or alienated therefrom; or† to appoint by any writing or writings under his, her, or their hand or hands, a gamekeeper to preserve, or to course, hunt, shoot at or kill game, for the use of the person or persons who shall make such appointment, in, over and upon such his, her, or their lands, and in, over and upon the lands of every other person or persons who shall, by license in writing under his, her, or their hand or hands, authorise him, her, or them to appoint a gamekeeper or gamekeepers, or other servant or servants, to preserve, course, hunt, shoot at or kill game in, over and upon the lands of the person or persons not being within the bounds of any manor, lordship, or royalty, so granting such license."

Sect. 2. "That every such gamekeeper having such appointment as aforesaid, during the continuance of such appointment, shall not be made subject or liable to any penalties imposed by any former statutes of this realm, for having any game in his or their custody or possession, or for coursing, hunting, shooting at or killing game, on or upon any lands mentioned in his or their appointment or appointments, and whereon the person or persons making such appointment or appointments has or have any power, license, or authority to make or grant any appointment or appointments by virtue of this act: provided always, that nothing herein contained shall extend or give, or be construed to extend or give, any power or authority to any person or persons to make or grant any such appointment or appointments, license or licenses, to course, hunt, shoot at or kill game in, over or upon his, her or their lands, situate or being within the precinct or boundary of any manor, lordship, or royalty, unless such lands shall have been enfranchised or alienated therefrom, without the license or consent in writing of the proprietor or proprietors of such manor, lordship, or royalty, having the right to pursue and kill game in, upon or over such lands, first had and obtained; and where in any existing lease or demise, or agreement for demising any lands, the lessor or lessors, landlord or landlords thereof, hath or have not reserved the right or power of hunting, shooting, or sporting, when no such appointment or appointments, license or licenses, shall be valid, so as to authorise any such gamekeeper or gamekeepers, servant or servants, to enter upon any such lands, to preserve, course, hunt, shoot at or kill game thereon, without the consent in writing of the person or persons in the actual possession of such lands first had and obtained."

Sect. 3. "And whereas the manors, lordships, and royalties, within the said principality, are in many instances extremely extensive, and comprehend very large tracts of country: and whereas by an act passed in the ninth year of the reign of Queen Anne, intituled, 'An Act for making the act of the fifth year of her Majesty's reign, for the better preservation of the game, perpetual, and for making the same more effectual,' it is among other things enacted, 'that only one gamekeeper shall be appointed to kill game within any one manor: and whereas such restriction hath, on account of the extent of the said manors, lordships, and royalties, been found extremely inconvenient, and tended greatly to the destruction of the game within the said principality: it is enacted, that the lords and ladies of such manors, lordships, and royalties, and the stewards of the crown for such manors, lordships, and royalties as appertain to his Majesty within the said principality, shall be, and they are hereby authorised respectively to nominate and appoint gamekeepers for such districts and divisions of their respect manors, lordships, and royalties, as they shall think fit; and that each and every gamekeeper so appointed shall have the like powers, privileges, and authorities within such district or division as any gamekeeper appointed for the whole of a manor hath or would

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have by virtue of any act now in force: provided always, that nothing herein contained shall be construed to authorise the appointment of more than one gamekeeper for the same district or division, and that all appointments under this act shall be registered with the clerk of the peace in like manner, and be subject to all other regulations which are enacted with respect to the appointment of gamekeepers of manors by any act now in force."

Sect. 4. "That it shall and may be lawful to and for all and every persons and person, who shall or may grant or make any appointment or appointments, license or licenses, by virtue of this act, to revoke, annul, or render void all and every such consent, appointments and appointment, licenses and license, and to grant or make other consent or consents, appointments or licenses in lieu thereof, as often as to him, her, or them, shall seem proper."

Sect. 5. "That nothing herein contained shall extend or be construed to extend the protection of this act to any person or persons killing game without a certificate taken out or purchased, according to the provisions of the act now in force respecting game certificates, or in any manner to affect the rights of his Majesty or his successors, or of any other person or persons, in, to or over any manor, lordship, or royalty, within the said principality."

QUALIFICATION  
BY BEING A  
GAMEKEEPER.

59 Geo. 3, c. 102.

Persons granting appointments may annul the same, and grant others in lieu thereof.

This act not to extend to persons killing game without certificate.

*What Manor, &c. sufficient*—Only a lord or lady of a *lordship or manor* can authorise a gamekeeper to kill game. See the 5 Ann. c. 14, s. 4, *ante*, 886. As to who may authorise a gamekeeper to preserve game, see the statute 7 Jac. I. c. 11, s. 7, *ante*, 880, and 22 & 23 Car. II. c. 25, s. 2, *post*, 943; and see *Chit. G. L.* 45, 46.

What manor, &c. or title to, sufficient.

The lord of a hundred or wapentake cannot grant a deputation to a gamekeeper. *Lord Aylesbury v. Pattison*, Dougl. 28. *Com Dig., Justice of the Peace*, (B.) 46.

A devisee of a manor in trust may appoint a gamekeeper merely to preserve the game, but not for the purposes of an establishment for pleasure to the trustee. *Webb v. Earl of Shaftesbury*, 7 Ves. 488.

In *Calcraft v. Gibbs*, 5 T. R. 19, Lord Kenyon, C. J. said, "that the lord of a manor cannot convey to another the power of appointing a gamekeeper, without a conveyance also of the manor itself. Such a power is a mere emanation of the manor, and it is inseparable from it. It is a mere shadow, accompanying the substance."

A college or corporation may appoint a gamekeeper; and it is not necessary that it should appear in the deputation that he was to kill game for the sole use and benefit of the lord of a manor. Although unqualified he is protected, unless it be proved that he killed game otherwise than for the use of the lord. *Spurrier v. Vale*, 1 Campb. 457. 10 East, 413.

A good colourable title to the manor or lordship will suffice; that is to say, the court will not suffer the title to be tried nor the disputed boundaries of a manor to be settled in an action for penalties under the game laws. See *Hawins v. Bailey*, and *Blunt v. Grimes*, 4 T. R. 681, n.; *Phillips v. Davis*, East, 179.

In an action for penalties for killing game, to which an appointment under stat. 5 Ann. c. 14, by a lord of the manor, was pleaded as an exemption, the court of King's Bench decided that the true question was, not whether the gamekeeper acted *bond fide*, but whether the person under whose deputation he acted had any colourable title to the manor or not; and that in such a case, evidence of real title is admissible to rebut the presumption of colourable title. Where, therefore, the only evidence of colourable title to the manor is the appointment since 1806 of two gamekeepers, evidence of actual title is held to be admissible, both for the purpose of repudiating the colourable title, and also of showing that it was within the knowledge of the plaintiff that moral rights had been openly exercised by others, and that he had no ground of claim whatever. *Hunt v. Andrews*, 3 B. & A. 341.

If there be no colourable title or if the presumption of it be rebutted, the penalties of the game laws will attach upon the gamekeeper, and the cir-



**QUALIFICATION  
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cumstance of his acting *bonâ fide* will constitute no defence. *Hunt v. Andrews*, 3 B. & A. 341; *Calcraft v. Gibbs*, 4 T. R. 681; 5 T. R. 19; *Wetherall v. Hall*, *Cald.* 230.

Showing a seisin in fact and the exercise of manorial rights is evidence of a colourable title. 4 T. R. 682. Reputation is not evidence of the existence of a manor without a foundation being first laid. *Rushworth v. Craven*, 1 Mac. & Y. 417.

Books preserved in the office of the clerk of the peace, containing enrolments of ancient deputations of gamekeepers for a certain manor, are admissible in evidence to show that those persons, who caused the enrolments to be made, had exercised rights as lords of the manor; and they are admissible, without proof that the original deputations have been lost, or that the gamekeepers named in them have acted under their authority. 3 B. & A. 341.

Lord need not be  
an esquire.

The lord of a manor need not, notwithstanding the words of the 22 & 23 Car. II. c. 25, be an esquire, in order to appoint and authorise a gamekeeper to kill or preserve game. See *Mallock v. Eastley*, 7 Mod. 482; *Chit. G. L.* 47.

Form of deputa-  
tion.

The deputation must be on a 35s. stamp, 55 Geo. III. c. 184, *ached*; *post*. Vol. V. p. 607. It must, as we have already seen by the words of the statutes, *ante*, 886, be under the hand and seal of the party making it. It should specify all the powers intended to be given to the gamekeeper consistent with those that may be given. In a late case, where the deputation by its words only authorised the keeper to seize greyhounds, setting dogs, and ferrets, and to do all things belonging to the office of gamekeeper, according to the directions of the acts of parliament, it was held, he was not thereby authorised to seize hounds. *Grant v. Hulton*, 1 B. & A. 134. So a gamekeeper, under a general deputation to kill game for his own use, cannot seize game in possession of an unqualified person. *Bird v. Dale*, 1 Moore, 290; *post*, 945. It does not seem absolutely necessary for the deputation to state, that the gamekeeper is to kill game for the use of the lord only, though this is commonly mentioned in the ordinary appointment of a gamekeeper. See *Spurrier v. Vale*, 1 Campb. 457; 10 East, 413, S.C.

Discharging, &c.  
gamekeeper.

A gamekeeper guilty of disobedience may be discharged forthwith without notice, unless there has been a special agreement to the contrary. *Moore*, 8. See *post*, *Serbant*, Vol. V. p. 360.

Gamekeeper not  
to sport off the  
manor, &c.

His residence in a house by permission of the lord of the manor is lawful only whilst gamekeeper. *Lit. Rep.* 139; and see 16 East, 33.

The statutes expressly confine the power of the gamekeeper to kill game within the precincts of the manor, and if he kill game or use guns or dogs for that purpose out of the limits of his manor, he is liable, if not qualified in other respects, to the same pecuniary penalties as any other unqualified person. *Chit. G. L.* 50.

But neither a justice of the peace or any other gamekeeper can legally seize his dogs or guns, &c., although he is sporting for the purpose of killing game in another manor than that for which he has received his deputation; for the power of seizure under stat. 5 Ann. c. 14, s. 4, extends to those persons only who are not qualified to keep engines for the destruction of game, and gamekeepers are qualified to keep such engines *anywhere*. *Rogers v. Carter*, 2 Wils. 387. It was admitted, however, in this case, that if the gamekeeper had actually killed game beyond the limits of his own manor, he would have been liable to the penalty of 5*l.* 2 Selw. N. P. 840. See further as to seizing guns, &c., *post*, 943.

#### IV. Certificate to be taken out, and Consequences of Omission.

Certificate, stamp  
duties on.

By stat. 25 Geo. III. c. 50, the stat. 24 Geo. III. ss. 2, c. 43, was repealed, and a stamp duty of 2*l.* 2*s.* imposed on game certificates.

By stat. 48 Geo. III. c. 55, this duty was increased to 3*l.* 3*s.* and by stat. 53 Geo. III. c. 93, to 3*l.* 13*s.* 6*d.*; and the latter act placed the duties under the management of the commissioners of assessed taxes.

By stat. 52 Geo. III. c. 93, sch. (L.) the following schedule of duties, with CERTIFICATE.  
the rules for charging, &c. the same, is given :—

*"A Schedule of the Duties payable in respect of Killing Game.*

52 Geo. 3, c. 93.  
Sched. (L.)

"Upon every person who shall use any dog, gun, net, or other engine, for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, or shall take or kill by any means whatever, or shall assist in any manner in the taking or killing by any means whatever, any game or any woodcocks, snipe, quail, or landrail, or any coney, by virtue of any deputation or appointment, duly registered or entered as gamekeeper for any manor or royalty in England, Wales, or Berwick-upon-Tweed, or for any lands in Scotland :

"If such person shall be a servant to any person duly charged in respect of such servant to the duties granted on servants in schedule (C.) No. 1, there shall be charged in respect of every such person acting by virtue of such deputation or appointment, £ s. d.  
the annual sum of . . . . . 0 4 0

48 Geo. 3, c. 55.

"In addition to the duty of 1*l.* 1*s.* granted in respect of such person by the act passed in the 48th year of the reign of his present Majesty.

"And where the duty granted by the said act shall not be chargeable in respect of such person, the annual sum of . . . . . 1 5 0

"And if such person as last aforesaid shall not be a servant for whom the said duties on servants shall be charged, there shall be charged in respect of every such person acting by virtue of such deputation or appointment, the annual sum of . . . . . 0 10 6

"In addition to the duty of 3*l.* 3*s.* granted by the said act.

"And where the duty granted by the said act shall not be chargeable in respect of such person, the annual sum of . . . . . 3 13 6

"Upon every other person who shall use any dog, gun, net, or other engine, for any of the purposes before-mentioned, or shall take or kill, by any means whatever, or assist (a) in any manner in the taking, or killing, by any means whatever, any game, or any woodcock, snipe, quail, or landrail, or any coney, there shall be charged the annual sum of . . . . . 0 10 6

"In addition to the like duty of 3*l.* 3*s.* granted by the said act.

"And where the duty granted by the said act shall not be chargeable upon such person, the annual sum of . . . . . 3 13 6

*"Exceptions to the above Duties.*

Exceptions.

"I. The taking of woodcocks and snipes with nets or springs.

"II. The taking or destroying of conies by the proprietors of warrens, or on any enclosed ground whatever, or by the tenants of lands, either by himself, herself, or themselves, or by his, her, or their direction or command.

*"Rules for Charging the said last-mentioned Duties.*

"I. Every person who intends to use or shall use at any time after the fifth day of April, one thousand eight hundred and thirteen, any dog, gun, net, or other engine, for any of the purposes mentioned in the schedule to Rules for charging.  
Duty for using  
dogs, &c. paid to

(a) Now, however, by 54 Geo. III. c. 141, the duties, provisions, and penalties contained in this schedule relating to persons aiding or assisting, or intending to aid or assist, in the taking or killing of any game, or any woodcock, snipe, quail, landrail, or coney, in the manner hereinafter mentioned, shall, after the passing of this act, severally cease and determine; provided that the act of aiding and assisting as aforesaid, and in the said act mentioned (52 Geo. III. c. 93,) shall be done in the company or presence and for the use of another person who shall duly have obtained certificate in his own right, according to the directions of the said act, and who herein shall by virtue of such certificate then and there use his own dog, gun, net, or other engine, for the taking or killing of such game, woodcock, snipe, quail, landrail, or coney, and who shall not act therein by virtue of any deputation or appointment. See post, 901, 902, as to how far an unqualified person may subject himself to a penalty by sporting with or for a qualified one. Such of the duties in the schedule of 52 Geo. 3, c. 93, as relate to persons assisting in killing of game shall cease, if the assistance be given to another who has obtained a certificate, &c.

## CERTIFICATE.

52 Geo. 3, c. 93.  
Sched. (L.)

collectors of  
assessed taxes  
annually.

Collectors to give  
receipts.

Fee.

Receipts ex-  
changed for certi-  
ficates by clerk to  
commissioners.

Commissioners to  
assess parties ac-  
cordingly.

Forms of receipts  
and certificates.  
(b)

Where no clerk  
surveyor to act.

Gamekeepers'  
certificates.

Lands to be adver-  
tised.

this act annexed, marked (L.), shall before he shall so use the same, in any year, and every person who intends to take or kill, or to assist in the taking or killing any game, woodcock, snipe, quail, landrail, or coney, shall, before he shall so take or kill, or assist in the taking or killing the same, pay or cause to be paid in each year, unto the collectors of the duties mentioned or referred to in the other schedules of this act, for the parish, ward, or place where he shall reside, if in England, or to the collector of the like duties, or his deputy or sub-collector for the shire, county, borough, or place where he shall reside, if in Scotland, or one of them, respectively as aforesaid, for the time being, the duty hereby made payable, and shall obtain a certificate thereof in the manner herein directed, which certificate shall continue in force until and upon the fifth day of April next after the time of issuing the same, and no longer."

"II. Every collector, or his deputy or sub-collector, on application to him made by any person residing within the limits of his collection, and on payment to such collector, or his deputy or sub-collector, of the duty hereby made payable, shall give a receipt for the same, which receipt shall be signed by such collector, or his deputy or sub-collector, and made out conformable to such of the forms for certificates in the schedules to this act annexed, as the case may require; and every such receipt shall be a charge on the parish or place for which such collector, or his deputy or sub-collector, shall be appointed, for the sum therein expressed, in like manner and to the like effect as if the said sum had been previously assessed and levied by such collector, or his deputy or sub-collector, under the warrant of the commissioners acting in the execution of this act, for which receipt the said collector, or his deputy or sub-collector, shall be entitled to demand and receive from such person the sum of one shilling over and above the said duty, and no more, which sum shall be deemed the compensation to such collector, and his deputy or sub-collector, for his pains and care in executing this act; and the duty so received shall be paid to the receiver general, or his deputy, at his or their next receipt of duties, in full and without deduction; provided that the receipt given for the duties contained in this schedule shall not be liable to any stamp duty whatever."

"III. Every such receipt, being delivered to the clerk of the commissioners acting for the district where the person aforesaid shall reside, shall be exchanged for a certificate made out in one of the forms in the schedule to this act annexed, marked (N.), corresponding with such receipt, which certificate the said clerk is hereby required, on demand, to make out and deliver gratis to such person, in exchange for the said receipt."

IV. The said receipts so exchanged shall be entered by the clerks in books for that purpose, and after examination by the commissioners, shall be a sufficient authority to cause an assessment to be made on the persons mentioned in such receipts in the sums paid by them, which assessments shall be as binding on the collectors and others acting in the execution of this act, and on the parishes for which such collectors shall have been appointed, as any assessment to be made by the commissioners under the acts under which they act as commissioners; and the commissioners shall return duplicates thereof to the receiver-general, and to the commissioners of taxes.

V. The commissioners for taxes are to cause forms of receipts and certificates to be provided and distributed amongst the clerks, and by them to the collectors, and such clerks and collectors are to be accountable for same.<sup>(a)</sup>

VI. Enacts that the surveyor of the district is to execute the duty of a clerk, where no clerk is appointed, and points out how the collector himself is to be charged if liable.<sup>(a)</sup>

VII. Provides that if a deputation to a servant is revoked in the midst of a year, the master or mistress may obtain a renewed certificate for a servant, free from any duty or fee. It also points out the mode of obtaining the renewal.<sup>(a)</sup>

"VIII. The commissioners for the affairs of taxes shall once, or oftener, in

(a) See these enactments in full, *post*, *Laws*, Vol. V. p. 834, 835.

(b) See the forms given, *post*, *Laws*, Vol. V. p. 842.

every year, as soon as conveniently may be, after such certificate shall have been issued, cause the names and residences of the several persons to or for whom such certificates have been granted for that year, in each county in Great Britain, distinguishing the persons acting under any deputations or appointments from others, and the manors, royalties, or lands, for which deputations or appointments have been granted, and also distinguishing the rate of duty assessed, to be inserted in some newspaper circulated in each respective county, or in such other newspaper, and in such manner as to them shall seem proper."

"IX. Neither the assessment of the duty hereby imposed, nor the payment thereof, nor the certificate delivered, nor any thing herein contained or done in pursuance of this act, shall authorise or enable any person to act in the manner described in this schedule, at any time or times, or in any manner prohibited by any statute in force at and immediately before the passing of this act; nor unless such person shall be duly qualified so to do, under and by virtue of the said statutes; and all penalties and forfeitures, actions and suits, for offences against such statutes, shall and may be prosecuted and maintained for such offences, as if this act had not been made."

"X. No assessment or certificate under the said acts and this act, or payment of the duty thereby imposed, by or for any person acting under a deputation or appointment, shall be received in evidence, or be available in law or equity, in any suit or prosecution under this act, where proof shall be given of doing or having done any act for any of the purposes mentioned in this schedule, out of the precincts or limits of the manor, royalty, or lands for which such deputation or appointment was made or granted."

"XI. If any person shall be discovered doing any act whatever, in respect whereof such person shall be chargeable as aforesaid, by any assessor or collector of the parish where any such person shall then be, or by any commissioner for the execution of this act, acting for the county, riding, division, or place in which such person shall then be, or by any lord or lady, or gamekeeper, of the manor, royalty, or lands, wherein such person shall then be, or by any inspector or surveyor of taxes, acting in the execution of the said acts or this act, for the district in which such person shall then be, or by any person duly assessed to the duties granted in this schedule, or consolidated therewith, or by the owner, landlord, lessee, or occupier of the land in which such person shall then be, it shall be lawful for such assessor, collector, commissioner, or gamekeeper, inspector, or surveyor, or other person as aforesaid, or such owner, landlord, lessee, or occupier of land as aforesaid, to demand and require, from the person so acting, the production of a certificate issued to him for that purpose, which certificate every such person is hereby required to produce to the person so demanding the same, and to permit him to read the same, and (if he shall think fit) to take a copy thereof, or any part thereof; or in case no such certificate shall be produced to the person demanding the same as aforesaid, then it shall be lawful for the person having made such demand to require the person so acting forthwith to declare to him his Christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed to the duties by his act granted or consolidated therewith; and if any such person shall, after such demand made, wilfully refuse to produce and show a certificate issued to him for that purpose, or in default thereof as aforesaid, to give in to the person so demanding the same his Christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed, or shall produce any false or fictitious certificate, or give any false fictitious name, place of residence, or place of assessment, every such person shall forfeit and pay the sum of twenty pounds, to be sued for, recovered, and applied in the manner hereinafter directed." (b)

# CERTIFICATE.

32 Geo. 3, c. 93.  
Sched. (L.)

Unqualified persons not protected by certificate, &c.  
(a)

Gamekeepers' certificate confined to manor.

Certificates produced by persons on demand of assessor.

Penalty, &c.

(a) See *ante*, 879 to 890, as to who not qualified.

(b) In *Molton v. Rogers*, 4 Esp. 215, was held, on 20 Geo. III. c. 50, that penalty for not producing the certi-

cate does not attach by the refusal to produce it, unless the party also refuse on request to tell his Christian and surname, and the place of his residence.

## CERTIFICATE.

52 Geo. 3, c. 93.  
Sched. (L.)

Acting without a  
certificate.

Penalty 20*l*.

Appeal.

Offences before  
whom to be  
determined.

Power of mitiga-  
tion to not less  
than one half of  
the penalty.

Costs.

For want of suffi-  
cient distress,  
commitment to  
the house of cor-  
rection not ex-  
ceeding six calen-  
dar months, unless  
the penalty be  
sooner paid.

" XII. If any person or persons shall, after the fifth day of April, one thousand eight hundred and thirteen, in England or Wales, or after the twenty-fourth day of May, one thousand eight hundred and thirteen, in Scotland, do any act for any of the purposes mentioned in this schedule, without having obtained such certificate as is directed by this act, in order to an assessment for the year wherein such person or persons shall so act, every such person shall forfeit and pay the sum of twenty pounds, to be sued for, recovered, and applied in the manner hereinafter directed; and every such offender shall also be liable to the payment to his Majesty, his heirs or successors, to the full duty of three pounds thirteen shillings and sixpence sterling, over and above the said penalty to be charged in the assessment of the parish or place where the offence shall be committed, by way of increased charge by the inspector or surveyor of the said parish or place; which increased charge may be made at any time within six calendar months after the duty shall have accrued, and the said charge shall be allowed by two commissioners, according to the directions of the acts relating to the duties of assessed taxes, subject to appeal whenever such commissioners shall appoint the time and place for hearing and determining the said appeal."

" XIII. It shall be lawful for any two commissioners for executing this act, or for any one justice of the peace of the county, riding, or division, or the shire or stewartry, or for any city, borough, liberty, or place wherein any offence or offences mentioned or described in this schedule shall be committed, such justice being also a commissioner for executing this act; and he and they is and are hereby required, upon information or complaint to him or them made of any such offence or offences committed within the district where he or they shall act as such commissioner or commissioners, within three calendar months after the offence shall be committed, to summon the person or persons accused, and also the witnesses on either side, to appear before him or them; and upon the appearance of the person or persons accused, or in default of his or their appearance according to such summons, to proceed to hear and determine the matter in a summary way; and upon due proof made thereof, either by the voluntary confession of the person or persons accused, or by the oath of one or more credible witness or witnesses, to give judgment for the penalty or penalties, or for such part thereof, to which part thereof the said commissioners or justice shall think proper to mitigate the same (the same not being in any case mitigated to less than one moiety of the said penalty or penalties); and in default of payment of the same at the time of conviction, to award and issue his or their warrant or warrants, under his or their hand and seal, or hands and seals, for levying the penalty or penalties so adjudged, together with the reasonable costs and charges attending the same, as hereinafter directed, of the cattle, goods, and chattels of the offender or offenders, and to cause sale to be made of the said cattle, goods, and chattels so distrained, in case they shall not be redeemed within four days; and the money arising from such sale shall, in the first place, be liable for payment of the said penalty or penalties adjudged to be paid, and in the next place for payment of the costs attending the information, conviction, and warrant, or informations, convictions, and warrants, to be settled by the said commissioners or justice, and indorsed on such warrant or warrants; and also the reasonable costs attending the distress and keeping the goods and chattels distrained, and maintaining the cattle, if any, during the four days allowed to redeem the same, and also the expense of the sale thereof, and of returning the said warrant or warrants to the commissioners or justice, and entering the same, with an indorsement thereon of what has been done therein; and where sufficient cattle, goods, or chattels of such offender or offenders cannot be found, to commit such offender or offenders to the house of correction, there to remain for any space of time not exceeding six calendar months, unless the said penalty or penalties shall be sooner paid; and if such person or persons shall find himself or themselves aggrieved by the judgment of such commissioners or justice, then he or they shall and may, upon giving security to the amount of double the said penalty or penalties, appeal to the justices of the peace at the next general quarter

sessions for the county, riding, or division, or to the justice clerk, or other officer of the court of judicary of the shire, stewartry, city, liberty, or place in Scotland; which courts respectively are hereby empowered to examine witnesses upon oath, and finally to hear and determine the same; and in case the judgment of such commissioners, or justice or justices, shall be affirmed, it shall be lawful for the said court of quarter sessions, or court of judicary, to award the person or persons to pay costs occasioned by such information, conviction, and appeal, as to themselves shall seem meet."(a)

"XIV. If any person or persons shall be summoned as a witness or witnesses to give evidence before such commissioners or justice receiving such information, or before the courts of quarter sessions or judicary, upon appeal touching any of the matters contained in such information, either on the part of the prosecution or the person or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for his, her, or their neglect or refusal, to be allowed by the commissioners, or justice or justices, or court before whom the prosecution shall be depending, then and in every such case every such person shall forfeit, for every such offence, the sum of ten pounds, to be recovered, levied, and paid in such manner, and by such means, as other penalties mentioned in this schedule may be recovered, levied, and paid."

"XV. The commissioners or justice before whom any offender shall be convicted shall cause the said conviction to be made out in the manner and form following, or in any other form of words to the like effect (*mutatis mutandis*); that is to say,

"BE it remembered, that on the      day of      in the year of our Lord  
at      in the      of      A. B. of      was duly convicted by me [or us] of      Form of conviction.  
[here state the offence]-and adjudged to pay the sum of      for his said offence.

"Given under the hands and seals [or hand and seal] of      being commissioners  
acting in the execution of the acts relating to assessed taxes for the district of  
[or      being a justice of the peace for      and a commissioner acting in the  
execution of the acts relating to assessed taxes for the district of      ]."

"And every such conviction shall be entered and registered upon the books of assessment of the commissioners of the district where the offence was committed; and after such entry and registry shall be transmitted to the court of appeal, as herein directed, to be filed there of record; and the said conviction or entry of the same in the said books of assessment, or any examined copy thereof, shall be received in evidence before the respective commissioners for executing this act, in all matters relating to the duties contained in this schedule; and no conviction of such commissioners or justice shall be removable by any process whatever into any other court of law or equity, or be subject to revision in any manner, other than as aforesaid."

"XVI. All penalties and shares of penalties imposed by and recovered or paid under the authority of the rules contained in this schedule, shall be added to the first or supplementary assessment of the parish or place where the offence shall be committed (as the case shall require,) and shall be paid to the collector or collectors of the duties contained in this schedule, for such parish or place, to be by him or them accounted for in the same manner, and paid to the receiver general at the same times as the duties contained in his act are to be accounted for and paid, and shall and may be distributed, apportioned, and applied, in such manner as other penalties may by the said acts relating to the said duties be distributed, apportioned, and applied."

"Exemptions from the Duties in Schedule (L.)," ante, 891.

"Any of the royal family."

# CERTIFICATE.

32 Geo. 3, c. 93.  
Sched. (L.)  
Appeal.

Witnesses neglecting to appear to give evidence.

Form of conviction.

Conviction to be entered.

Evidence of.

Application of penalties.

(a) The party may enter and respite his appeal at the next sessions, after giving the security, without notice to the other side, but after the appeal has been respited, if he does not give

the usual notice of trying it, the sessions will be authorised to dismiss it altogether. *R. v. Js. Salop*, 2 B. & A. 694. And see further, ante, Appeal, Vol. I. p. 150.

## CERTIFICATE.

7 & 8 G. 4, c. 49.  
English and Irish  
certificates,  
exemptions by.

The stat. 7 & 8 Geo. IV. c. 49, s. 1, enacts, "that from and after the passing of this act, whenever any person shall have paid or shall pay the duty imposed by the said recited act of the fifty-second year of the reign of his late Majesty on persons in Great Britain, other than persons acting by virtue of a deputation or appointment, who shall use any dog, gun, net, or other engine for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, or shall take or kill by any means whatever, or shall assist in any manner in the taking or killing by any means whatever, any game, or any woodcock, snipe, quail, or landrail, or any cony, such person shall be exempt from the duty imposed by the said recited act passed in the fifty-sixth year of the reign of his said late Majesty on certificates to authorise persons not being gamekeepers to kill game in Ireland, for and during the period in respect whereof such duty shall have been paid in Great Britain, and from all the penalties contained or imposed in the said recited act of the fifty-sixth year of the reign of his late Majesty, or in and by any other act or acts for securing any of the said duties so payable in Ireland as aforesaid; and that every person who shall have paid any of the duties imposed by the said recited act of the fifty-sixth year of the reign of his late Majesty on certificates to authorise persons not being gamekeepers to kill game in Ireland, shall be exempt from the duties imposed by the said recited act of the fifty-second year of the reign of his late Majesty, on persons in Great Britain who shall use any dog, gun, net, or other engine for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any cony, and from all the penalties contained in or imposed by the said recited act of the fifty-second year of the reign of his late Majesty, or in or by any other act or acts for securing any of the said duties payable in Great Britain as aforesaid, provided such person shall first pay to the said commissioners of stamps in Great Britain the difference between the duty already paid by him in Ireland, and the duty which would have been payable in respect of such person for any of the purposes aforesaid in Great Britain."

Sect. 2. "That in every case in which any such difference of duty shall be offered to be paid to the commissioners of stamps in Ireland as aforesaid, it shall be lawful for the said commissioners of stamps, or their proper officers, and they are hereby authorised and required to receive the amount of such difference of duty, upon the production to the said commissioners, or their proper officers, of the certificate upon which the original duty shall have been paid, and to stamp such certificate with a mark or impression denoting the payment of the additional duty payable thereon in pursuance of this act."

Sect. 3. "That neither the payment of the difference of duty as aforesaid, nor the stamping of the certificate, nor any thing contained or done in pursuance of this act, shall be construed to authorise or enable any person to kill game, or use any dog, gun, net, or other engine, for any of the purposes mentioned in this act, at any time or times, or in any manner prohibited by any law in force at or immediately before the passing of this act, nor unless such person shall be duly qualified so to do under and by virtue of the laws in being; and all penalties and forfeitures, actions and suits, shall and may be prosecuted and maintained for such offences as if this act had not been made."

### V. Offences under 5 Anne, c. 14, s. 4, by Unqualified Persons keeping or using Dogs and Guns, &c. to Kill Game.

Anne, c. 14, s. 4. There are various statutes noticed, *ante*, 880, 881, inflicting penalties on unqualified persons for killing game, &c. and see also the 4 & 5 Will. III. c. 23, s. 3.(a) The only statute, however, now called into use in this respect

30s. penalty for

(a) By stat. 4 & 5 W. III. c. 23, s. 3, if any unqualified person shall have,

is the statute 5 Anne, c. 14, s. 4, which we will now proceed to notice. It being a penal act it should be construed strictly. *Per Best, J. Hayward v. Horner, 5 B. & A. 317.*

5 Anne, c. 14, s. 4. "That if any person or persons, not qualified by the laws of this realm so to do, shall keep or use any greyhounds, setting dogs, hayes, lurchers, tunnels, or any other engines to kill and destroy the game, and shall be thereof convicted upon the oath of one or two credible witnesses, by the justice or justices of the peace where such offence is committed as aforesaid, the person or persons so convicted shall forfeit the sum of 5*l.*; one half to be paid to the informer, and the other half to the poor of the parish where the same was committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of such justice or justices, before whom such person or persons shall be convicted, as aforesaid; and for want of such distress, the offender or offenders shall be sent to the house of correction for the space of three months for the first offence, and for every such other offence four months."

The section concludes with provisions as to seizing the game in offender's possession, and imposes a penalty on gamekeepers selling game. See *post*, 943 to 947, as to seizing game, and *post*, 913 to 920, as to selling game.

We will consider the provisions of this act with reference as to, 1st, Who are subject to the Penalty;—2d, The Amount of the Penalty;—and 3d, The Means of enforcing the Payment of it.

#### (1.) WHO ARE SUBJECT TO THE PENALTY.

*If any person*—A minor may be convicted for all offences under the game laws: he is answerable for all crimes, offences and trespasses, when he is of sufficient age to distinguish moral right from wrong. But he may be qualified either by estate, or by being the heir apparent of an esquire, or of some person of higher rank. *Christ. G. L. 191.*

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5*l.* penalty for  
keeping or using  
dogs and engines;  
and the same to  
be seized.

Conviction to be  
within three  
months.

Division of sub-  
ject.

Minors.

keep, or use any bows, greyhounds, setting dogs, ferrets, coney dogs, hayes, lurchers, nets, tunnels, lowbels, hare pipes, snares, or any other instruments for destruction of fish, fowl, or other game, and shall not give a good account before a justice, to the satisfaction of such justice, how he came by the same, or else shall not in some convenient time (to be set by such justice) produce the party of whom he bought the same, or some other credible person to depose upon oath to such sale thereof, he shall forfeit for every offence not under 5*s.* nor above 20*s.* half to the informer, and half to the poor, to be levied by distress, rendering the overplus, if any be; for want of distress, to be committed to the house of correction not more than one month nor less than ten days, there to be whipped and kept to hard labour. And if any person produced or charged with the said offence shall not before the justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person first charged therewith, and so from person to person till the first offender be discovered.

keeping or using  
dogs or engines.

Sect. 4. "That all lords of manors or other royalties, or any person or persons authorized by them as gamekeepers, shall and may, within their respective manors or royalties, oppose and resist such offender in the night-time, in the same manner, and be equally indemnified for so doing, as if such fact had been committed within any ancient chase, park, or warren inclosed whatsoever."

Lords and keepers  
may oppose of-  
fenders in the  
night.

Sect. 7. "That no certiorari shall be allowed to remove any conviction made, or any proceeding of, for or concerning any matter or thing in this act, unless the party or parties, against whom such conviction shall be made, shall before the awardance of such certiorari become bound to the person or persons prosecuting, to the sum of fifty pounds, with such sufficient sureties, as the justice or justices of the peace, before whom such offender was convicted, shall think fit, with condition to pay unto the said prosecutors (within one month after such condition confirmed, *procedendo* granted,) their full costs and charges, to be ascertained upon their oath; and that in default thereof, it shall be lawful for the said justice and justices, and others, to proceed to the due execution of such conviction, in such manner as if no certiorari had been awarded."

Certiorari.



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Feme covert.

Several persons.

So a married woman may be convicted, if she uses a gun or engines to destroy game; or if she uses a greyhound, setting dog, or lurcher, not in company with her husband. *Christ. G. L.* 191. She may be qualified by lands in her own right; but her husband's qualification will not qualify her, though her's will give a qualification to her husband. *Id.*

*Or persons*—In the case of *Peshall v. Layton*, 2 T. R. 712, Lord Kenyon, C. J., said, that where several unqualified persons offended by going out together and killing a hare, only one penalty can be recovered, though the prosecutor has his election which he will sue. So in the case of *R. v. Blewdale* and another, 4 T. R. 809, which was a conviction on stat. 5 Anne, c. 14, sect. 4, for using a greyhound to destroy game without being qualified, for which the defendants were convicted in 5*l.* each, the court, without hearing any argument, said, the conviction could not be supported, for that it was only one offence, and that the magistrate should only have convicted them in one penalty: and they said that this point had been several times decided, in *Hardyman v. Whitacre* (a) and in other cases. Conviction quashed. But if they were each using a gun, or each setting a snare, or each had a snare in his pocket, they would each be subject to a penalty: because each is guilty of a distinct, separate, substantive act. *Christ. G. L.* 161. And by 9 Anne, c. 25, *post*, 914, unqualified persons are subject to separate penalties of 5*l.* for every head of game unlawfully in their possession.

Who qualified  
or not.

*Not Qualified by the Laws of this Realm so to do*—We have already seen *ante*, 879 to 890, what persons are qualified to sport, &c.

Keeping or using  
dogs, &c.

*Shall keep or use any Greyhounds, Setting Dogs, Hays, Lurchers, Tunnels or any other engine, to kill and destroy the Game*—As to what shall amount to a keeping or using a greyhound, &c. to kill and destroy the game, within these words, is always a question of fact to be collected from the whole circumstances accompanying each particular case.

What a keeping.

The mere fact of *keeping* a sporting dog of the description in the statute will not subject an unqualified person to the penalty, if he can show he did not keep it for the purpose of killing and destroying game. Therefore in a late case, where it appeared from defendant's evidence that at the time the alleged offence was charged to have been committed that the dog (a setter) was tied up and never went out into the field with its master, the defendant was not liable within the act. *Hayward v. Horner*, 5 B. & Ald. 517. Nor would the mere fact of his *keeping* of hare pipes, or other instruments peculiarly appropriated and fitted for the destruction of game, make him liable, if he could show that he did not keep them to kill and destroy game. *R. v. Gardiner*, *Andr.* 255; 2 *Stra.* 1098; 14 *Vin. Ab.* 3. But the fact of such a keeping would in either case afford *prima facie* evidence that the dog or instrument was to kill and destroy game, and, if not rebutted by evidence to the contrary, would be sufficient to subject defendant to the penalty. See the above cases, and the cases in the note, *infra* (b).

(a) *Bull. N. P.* 189. This case of *Hardyman v. Whitacre* is more fully reported in a note to *Barnard v. Gosling*, 2 *East*, 573.

(b) *R. v. Filer*, 1 *Stra.* 496. Conviction for *keeping* a lurcher to destroy game, not being qualified. Exception was taken that it was not shown that he used the dog to destroy game; and it may be he only kept it for a gentleman who was qualified, it being common to put out dogs in that manner. But by the court, the statute is in the disjunctive, *keep or use*; so that the bare *keeping* a lurcher is an offence; and so it was

determined in the case of *R. v. King*, 1 *Sess. Cas.* 88, which was a conviction for keeping a gun. And it was not doubted by the court, whether the *keeping* was not enough to be shown, but the only question they made was, whether a gun was such an engine as is within that statute? and in that case a difference was taken, as to keeping a dog, which could only be to destroy the game, and keeping a gun, which a man might do for the defence of his house. And the conviction was confirmed.

*R. v. Hartley*, *Cald.* 175. This was a conviction on 5 Anne, c. 14, for *keeping*

The mere fact of *keeping* a gun or other instrument *not peculiarly appropriated* and fitted for the destruction of game, is not even *prima facie* evidence sufficient to subject an unqualified person to the penalty, and he need not, as in the preceding instances, prove that he did not keep it for the purpose of killing and destroying of game. It must be proved against him that he kept it for that purpose, as by proving he *used* it for that purpose. *R. v. Thompson*, 2 T.R. 18; *R. v. Gardner*, Andr. 255; 2 Stra. 1098; 14 Vin. Ab. 3. (a)

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and using a *greyhound* to kill and destroy the game. On a rule to show cause why this conviction should not be quashed, it was objected, 1st, that it was not sufficiently stated that there had been an using of the greyhound (that is) how and in what manner, and for what purpose. 2d, That it was not expressly and positively averred that he had kept and used a *greyhound* at all; being only set forth that he kept and used a dog called a greyhound, but that it might be called so, and yet be another kind of dog; that it might be an *Italian* greyhound, or might be kept for the protection of a house, or other purposes than to kill or destroy the game. By Lord Mansfield, C.J.—“Convictions must certainly be precise, that the court may see whether the offence committed falls within the jurisdiction of the magistrate; and must be quashed if not so. In this act there are two offences described, a *keeping* and *using*; and the legislature mean that there may be a keeping to destroy, &c., which is not of necessity to be proved by an using to that purpose; if it were so, it would be tautologous, for such evidence would be a proving of the other offence: the keeping therefore of a dog prohibited being an offence under the act, it is necessary *prima facie* evidence of a keeping for the purpose prohibited, and it is incumbent upon the defendant to show that it is kept for another purpose, as that in the present case it is a house dog, a favourite dog, or a particular species of greyhound. The description cannot be more precise unless some particular instance of using be shown, which if keeping of itself constitutes an offence, cannot be necessary. To the other objection, that the averment defective in stating only that this was a dog called a greyhound, I think it positive enough: it must mean the dog of that species generally known in this country.” The other judges concurred. The defendant discharged, and conviction affirmed. *Read v. Phelps*, 15 East, 271. Upon the notion to set aside a nonsuit in an action upon stat. 5 Anne, c. 14, for keeping and using a setting dog to kill and destroy game, which nonsuit was set aside, because there was no evidence that the dog had been used for killing

game, it was said that this evidence was not necessary if from other circumstances the jury might infer that the dog was kept for that purpose, the words in the statute being “keep or use:” but the court, without argument, refused the rule.

*Briarly v. Althorpe*, 5 B. & Ald. 325, S.C. Trover for a pointer dog, seized by the defendant, lord of the manor and a justice of the peace, as being in the custody of an unqualified person. *Cockell*, Serjt., for the plaintiff, insisted that the defendant had not, either as lord of the manor or as a justice of the peace, a right to seize the dog; first, as not being a setting dog, nor included within the act 5 & 6 Anne, c. 14; secondly, as not being kept for the purpose of killing game, but as a house dog, and for defence, plaintiff having used the dog to kill game before he sold his estate, which qualified him, but never since, having kept him expressly for the purpose of a house dog. *Buller*, J.—“The first question is, whether a pointer is a setting dog within the act? I am of opinion a pointer is within the act of parliament. It is a well known rule, in expounding acts of parliament, to consider all the acts in *pari materia*. Stat. 22 & 23 Car. II. c. 25, s. 2, mentions ‘other dogs.’ A setting dog, I think, means any dog who *stops* at his game. But it is essential that it must be kept or used to kill game. If not, the word greyhound would extend to an *Italian* greyhound, kept by a lady for her amusement. So ‘hays.’ There is no difference that I know between hays and a cabbage-net; but keeping a cabbage-net or hays to put over cabbages is not unlawful. It must be kept or used to kill game, to entitle the lord to seize. If you (the jury) think the dog was used to kill game in September or October, 1790, being since the plaintiff sold his property, there must be a verdict for the defendant; if not, then the plaintiff is entitled to a verdict.” Verdict for plaintiff, damages 10*l*.

(a) *R. v. Gardner*, Andr. 255; 2 Sess. Cas. 204; 2 Str. 1098; 14 Vin. Ab. 3. It was moved to quash a conviction for unlawfully having and keeping a gun, being an engine or instrument for de-

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What an using.

With respect to what is using of a dog, or gun or other engine, to kill game; in the case of *R. v. King*, *Sess. Cas. 88*, *Parker, C. J.*, said, that walking about with intent to kill game is evidence of using the instrument for that purpose.

It is also sufficient to prove that the defendant was beating about for game, and pointed his gun, though he did not fire at any game. *Hebden v. Healey*, 1 *Chit. Rep.* 607. This was an action of debt on 5 Anne, c. 14, against an unqualified person, to recover penalties for using a gun to kill and destroy game. At the trial before *Holroyd, J.*, at *Huntingdon Sum. Ass.* 1819, it appeared in evidence that the defendant was the gamekeeper of a manor adjoining to that in which the offence was alleged to have been committed. The defendant had gone into the latter manor with a gun and dog, and appeared to be beating about for game. The dog had snapped at a hare, and there was a count in the declaration for destroying that hare, the defendant being charged with having used the dog for that purpose. A covey of birds was put up, and the defendant pointed his gun at them, but he did not fire. Under these circumstances the jury found for the plaintiff. On motion for a rule nisi to set aside the verdict, and enter a nonsuit, it was contended that the evidence in the cause did not satisfy the averment in the declaration, that the defendant "had used a gun to kill and destroy game," because, in any thing that appeared, the circumstances of the defendant having pointed his gun was no more than if he had pointed a stick at the game. *Abbott, C. J.*—"As this question was left to the jury, I do not see how we can disturb the verdict, and certainly there was evidence sufficient to go to them, upon the question whether the defendant had used the gun to kill and destroy game. The generality of that allegation must be coupled with the circum-

stroying the game. And it was urged that this is no sufficient charge within this act, or any other of the laws relating to the game; for it is not said that the defendant used the gun for the destruction of game; and a gun is not an instrument so far appropriated to killing game, as that it is criminal for a person to have one in his custody only: and it would have been altogether as well if it had been said that the defendant had in his custody a cane for the destruction of the game, which may possibly be used for that purpose. The only offences intended to be prevented by the act are, the keeping of engines appropriated to, and which can only be used in, the destroying of game. A gun is an engine, not for the killing of game, but for the defence of a man's house. And the whole court were clearly of opinion that this conviction was not good. For (as they argued) if the statute is to be construed so largely as to extend to the bare having of any instrument that may possibly be used in destroying game, it will be attended with very great inconvenience, there being scarcely any, though ever so useful, but what may be applied to that purpose. And though a gun may be used in destroying game, and when it is so, doth then fall within the words of the act; yet as it is an instrument proper and frequently necessary to be kept and used for other purposes, as the killing of noxious vermin and the like, it

is not the having a gun, without applying it in the destruction of game, that is prohibited by the act: but otherwise it is of lurchers, harepipes and such like, which are peculiarly fitted or disposed for killing game. The bare keeping of these for the purpose of killing game is sufficient to convict an offender; and it will be incumbent upon the defendant himself to prove that he kept them for other purposes. And the conviction therefore was quashed. After which, *Strange, S. G.*, said, that in the case of *R. v. King*, 3 *G.*, Lord *Macclesfield* said, that he was in the House of Commons when this act was made, and he himself objected to the inserting of the word gun therein, because it might be attended with great inconvenience.

In *Wingfield v. Stratford*, *Sey.* 15; 1 *Wils.* 315; *Lee, C. J.*, takes this distinction; "As greyhounds, setting dogs, &c. are expressly mentioned in this statute, it is not necessary to allege that any of these have been used for killing or destroying game, and the rather as they can scarcely be kept for any other purpose than to kill and destroy game. But as guns are not expressly mentioned, and as a gun may be kept for the defence of a man's house, and for other lawful purposes, it is necessary to allege, in order to its being comprehended within the meaning of the words 'any other engines to kill the game,' that the gun had been used for killing the game."

stances proved, and no doubt the learned judge left the case entirely for the consideration of the jury; and as I think he was right in so doing, I am of opinion that we ought to leave the verdict where it is." *Bayley, J.*—"There was evidence sufficient to go to the jury, whether in fact the defendant was not beating about for game for the purpose of driving it into his own manor, and thereby leaving it within his reach. There are cases which have decided that it is not necessary to prove that the man actually shot the game, but if he is beating about for game, so as to show an intention on his part to shoot it if he has the opportunity, that is a sufficient using of the gun to support an action upon the statute of Anne. In the case of *R. v. King*, (*ante*, 800), *Parker, C. J.*, held, that walking about with intent to kill game, is evidence of using the instrument for that purpose. In this case there was evidence sufficient to show that the defendant was beating about in the field where he was seen, and using his gun for that purpose." Rule refused.

And in *R. v. Davies*, 6 T. R. 177, where the evidence stated in the conviction was, that the witness was satisfied that the defendant did keep and use a gun to kill and destroy the game, from the circumstance of his hearing a gun go off, and observing that it was fired by the defendant, who was then walking about a piece of ground with that apparent intent, the court affirmed the conviction. Lord Kenyon, C. J., said, "*It is sufficient in convictions, if there were such evidence before the magistrate as in an action would be sufficient to be left to a jury: here we cannot say that there was no evidence of the fact for the consideration of the magistrate.*"

In all these cases the justice of the peace himself must be satisfied of the intent, from the circumstances stated by the witnesses. He must be satisfied that the party was in pursuit of game, and not of sparrows, larks or fieldfares. Even if he were in pursuit of woodcocks, snipes, or rabbits, and not of hares, pheasants, partridges, or grouse, the justice would have no authority to convict under this statute. *Christ. G. L.* 157, 158.

A qualified person (who has a certificate) is empowered to take as many of his servants or other unqualified persons to attend him, as he thinks necessary, and for the purpose of assisting him in raising the game, without subjecting such servants or unqualified persons either to the penalty of the statute for sporting without a certificate (see stat. 54 Geo. III. c. 141, *ante*, 891,) or of 5*l.* under the stat. 5 Anne. Thus in *R. v. Taylor*, 15 East, 460, it was held that a servant who went out coursing with his master, who was qualified, could not be convicted for using dogs to kill and destroy game. And in *Lewis v. Taylor*, 16 East, 49, it was held that an unqualified person being out coursing with the qualified owner of greyhounds, although not his servant, and although he took an active part in the sport, was not liable to the penalties imposed by the 5 Anne, c. 14: and Lord Ellenborough, C. J., said, "There is no evidence against this defendant upon the charge of using a greyhound for killing the game. This is not a solitary amusement, and here is nothing to prevent a qualified person from taking others with him to aid him in the pursuit of the game; and he is the person using the dogs: the others have no other use of them than as his servants, and contemplating with him the pleasure of the chase. If indeed an unqualified man used his own greyhound for the purpose of sporting, though in the same company with a qualified person, the case would admit of a different consideration: it there can be no ground for recovering the penalty against this defendant, who went out with the dogs of another who was qualified, and which other as using them himself: the defendant's picking up the hare after it was killed is no using of the dogs to kill the game." *Bayley, J.*, also observed at the words of the statute of Anne are *keep or use* any greyhounds, &c.; at this defendant neither kept the dog, nor was it under his controul at the time it was used to kill the hare.

And where an unqualified person, by the orders and in the presence of his master, a qualified person, set on his master's grounds a trap for hares, &c. and afterwards finding a hare therein, carried it according to order to his master, who was not present when the hare was found: it was held that the

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defendant was not liable to the penalties for using snares to destroy game on the 5 Ann. c. 14, or for exposing game to sale on the 9 Ann. c. 25, post, 914.

*Walker v. Mills*, 2 Brod. & Bing. 1; 4 Moore, 343, S.C. Debt, on 5 Ann. c. 14, s. 4, and 9 Ann. c. 25, s. 2, to recover penalties for using a snare to destroy game (the defendant not being qualified), and for exposing a hare to sale. Plea, *nil debet*. The following facts were the facts as proved before Garrow, B. at the last Sussex assizes. The defendant, a cottager in the employ of a qualified person, was on Sunday morning found with a hare in his possession, which he had just taken out of a trap placed on his master's property. The master stated, that the trap was placed there on the Thursday preceding by his direction, and in his presence, for the purpose of catching hares and rabbits which had annoyed him; that the defendant had received orders from him to bring to his (the master's) residence, whatever might be caught in the trap, and that the defendant had, accordingly, brought the hare in question to him on the Sunday morning on which it was seen in the defendant's possession. The learned judge thought the point new, but having directed the jury that this resembled the case of a qualified person attended by a person unqualified, assisting him in the operations of sporting; that the defendant was acting as servant to his master, and under his directions; and that, therefore, the possession of the hare by the servant must be taken to be the possession of the master; the jury found a verdict for the defendant. D'Oyley, Serjeant, moved to set aside the verdict and have a new trial, on the ground that the right of a person qualified to kill game did not extend to the protection of persons unqualified, unless the qualified person were actually present; and that a qualified person had no right to send out one unqualified to kill game for him: that the master, in this case, though present at the setting of the trap, was absent when the hare was caught and found in the defendant's possession, and that such possession constituted an exposure to sale, under the 9 Ann. c. 25, s. 2. He cited *Molton v. Cheesley* (1 Esp. 123.) *Dallas, C. J.*—"Cases of this sort frequently run into very nice distinctions, and I would not hastily lay down a general rule which might be open to objection. If I had any doubt I would look into the cases that have been referred to; but I have none: nor have I any hesitation in saying that this action is most improperly brought. For what are the circumstances of this case? The defendant was the servant of a qualified man, who, finding his land annoyed by hares and rabbits, ordered this trap to be set, with a view to their destruction. I take it to be perfectly clear, that a qualified person has a right to order a trap to be set for such a purpose, even in his absence; but, in this case, the qualified person was present, and superintended the setting of the trap. In this trap the hare was afterwards caught, and the catching was a catching by the master on his own land. Then as to the possession, the master ordered, that whatever was caught should be brought to him: the hare was brought the moment it was taken, and the possession of the servant in the act of taking the hare to his master, was under the master's direction, and the same as the possession of the master." *Burrough, J.*—"Actions of this kind do a great deal of mischief; there was no pretence for charging this defendant with an illegal taking or possession." *Richardson, J.*—"The trap being set by the master's order, and in his presence, the hare was in effect caught by him. As to the possession, it was proved that he ordered his servant to bring to him whatever might be taken: so that the case falls within the principle of *Warnford v. Kendall*, 10 East, 19;" post, 916. He also referred to *Spurrier v. Vale*, 10 East, 413.

But in *ex parte Sylvester*, 9 B. & Cres. 61, it was held an unqualified person going out with a qualified person as his servant, and shooting game for him, was liable to the penalty imposed by the 5 Ann. c. 14, and for keeping and using a gun to kill game. In that case it appeared the defendant, on the occasion in question, shot with the gun of a qualified person in his presence, and by his order and direction, and for his use, at game, the qualified person himself not having on the same day shot at game or used a gun for that purpose. The above cases of *Walker v. Mills*, 2 B. & B. 1; *Ret v. Taylor*, 15 East, 460, and *Lewis v. Taylor*, 16 East, 49, were urged in de-

defendant's favour. *Sed per Bayley, J.* "The principle upon which those two latter cases proceeded was, that the using the greyhounds was the act of the owner and master, and not of those who accompanied him. So also the principle of *Walker v. Mills* was, that the trap being set by the master's order, and in his presence, must be taken to have been set by him. But we cannot say that of using the gun, neither his hand nor his skill was applied to it. If we were to hold that the firing of the gun was the act of the master, he might in the same manner use twenty guns at the same time. I think we must consider the gun to have been used by the person who actually fired it, and if so, the cases cited are inapplicable, and there can be no doubt that Sylvester was properly convicted." Rule for quashing conviction discharged.

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If an unqualified person goes out of his own accord for the purpose of sporting, and meeting with a qualified man, join, without invitation, in the chase, he will be as much liable to the penalty as if he had proceeded alone. *Chit. G. L. 73.*

A person being unqualified, relying for his defence on being in company with a qualified man, under any circumstances, must give strict evidence, upon the trial of an action or information, of the qualification of the person under whom he claims protection; and unless this is satisfactorily made out, a verdict will be given against him. *Clarke v. Broughton, 3 Campb. 328.*

*Any Greyhounds, Setting Dogs, Hays, Lurchers, Tumrels, or other Engine*—In order to subject an unqualified person to a penalty under this act of 5 Ann. for keeping or using a dog, such dog must come within one of these descriptions. Therefore in the case of *Reason v. Lisle, Com. 576*, in an action for the penalty under this statute, judgment was arrested, because it was stated in the declaration that the defendant did keep and use a dog to kill and destroy the game, without specifying what species of dog; for it might be a mastiff or a lap-dog, and the statute only mentions greyhounds, setting dogs, and lurchers.

What dogs or engines within the act.

So in *Hooker v. Wilks, 2 Str. 1126*, an action was brought on stat. 8 Geo. I. 19, for using a hound to destroy game, and after a verdict for the plaintiff, the judgment was arrested; for the stat. 5 Ann. c. 14, has not the word *hound*, and the words *other engine* come after *nets*, and are applicable only to inanimate things; and this being a penal law, cannot be extended.

So in *Grant v. Hulton, 1 B. & A. 134*, it was held a gamekeeper is not empowered by stat. 22 & 23 Car. II. to seize a hound belonging to an unqualified person.

Under the term "setting dogs" any dog that stops at his game, as a setter pointer, is included. *Briarly v. Althorpe, 5 B. & A. 326, n. ante, 899, n.*

*To Kill or Destroy*—We have already seen that the dog or engine must be kept or used by the unqualified person for the purpose of killing or destroying game in order to subject him to a penalty under this act, *ante, 898 to 1.*

Dog or engine must be kept or used to kill and destroy game.

It is to be noticed that the statute does not inflict any penalty upon an unqualified person for killing or destroying the game, but rather makes the means by which that is effected the offence, and a conviction or declaration merely for killing game would not be sufficient. *R. v. Morgan, 2 Chit. Rep. 3.* The defendant was convicted on stat. 5 Ann. c. 14., under a conviction which stated the information to have been, that the defendant "*did kill and destroy the game*;" and the evidence to have been, that the defendant "*did, with certain dogs, called hounds and greyhounds, kill and destroy hare.*" Plomer moved to quash the conviction, on the ground that the offence, as stated in the conviction, was no offence against the 5 Ann. c. 14.; evidence of itself certainly brought the offence within the meaning of the statute; but the evidence cannot extend the offence further than that stated in the information. The fact charged in the information is, that the defendant killed a hare and destroyed the game." Now the words of 5 Ann. c. 14., are prohibitory against *keeping or using a gun, &c. to kill*, and not *instilling*. The defendant, for all that appears in the information, might have accidentally killed the hare. Killing in the night, or in the snow, is *OL. II.*

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an offence against the statute; but then the offence must be so charged. The conviction was admitted to be bad by the other side, and the court ordered the same to be quashed. Conviction quashed. And see *Reg. v. Matthews*, 10 Mod. 26.

The 9 Ann. c. 25, s. 2, however, as we shall hereafter see, makes it an offence for any person to have possession of game who is not either himself qualified or entitled to it under a person who is.

What game is  
within the act.

*The Game*—We have already seen what in general is deemed game, *ante*, 874. This act of 5 Anne, c. 14, s. 4, however, includes only hares, pheasants, partridges, moor, heath game, or grouse. It does not include woodcocks or rabbits. *Per Ashhurst, J. in R. v. Thomson*, 2 T. R. 18; *R. v. Yates*, 1 Ld. Raym. 151. Woodcocks and rabbits, snipe, quails, and landrails, are comprehended under the 52 Geo. III. s. 93, relating to taking out game certificates, *ante*, 891.

## (2.) The Amount of the Penalty.

Amount of pen-  
alty, and how  
many be incurred.

*Shall forfeit the sum of 5l.*—It has been already shown that if several be jointly guilty of the same offence, they are liable under this statute to only one penalty, *ante*, 898; but if the acts be several and distinct, as if each use a gun or set a snare, each is subject to a distinct penalty. See 2 *East*, 573: *Chit. G. L.* 85.

If an unqualified person kill several hares, partridges, &c.; (*Reg. v. Matthews*, 10 Mod. 26; *Marriott v. Shaw*, Com. 274; *Crepps v. Darden*, Corp. 646;) or use a dog and also a gun; (*R. v. Lovett*, 4 T. R. 152; *R. v. Blaney*, Andr. 240;) upon the same day, he is only liable to one penalty under this statute.

On a conviction, exception was taken that the person was charged with as many 5l. as he had killed hares in the same day. And the court was of opinion that the offence for which the statute gave the forfeiture, was the keeping of dogs and engines, and not killing the hares. If a man not qualified go hunting, and kill never so many hares on the same day, he would forfeit but one 5l. for it is but one offence; but if a man keep dogs, and go hunting several days, and kill hares, if it were thus laid, that he such a day kept dogs and killed, and then again such a day, &c. by laying it thus severally, the offence is severed, and he shall forfeit 5l. for each offence. *Q. v. Matthews*, 10 Mod. 26.

In a subsequent case (*R. v. Lovett*, 7 T. R. 152) Lord Kenyon, C.J. said, "If a person go in pursuit of game with a dog and gun on the same day, he can only be convicted in one penalty."

From a *nisi prius* report (*Molton v. Cheesely*, 1 Esp. 123)(a) it might be supposed to have been decided that only one penalty would be incurred under the same act of parliament, but this has been considered as a mistake, and that if two distinct offences be committed against the same act, the defendant will be liable to several penalties.

As this defect in the statute of 5 Ann. c. 14, s. 4, making no distinction as to the quantity of game destroyed, tended to encourage offenders in their violation of the law, a provision was introduced by stat. 9 Ann. c. 25, (*post*, 914,) subjecting a party to a penalty of 5l. for every head of game he may have in his possession; and thus the provisions of the legislature are become complete. *Chit. G. L.* 86, 87.

A defendant may be convicted of several penalties in the same conviction. *R. v. Swallow*, 8 T. R. 284.

## (3.) The Means of enforcing the Penalty.

Means of enforcing  
penalty.

The means of enforcing the penalty may be by Action—by Information in the Superior Courts—or by an Information and Conviction before Magistrates.

(1.) By action.

(1.) By ACTION—This penalty, imposed by the 5 Ann. c. 14, s. 4, as will

(a) But see this case observed upon in 10 *East*, 19.

be seen by the act, *ante*, 897, like many other penalties, was recoverable only before a magistrate, in which case a moiety of the penalty goes to the informer, and the other to the poor of the parish, and no costs are recoverable, unless in case of an appeal and affirmance of the conviction, which must take place within three months after the offence was committed. But this division of the penalty and restriction as to costs and time of proceeding, together with the minute accuracy required in the form of the conviction, having been found to deter persons from prosecuting offenders, it was afterwards enacted by the 8 Geo. I. c. 19, s. 1, That the informer might proceed by *action* of debt on the case, bill, plaint, or *information*, in any of his Majesty's courts of record, in which, if he recovers, he shall likewise have double costs, and the whole of the penalty to his own use, and may sue for the same within six months after the offence was committed. 2 Geo. III. c. 19, s. 5, 6. But it is provided, that no offender shall be prosecuted by *both* of these methods, but only by one, and that in case of any second prosecution, the person so doubly prosecuted may plead in his defence the pendency of the former prosecution or the conviction or judgment had thereon. 8 Geo. I. c. 19, s. 2. And from these advantages, as well as from the proceedings not requiring so much precision as a conviction, it is more frequent, particularly in cases where difficulties may arise, to proceed by action or information in the King's Bench, than before a magistrate, which latter course, however, is more expeditious and less expensive. *Chit. G. L.* 171, 172.

The 8 Geo. I. c. 19, s. 2, enacts, "that the action shall be brought before the end of the next term after the offence was committed." But the 2 Geo. III. c. 19, s. 6, enacts, "that it shall be brought within six months after the matter done," which means lunar, and not calendar months; *Lacon v. Hooper*, 1 *Exp. Rep.* 246; and since the last act it is sufficient to commence the action within six months, though after the end of the second term, nor is it necessary to aver in the declaration, though it must be proved at the trial, that the action was commenced within the time, *Lee v. Clark*, 2 *East*, 833, and the record in the action will not of itself afford any inference that the suit was not commenced in due time. *Hardyman v. Whitacre*, 2 *East*, 573. See *R. v. Bellamy*, 1 *B. & Cres.* 500; 2 *D. & R.* 727, S.C.; *post*, 907.

For the rest of the law relative to the pleadings, verdict and costs in an action for the penalty, the reader is referred to *Chit. G. L.* 173 to 184.

(2.) BY INFORMATION IN THE SUPERIOR COURTS]—The penalty is recoverable not only by information and conviction before magistrates, but also by information in any of the superior courts at Westminster. See the 8 Geo. I. c. 19, s. 1, and 2 Geo. III. c. 19, s. 4, which admit of this mode of proceeding for all penalties incurred under those and prior statutes. See *post*, *Information*, Vol. III. and *Chit. G. L.* 184, &c.

(2.) By information in superior courts.

(3.) BY INFORMATION AND CONVICTION BEFORE A MAGISTRATE]—The words of the 5 Anne, c. 14, s. 4, allowing this mode of proceeding, are, "That if any person or persons, not qualified by the laws of this realm so to do, shall keep or use any greyhounds, setting dogs, hayes, lurchers, tunnels or any other engines to kill and destroy the game, and shall be thereof convicted upon the oath of one or two credible witnesses, by the justice or justices of the peace where such offence is committed as aforesaid, the person or persons so convicted shall forfeit the sum of five pounds; one half to be paid to the informer, and the other half to the poor of the parish where the same was committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of such justice or justices, before whom such person or persons shall be convicted as aforesaid; and for want of such distress, the offender or offenders shall be sent to the house of correction for the space of three months for the first offence, and for every such other offence four months."

(3.) By information and conviction before a magistrate.

5 Anne, c. 14, s. 4.

The second section, after imposing a penalty upon higgler, &c. for buying or selling game, and directing the mode of proceeding, enacts, "provided that such conviction be made within three months after such offence com-

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mitted, and that no *certiorari* shall be allowed to remove any conviction made, or other proceedings of or concerning any matter or thing in this act, into any of the courts at Westminster, upon any pretence whatsoever, unless the party or parties against whom such conviction shall be made; shall, before the allowance of such *certiorari*, become bound to the person or persons prosecuting the same in the sum of 50*l.* with such sufficient securities, as the justice or justices of the peace, before whom such offender shall be convicted, shall think fit, with condition to pay unto the prosecutors, within fourteen days after such conviction or *procedendo* granted, their full costs and charges to be ascertained upon their oaths, and that, in default thereof, it shall be lawful for the said justice or justices, or others, to proceed for the due execution of such conviction, in such manner as if no such *certiorari* had been awarded."

Observations  
thereon in general.

We have already minutely considered the law as to informations and convictions in general before magistrates, see title *Conviction*, Vol. I. All that remains to be here noticed are those points peculiarly applicable to an information and conviction under the 5 Anne, c. 14, s. 4.

The information.

THE INFORMATION]—There must be some information in order to convict the defendant. 1 *Saund.* 262, n. 1. A verbal information on this fourth section of the act, without oath, will suffice.

The informer must negative every one of the qualifications in the statute of Car. II. *ante*, 881. And if the information be in writing, it should also negative every one of such qualifications. *Id.*; *R. v. Marriott*, 1 *Str.* 63; *R. v. Hill*, 2 *Ld. Raym.* 1415; *Chit. G. L.* 193, 4.

The information need not state the informer proceeds as well for the poor of the parish as for himself, for the division of the penalty must follow the conviction. *R. v. Lovett*, 7 *T. R.* 152; *Com. Dig. Action sur le Statute*. See further, *ante*, *Conviction*, Vol. I. p. 818 to 827.

The information and conviction must take place in the county wherein the offence was committed. The place wherein such offence took place should be described, in order to show it was within the magistrate's jurisdiction. *R. v. Edwards*, 1 *East*, 278; 14 *East*, 267; *ante*, *Conviction*, Vol. I. p. 820. Where part of a penalty is given to the poor of the parish, the offence must be laid in the proper parish, but if otherwise disposed of, the parish is only laid for a venue, and the plaintiff may prove the defendant guilty in any other parish within the county. *Clark v. Taylor*, 3 *Esp.* 218. But if the place was extra-parochial, then, as the informer would be entitled to the whole penalty, a mistake might not be material. *R. v. Wyatt*, 2 *Ld. Raym.* 1478.

In some places a man may stand in one parish (or county), and shoot into two or three; in such case the place where the offence was committed is where the party stood when he shot, and not where the object was which he shot at. *R. v. Alsop*, 1 *Skow.* 339.

See further as to venue in general, *ante*, *Conviction*, Vol. I. p. 820; *Indictment*, Vol. III. p. 335.

The summons.

THE SUMMONS]—As to the necessity for the defendant's being summoned, and how far a conviction may be justified without it, see in general, *ante*, *Conviction*, Vol. I. p. 827. The summons must be personally served to warrant a conviction in defendant's absence. *R. v. Colanins*, 8 *D. & R.* 344; *R. v. Hall*, 5 *D. & R.* 84.

Hearing of the  
case and evidence,  
&c.

HEARING OF THE CASE AND EVIDENCE, &c.]—The observations already made, *ante*, *Conviction*, Vol. I. p. 828 to 834, will here apply.

As to what evidence is necessary to convict a party, see *ante*, 897 to 904.

As to what is sufficient evidence or not of a qualification, see *ante*, 881 to 890.

It is now settled, that in support of actions, and also of an information before a magistrate, on this act, it is not necessary for the informer to adduce evidence to negative the defendant's qualification. *R. v. Turner*, 5 *M. & S.* 206, *post*, 920. It is advisable, however, for the informer to be prepared, as

V. (3.)] **Game**—(*Offences under 5 Anne, c. 14, s. 4.*)

far as possible, with such negative evidence. *Per Chambre, J. 3 B. & P. 307; Chit. G. L. 203.* A return under the Income Act, by which the defendant stated that his estate was worth less than 100*l.* a-year, has been held good evidence. *R. v. Clark, 8 T. R. 220.*

If there be evidence *tending* to prove the offence, and the magistrate forms his conclusion upon it that the offence has been committed, the Court will not minutely weigh the propriety of such conclusion. *R. v. Davis, 6 T. R. 177; ante, title Conviction, Vol. I. p. 834.*

*Upon the Oath of one or two credible Witnesses*—Though the statute directs the conviction to be “*upon the oath of one or two credible witnesses,*” without adding, *or by the confession of the offender*; yet a conviction upon his confession before the justice has been held sufficient. *R. v. Gage, 1 Stra. 546; 1 T. R. 320; 1 Saund. 262, n. 1.* And what is still stronger, it has been held that a confession made to others, and not to the justice, if proved by such persons to his satisfaction, in the presence of the defendant, will be sufficient evidence to convict. *Ibid.* Where the defendant confesses the charge, it seems to be sufficient only to state in the conviction the information, the defendant’s appearance, the confession, and adjudication. But a confession will extend no farther than to the facts charged in the information; therefore, if the offence be not brought by the information within the act of parliament upon which the conviction is founded, the defendant’s confession will not make the conviction good. *R. v. Little, 1 Burr. 605.*

*Credible Witness*—*R. v. Stone, 2 Ld. Raym. 1545.* A conviction was quashed because the informer was the witness, divers convictions having been quashed for the same reason before. The same adjudged in the case of *R. v. Blaney, T. 11 G. 2. Andr. 240.* And in stat. 2 Geo. III. c. 19, it is recited that in prosecutions on the act of 8 Geo. III. c. 19, in the courts of Westminster, where a part of the penalty is given to the poor of the parish, the inhabitants of such parish had been disallowed to give evidence; and therefore in that case, to remedy the same, the act give the whole penalty to the prosecutor, in order to enable the inhabitants to give evidence.

A magistrate ought to take very correct minutes of what passes upon every conviction before him, and he ought carefully to preserve them. *Christian’s G. L. 199.* And see further, *ante, Examination, Vol. II. p. 97.*

For the rest of the law relative to the proceedings at the hearing of the case and otherwise before the conviction be drawn up, see *ante, Conviction, Vol. I. p. 828 to 834.*

**THE CONVICTION**—For the requisites of convictions in general, see *ante, The conviction. Conviction, Vol. I. p. 835 to 846.*

The conviction, as well as the information under the 5 Anne, c. 14, s. 4, *Time of.* for using a gun, &c. must be made within three lunar months after the offence committed. *R. v. Bellamy, 1 B. & Cress. 500; 2 D. & R. 727 (a), 5. C. R. v. Tolley, 3 East, 467.*

(a) *Per Abbott, C. J.*—“I am of opinion that a conviction under the 5 Ann. c. 14, s. 4, must take place within three lunar months after the offence is committed. In this case it did not take place within that time, and therefore must be quashed. The language of the acts of parliament upon the subject of time is by no means free from obscurity. It is our duty, however, to give effect to the intention of the legislature, that can be ascertained: now I think at the intention is made manifest in this instance, by the different parts of the act in question, and also the subse-

quent stat. of 9 Ann. c. 25. The 5 Ann. c. 14, s. 2, enacts, ‘that if any higgler, &c. shall have in his possession any hare, pheasant, &c. or shall buy, sell, or offer to sell any hare, &c.; every such higgler, &c. shall, upon every such offence, be carried before a justice of the peace; and upon view, or upon the oath of one or more credible witnesses, shall be convicted of the same, and shall forfeit for every hare, pheasant, &c. 5*l.* provided that such conviction be made within three months after such offence committed.’ The conviction for offences described by that section must, there-

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CONVICTION.

Form of.

Describing of-  
fence.Negating quali-  
fications.

The form prescribed by the late act of 3 Geo. IV. c. 23, should be followed, the statute of 5 Anne, c. 14, not prescribing any form.

Great accuracy is required in framing convictions under the game laws. *R. v. Corden*, 4 Burr. 2279; *R. v. Whistler*, 2 *Ld. Raym.* 842; *R. v. Chandler*, 1 Salk. 378; *Chit. G. L.* 207; and *ante*, *Conviction*, Vol. I. p. 835.

As to the venue, see *ante*, 906.

Great care must be observed in describing the offence, so that it may appear it was within the letter and spirit of the statute, and so that defendant may know what charge he has to answer.

A conviction stating the offence to be that the defendant "did kill a hare and destroy the game," would be bad, *ante*, 903.

There is no objection to saying that the defendant kept a dog called a lurcher for destroying the game, for it must be presumed that the right appellation is given to dogs used by the defendant, though it may be proper to state in more positive terms that the defendant kept a lurcher. *R. v. Earshaw*, 15 *East*, 456; *Cald.* 175.

It is necessary to state and negative all the qualifications enumerated in the statute of 22 & 23 Car. II. c. 25, *ante*, 881. Thus in *R. v. Jarvis*, 1 Burr. 148, the conviction set forth that the defendant did unlawfully keep and use, and had in his custody and possession, one setting dog and setting net

fore, take place within three months after the offence is committed. The third section only provides for discoverers. Then the fourth section enacts, 'that if any person not qualified so to do shall keep or use any greyhounds, &c. or other engines, to kill game, and shall be convicted thereof, upon the oath of one or two credible witnesses by the justices of the peace where such offence is committed, as *aforsaid*; the person so convicted shall forfeit the sum of 5*l.* one half to be paid to the informer, and the other half to the poor of the parish where the same was committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of such justice before whom such person shall be convicted as *aforsaid*.' The words 'as *aforsaid*' are twice used in the fourth section, and in both instances refer to 'convicted.' Now the only mode of conviction before pointed out in the statute, is that mentioned in the second section, and, therefore, by a general reference to that, the fourth section refers as well as to the time within which the conviction must take place, as to the other circumstances of it. Indeed no part of the description of the conviction is wanted in the fourth section, but that of the time within which it is to take place, for it expressly describes the justice before whom, and the witnesses upon whose testimony it is to take place. The fourth section then goes on to enact, 'that it may be lawful for any lord of a manor to empower his gamekeeper to kill game; but if the said gamekeeper shall, under colour or pretence of the said power and authority to kill or take the same for the use of such lord, sell and dispose thereof

to any person whatsoever, and shall be thereof convicted before any one justice of the peace as *aforsaid*, upon such conviction, such gamekeeper shall be committed to the house of correction for the space of three months.' Then comes the 9 Ann. c. 25, which enacts, 'that lords of manors shall appoint but one gamekeeper, whose name is to be entered with the clerk of the peace; and in case any other gamekeeper whose name shall not be entered as *aforsaid*, who shall not be otherwise qualified by the laws to kill game, shall presume to kill any hare, &c. or sell or expose to sale any hare, &c.; the offender shall for every such offence incur such forfeiture, pains, and penalties as are inflicted by the recited act upon higgler, &c. for buying and selling game, to be recovered by such means, and in such manner and form, and within such time, and to such uses as are prescribed by the said act.' It is reasonable to suppose, that when the legislature, in the 9 Ann. c. 25, imposed upon gamekeepers not duly appointed for killing or selling game, the same penalties as the 5 Ann. c. 14, imposed upon higgler, they understood that the offences mentioned in the 5 Ann. c. 14, s. 4, were subject to the same limitation of time as those described in the second section. For it would be a singular anomaly if it were necessary that a higgler or a gamekeeper, whose certificate was not duly enrolled, should be convicted within three months after the offence committed; yet that an unqualified person using a gun to kill game, or a gamekeeper selling game without the consent of the lord of the manor by whom he is appointed, might be convicted at any time."

for the destruction of the game; and that he the said *Jarvis* was not then anywise qualified, empowered, licensed, or authorised, by or according to the laws of this realm to kill game. It was moved to quash this conviction. And by Lord *Mansfield*, C. J. "It is now settled by the uniform course of authorities, that the qualifications must be all negatively set out; otherwise the justices have no jurisdiction over the persons killing game, or keeping dogs or engines for the destruction of it." *Denison*, J. concurred, and said "it was a clear case, and that it was fully settled and established, that in these convictions the want of the particular qualifications mentioned in the 22 & 23 Car. II. ought to be negatively set out. If not, the justices have no jurisdiction to convict the defendant as an offender. And the evidence and adjudication ought both of them to be, that he had not the qualifications which are specified in that act, nor any of them." *Foster*, J. also concurred, and said "that on negative acts of parliament the point is fully settled and established, that the particular qualifications mentioned in the purview of them, must be negatively specified in convictions made upon them." And, by the court unanimously, the conviction was quashed. And see *R. v. Hill*, 2 *Ld. Raym.* 1415; 1 *Str.* 66; *R. v. Earnshaw*, 10 *East*, 456; *ante*, 882. The case of *R. v. Matthews*, 10 *Mod.* 26, is overruled.

These qualifications being negated by the evidence, would not cure the defect in an omission to negative them in describing the offence. *R. v. Wheatman*, *Dougl.* 346.

Nor would the inserting of the word "*unlawfully*" cure the defect. *Hebden v. Bluff*, 1 *Chit. Rep.* 607, n.

The mode of stating the evidence in general will be found, *ante*, *Conviction*, Vol. I. p. 839, 840.

The evidence should be set forth, as nearly as possible, in the very words used by the witness. See the general observations on this requisite, *ante*, *Conviction*, Vol. I. p. 839, 840. This is expressly provided for in the general form of conviction given by the 3 Geo. IV. c. 23, *ante*, *Conviction*, Vol. I. p. 840. Before this act, a conviction framed according to a precedent inserted in prior editions of this work, and merely stating the effect of the evidence, viz. that the defendant "kept and used a gun to kill and destroy the game," was held sufficient, though the precedent was faulty. But as it was a precedent that had been so frequently adopted, it was considered expedient to allow a continuance of such adoption. *R. v. Thompson*, 2 *T. R.* 18. (a) A con-

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CONVICTION.

Negating quali-  
fications.

Stating the  
evidence.

The words of wit-  
ness.

(a) *R. v. Thompson*, 2 *T. R.* 18. This was a conviction on 5 Anne, c. 14, s. 4, stating, according to the precedent, the information on 8th Dec. 1786, the appearance of the defendant on the 9th, after being summoned, and the plea of *not guilty*, and then proceeded as follows: "Nevertheless, on the said 9th day of Dec. in the year aforesaid, at, &c. one credible witness, to wit, *R. Taylor* of, &c. cometh before me the said justice, and before me the same justice upon his oath, &c. saith that the defendant, on the 7th day of Dec. aforesaid, in the year aforesaid, at, &c. (negating the qualifications of 22 & 23 Car. II. c. 25, s. 3,) did keep and use a gun to kill and destroy the game; and thereupon the said defendant, &c. before me the same justice, by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, is convicted, and for his offence aforesaid hath forfeited 5*l.* to be distributed, &c." It was objected, that did not appear upon the conviction that the defendant had been convicted;

it only said, thereupon the defendant on, &c. before me the same justice, by the oath of one credible witness, according to the form of the statute, is convicted, and for his offence hath forfeited, &c., though this was only a conclusion of law, and not an adjudication of the justice. There was nothing to connect it with that which preceded it; such as that "he is convicted of the premises," or "in manner and form aforesaid." But the court were clearly of opinion that there was no ground for that objection; but desired it might be argued again on another objection, which they suggested to the counsel, whether the evidence was sufficiently set forth, so that the court could see by what act the defendant had incurred the penalty; for they observed, that the act of *keeping a gun* was in itself ambiguous, and it must be shown to be kept for the purpose of killing game, in order to bring the party keeping it within the act; it was not like keeping a greyhound or a snare, which could not be kept for any other purpose, and which

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viction now framed in that way would be incorrect, and at all events so far that a mandamus would be granted to compel the magistrates to alter it, by setting out the evidence on which it was founded as nearly as possible in the words used by the witness. *R. v. Warnford*, 5 D. & R. 489; *Re Rix*, 4 D. & R. 352, *ante*, *Conviction*, Vol. I. p. 841.

The evidence need not negative every particular qualification. *R. v. Thomas Spencer Crowther*, 1 T. R. 125. This was a conviction before a justice on 5 Anne, c. 14, for using a gun. After stating the information, which negatived specifically every one of the qualifications in 22 & 23 Car. II. c. 25, and which disclosed the fact of the defendant's having used a gun and pointers, and killed a partridge, it stated a summons and the appearance of the defendant; who "having heard the same, and the aforesaid deposition of the said E. Tye having been read over again to the said E. Tye, in the presence and hearing of the said T. S. Crowther, and the said E. Tye having again affirmed his said deposition to be true, in the presence and hearing of the said T. S. Crowther, he the said T. S. Crowther is asked by me, the said justice, if he can say anything for himself, why he, the said T. S. Crowther, should not be convicted of the premises above charged upon him in the form aforesaid: Whereupon, &c." It was moved to quash the conviction on two grounds; 1st, That the evidence on which it was founded was not given in the presence of the defendant, for on his appearing before the justice the wit-

was expressly prohibited by the act. After argument, *Per Ashurst, J.*—If this were a new case, I should most undoubtedly be of opinion that this conviction could not be supported, because I think the evidence should be set forth particularly, that we may judge whether the justice has convicted upon proper evidence. The fact of keeping or using the gun for the purpose of destroying game should appear; but it is only stated here that the defendant kept and used, &c., which is the result of his evidence. Then whether he kept it for the purpose of killing game is likewise a question of law; for an ignorant witness in the country might fancy that a woodcock or rabbit was game. So that it seems to me, that permitting this general evidence to be stated is allowing the witness to give his sentiments on the law as well as on the facts. But as the precedents are usually in this form, and as the conviction in *R. v. Hartley* (*Cald.* 95) was similar to the present, it is better to support this conviction than, by quashing it, to overturn all former precedents. *Bul-ler, J.*—If this precedent had never been adopted, I should have been of opinion that the evidence should have been fully set forth; but after so many convictions have been made in the same form, it would be dangerous to quash the present. The distinction taken in *R. v. Filer* is good law; it is not an offence to keep or use a gun, unless it be kept or used for the purpose of killing game. But it is here stated by the evidence, "that the defendant did keep and use a gun to kill and destroy the game." As to the other question respecting game, I cannot agree that the witness, in swearing that the

defendant used a gun to destroy game, would be swearing to a question of law: because it is settled by act of parliament, and every man is bound to know what is game. If he swear that to be game which is not so in law, he would be guilty of perjury. Game must be understood in its legal sense. *Grose, J.*—I cannot give my consent to support this conviction. The justice should return particularly all the facts and the conclusion in the conviction; first, the information, the summons, the appearance, or the defendant's default in not appearing; that the information was read to the defendant; that he was asked what he had to plead, the whole of the evidence particularly, and the adjudication. The witness should swear to the facts, and not to the law.

But the next day, when this case was again mentioned, *Grose, J.* said, As the precedent in *Burn*, though it seems to me a faulty one, has been recognised by this court in *R. v. Hartley*, *Cald.* 95, of which I was not aware before yesterday, I think it must be supported. It might be highly inconvenient to overturn it; and I should be sorry that any opinion of mine should shake the authority of an established precedent; since it is better for the subject that even faulty precedents should not be shaken than that the law should be uncertain.

There was another doubt entertained by the court, namely, whether it sufficiently appeared that the evidence was given in the defendant's presence, but it was overruled. Conviction affirmed. See *R. v. Pearce*, 9 East, 358, S. P. See *R. v. Swallow*, 8 T. R. 284, *ante*, *Conviction*, Vol. I. p. 840, as to the latter point.

ness only affirmed his former deposition to be true; and *R. v. Vipont*, 2 Burr. 1163, was cited. 2dly, The qualifications required by 22 and 23 Car. II. c. 25, were not negated by the evidence. The evidence was only general, that what he did was against the form of the statute, &c.; and *R. v. Jarvis*, 1 Burr. 154, and *R. v. Wheatman*, Dougl. 345, were cited. In answer it was said, that the deposition of the witness having been read over in the defendant's presence, and affirmed by him to be true, was the same as if he had been re-sworn. That as to the other objection, the information had negated every separate qualification, and was so stated in the conviction, and there was no occasion to prove it by evidence. If the information be specific, a general deposition that he is not qualified, is sufficient to put the defendant upon proving that he was. By the court.—The first objection is good: the witness ought to have been re-sworn in the defendant's presence. As to the other point, there is no case in which it has been directly decided that the evidence should negative every particular qualification. It cannot be so from the nature of the case. Conviction quashed.

In *R. v. Stone*, 1 East, 639, Lord Kenyon and Grose, J. were of opinion that the evidence ought to negative each of the qualifications; but the other two judges, Lawrence and Le Blanc, Js., thought it was not necessary to produce further evidence in an information before a magistrate than in an action; and there the witnesses are never required to prove more than the fact of using the dogs and engines; and the *onus probandi* of proving the qualification, as his defence, is always thrown upon the defendant. The court being equally divided, no order was made.

But in the case *R. v. Turner*, 5 M. & S. 206, post, 920, the Court of King's Bench determined that the same rule of evidence applies as well to proceedings on informations before magistrates, as to actions for penalties; and therefore a conviction, which specifically negatives the several qualifications mentioned in the statute, is sufficient, without stating evidence to negative these qualifications.

A defendant may be convicted of several penalties in the same conviction. *R. v. Swallow*, 8 T. R. 284. This was a conviction in the sum of 15*l.* for three penalties under the game laws, the defendant being prosecuted for that he, on three several days, kept and used traps and engines to kill game; the objection was that he was charged with three offences, and the conviction was general, without saying of how many. The words were, "and thereupon he is convicted, and for his several offences aforesaid hath forfeited the sum of 15*l.* for each offence, making together the sum of 15*l.* &c. &c." Lord Kenyon, C. J., said, "There is no objection to the conviction on the ground that the defendant has been convicted of several penalties. It is the constant practice in actions on the game laws, and not unfrequent in convictions. Even in indictments for capital offences, several offences are sometimes charged, as burglary and stealing in the dwellinghouse to the value of 40*s.* I by no means wish that magistrates, in drawing up convictions, should set all forms at nought; but they ought not to be entangled in greater forms and ceremonies than the superior courts. The word 'convicted' in this case applies to the several offences with which the defendant was charged, and to the evidence given in support of them; and the words following are, 'and for his several offences aforesaid, &c.' Taking the whole of the adjudication together, it is evident that the magistrate convicted the defendant in the three several offences charged." Conviction affirmed.

We have already considered the amount of the penalty, and how many different penalties the party may subject himself to, ante, 904.

A conviction adjudging a distribution of part of a forfeiture to the overseers of the poor of a township (where the statute speaks of a parish) cannot be supported. *R. v. Priest*, 6 T. R. 538. *Qu.* Whether the conviction could be supported if it had appeared on the face of it that the township separately maintained its own poor?

Since the 3 Geo. IV. c. 23, it would, it seems, now suffice to state generally in the adjudication that the penalty is "to be paid according to the form the statute in that case made and provided."

By that act, s. 3, where the merits have been tried, convictions are not to

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tivating qualifica-  
tions.

Conviction for  
several penalties.

Amount of  
penalty.

Distribution of  
penalty.

Defects in form.

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penalty.

be set aside for defect in form. See the provision and notes thereon, *ante*.  
*Constitution*, Vol. I. p. 837, 848.

LEVYING OF PENALTY]—We have seen, *ante*, 905, that the 5 Anne, c. 14 s. 4, directs the penalty to be levied by distress and sale of the offender's goods by warrant under the hand and seal of such justice or justices before whom the party was convicted, and that for want of such distress the offender or offenders shall be sent to the house of correction for the space of three months for the first offence, and for any further offence four months.

The proceedings in case of a distress have been already fully noticed, *ante*.  
*Distress under Warrant of Justices*, Vol. I., and the reader is referred thereto.

See also the important provisions of the 5 Geo. IV. c. 18, *ante*, Vol. I. p. 1018.

Imprisonment.

A replevin will not lie. *R. v. Burchet*, 1 *Stra.* 567; *R. v. Sheriff of Leicestershire*, 1 *Barnardiston*, 110; *R. v. Monkhouse*, 2 *Stra.* 1184.

If there be goods, they must be distrained upon before the offender can be committed, *Hill v. Bateman*, before *Raymond*, C. J. at Westminster, 2 *Stra.* 710. The defendant, *Bateman*, being a justice of the peace, had convicted the plaintiff for destroying game, and though (as it was proved) the plaintiff had effects of his own which might have been distrained, which were sufficient to answer the penalty he had incurred, yet the defendant sent him immediately to Bridewell, without endeavouring to levy the penalty upon his goods: and an action of trespass and false imprisonment being brought against *Bateman* for this commitment, the C. J. was of opinion that the action well lay.

For further information as to imprisoning a party for want of a distress see *ante*, *Commitment in Execution*, Vol. I.—*Distress*, Vol. I. p. 1019.

Appeal and cer-  
tiorari.

APPEAL AND CERTIORARI]—The 5 Anne, c. 14, gives no appeal against the conviction. See *ante*, *Appeal*, Vol. I.

A *certiorari* lies, as it is not expressly taken away; but by stat. 5 Anne. c. 14, s. 2, [no] *certiorari* shall be allowed to remove the conviction or other proceedings on this act, unless the party convicted shall, before the allowance thereof, become bound to the prosecutor in 50*l.*, with such sureties as the justice before whom the conviction shall be made shall think fit, to pay the prosecutor's full costs and charges, to be ascertained on their oath, in 14 days after the conviction [confirmed], or *procedendo* granted. And in default thereof the justice shall proceed in execution of the conviction in such manner as if no *certiorari* had been awarded.

The word [no] is inserted instead of the words [if any] which are in the act, since that word seemeth necessary to make up the sense; and the word [confirmed] is added for the like reason. And indeed there have been too many inadvertences in the drawing up of this act; for there is false grammar in no fewer than six places, besides other mistakes.

Recognizance.

Upon this act there ought to be a single recognizance of the defendant, and two sureties in 50*l.*; and a recognizance taken in 25*l.* each, is not a compliance with the act. *R. v. Dunn*, 8 *T. R.* 218. In practice a recognizance is never required, the bond being considered as supplying the place of a recognizance. *Paley*, 223. In consequence of this the prosecutor is in a worse condition than in others, for he cannot have an attachment for the costs, that being granted only where there is a recognizance, he must be sued on the bond. *Id.* n.

This bond is not returned with the *certiorari* as in the case of a recognizance, but remains with the prosecutor to whom it is given. *Paley*, 224.

In a note to the case of *R. v. Dunn*, it is made a query, whether the 5 Geo. II. c. 19, s. 2, the general *certiorari* act, is applicable to the *certiorari* given by the statute of Anne; since, as it is there observed, the stat. of Geo. II. refers to judgments and orders, subject to and made upon appeal, and the stat. of Anne gives no appeal in this case. (See the stat. of Geo. II. *Certiorari*, Vol. I. p. 580.) And this doubt expressed by the reporter seems well founded; and if so, the question whether or not a *certiorari* issued upon the stat. of Anne be within time cannot arise.

See further, as to *certiorari* and subsequent proceedings in general, *ante*, *Certiorari*, Vol. I.

As to *costs* in general, see *Costs*, Vol. I. p. 903.

BUYING,  
SELLING, OR  
HAVING IN  
POSSESSION.

(4.) **HOW FAR OFFENCE PUNISHABLE BY INDICTMENT.**—In *R. v. Buck*, 2 *Str.* 679, the Court of King's Bench held, that an indictment cannot be supported for killing a hare without a qualification, the 5 Anne, c. 14, having appointed a summary proceeding before justices of the peace; nor is it an indictable offence to have nets or guns in possession to kill game. *R. v. Towning and others*, *Andr.* 303; *Chit. G. L.* 87.

And although for some purposes several persons, by associating in the commission of an illegal act, may become indictable for a conspiracy, yet several persons cannot be indicted at common law for conspiring simply to kill game; and therefore in *R. v. Turner and others*, 13 *East*, 228, where the defendants resolved to go into a preserve, or place set apart for the protection of hares, with arms by night, and take and carry away hares, which they accordingly did, it was held, they could not be indicted for it as for a conspiracy. Lord Ellenborough, C. J. there said he should be sorry to have it doubted, whether persons agreeing to go and sport upon another's ground, in other words, to commit a civil trespass, should be thereby in peril of an indictment for an offence which would subject them to infamous punishment, *ante*, Vol. I. p. 784.

As to the offence of night poaching against 9 Geo. IV. c. 64, see *post*, 926; as to stealing deer and hares, &c. see *post*, 932, 934.

## I. **Buying or Selling Game, or having it in Possession.**

The statutes now usually resorted to as prohibiting the buying or selling game, or having it in possession, are the 4 & 5 W. & M. c. 23, s. 3; Anne, c. 14, s. 2; 9 Anne, c. 25; 28 Geo. II. c. 12; and 58 Geo. III. 75.

We will point out these provisions and afterwards notice the construction thereof.

The 4 & 5 W. & M. c. 23, s. 3, enacts, that "in case any hare, partridge, pheasant, pigeon, fish, fowl, or other game, shall (upon such search or otherwise) be found, the offender shall be carried before some justice of peace of the same county, riding, or division; and if such person do not give a good account how he came by such hare, partridge, pheasant, pigeon, fish, fowl, or other game, such as shall satisfy the said justice, or else shall not in some convenient time, to be set by the said justice, produce the party of whom he bought the same, or some other credible person, to depose upon oath such evidence thereof, that then such person not giving such good account, nor proving any such witness as aforesaid, shall be convicted by the said justice of such offence, and upon such conviction shall forfeit for every hare, partridge, pheasant, pigeon, fish, fowl, or other game, any sum not under 5s. nor exceeding the sum of 20s. to be ascertained by the said justice; one moiety thereof to be paid to the informer, and the other moiety to the poor of the parish where the offence was committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of the justice before whom the offender shall be convicted, rendering the offender, if any be; and for want of distress, the offender or offenders shall be committed to the house of correction, for any time not exceeding one month, and not less than ten days, there to be whipt and kept to hard labour."

4 & 5 W. & M.  
c. 23, s. 3.

The 5 Anne, c. 14, s. 2, enacts, "that if any higgler, chapman, carrier, keeper, victualler, or alehouse-keeper, shall from and after the first day of January, 1707, have in his or their custody or possession any hare, pheasant, partridge, moor, heath-game, or grouse, or shall buy, sell, or offer to sell any such hare, pheasant, partridge, moor, heath-game, or grouse, every such higgler, chapman, innkeeper, victualler, alehouse-keeper, or carrier, (unless such

5 Anne, c. 14, s. 2.  
Higgler, carrier,  
&c. not to have  
any hare, or buy  
or sell hare, &c.  
on penalty of 5l.



BUYING, SELLING, OR HAVING IN POSSESSION.	
5 Anne, c. 14.	game in the hands of such carrier be sent up by person or persons qualified to kill the game,) shall upon every such offence be carried before some justice of the peace for the county, riding, city, or town corporate, or liberties, where the said offence is committed; and upon view, or upon the oath of one or more credible witnesses, shall be convicted of the same, shall forfeit for every hare, pheasant, partridge, moor, heath game, or grouse, the sum of 5 <i>l.</i> one half to the informer, and the other half to the poor of the parish where the offence was committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of the justice or justices of the peace before whom such offender or offenders shall be convicted, rendering the overplus (if any be), the charge of distraining being first deducted; and for want of distress, the offender or offenders be committed to the house of correction for the first offence, for the space of three months, without bail or mainprize, and for every such other offence, for the space of four months; provided that such conviction be made within three months (a) after such offence committed; and that if any (b) certiorari shall be allowed to remove any conviction made, or other proceedings of or concerning any matter or thing in this act, into any of the courts at Westminster, upon any petition whatsoever, unless the party or parties, against whom such conviction shall be made, shall, before the allowance of such certiorari, become bound to the person or persons prosecuting the same, in the sum of 50 <i>l.</i> with such sufficient securities as the justice or justices of the peace, before whom such offender shall be convicted, shall think fit, with condition to pay unto the prosecutors, within fourteen days after such conviction or <i>procedendo</i> granted, their full costs and charges, to be ascertained upon their oaths; and that in default thereof, it shall be lawful for the said justice or justices, or others, to proceed for the due execution of such conviction, in such manner as if no such certiorari had been awarded."
To be levied by distress, &c.	
Imprisonment.	
Limitation of con- viction.	
Certiorari.	
Bond on.	
Encouragement to destroyers of the game to make discoveries.	By sect. 3 of the same act, "for the better discovery of such higgler, chapman, carrier, innkeeper, alehouse-keeper, and victualler, as shall offer to buy or sell any hare, pheasant, partridge, moor, heath game, or grouse," it is enacted, "that from and after the said first day of May, any person that shall destroy, sell, or buy any hare, pheasant, moor, heath game, or grouse, and shall within three months make discovery of any higgler, chapman, carrier, innkeeper, alehouse-keeper, or victualler, that hath bought or sold, or offered to buy or sell, or had in their possession any hare, pheasant, partridge, moor, heath game, or grouse, so as any one shall be convicted of such offence in manner as aforesaid, such discoverer to be discharged of the pains and penalties hereby enacted for killing or selling such game as aforesaid, shall receive the same benefit or advantage as any other informer shall be entitled to by virtue of this act for such discovery and information."
Gamekeeper wrongfully selling game.	Sect. 4, amongst other things, <i>ante</i> , 886, enacts, that if a gamekeeper shall sell any game without the consent or knowledge of the lord or lady of the manor, he shall be committed to the house of correction for three months, there to be kept to hard labour. This regulation will not extend to a gamekeeper appointed under the 48 Geo. III. c. 93, <i>ante</i> , 887.
9 Anne, c. 25. Unqualified per- son having game in possession, and exposing to sale.	As difficulties occurred in proving a sale, or offering to sale, it was enacted by stat. 9 Anne, c. 25, s. 2, "that if any hare, pheasant, partridge, moor, heath game, or grouse, shall be found in the shop, house, or possession of any person or persons whatsoever, not qualified in his own right to kill game, or being entitled thereto under some person so qualified, the same shall be adjudged, deemed, and taken to be an exposing thereof to sale, within the true intent and meaning of this and the said recited act" (stat. 5 Anne, c. 14, above mentioned).
28 Geo. 2, c. 12. Selling game, whether qualified or not.	By stat. 28 Geo. II. c. 12, s. 1, (after reciting that doubts had arisen with respect to the meaning of the word " <i>chapman</i> ," in the stat. of 5 Anne, c. 14,)(c) for putting an end to same, it is enacted, "that if any person or

(a) See *R. v. Bellamy*, 1 B. & Cres. 500; 2 D. & R. 727, S. C.; *ante*, 907.(b) See *ante*, 912; for the construction of this provision.(c) See *Kearle v. Bolton*, *Sayer*, 191.

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persons whatsoever, whether qualified or not qualified to kill game, shall sell, expose, or offer to sale any hare, pheasant, partridge, moor, heath game, or grouse, every such person or persons shall, for every such offence, be subject and liable to the same forfeitures, pains, and penalties, as are inflicted by the said recited act upon higglers, chapmen, carriers, innkeepers, victuallers, alehouse-keepers, for buying, selling, or offering of game to sale." (i. e. 51. or each head of game.)

BUYING,  
SELLING, OR:  
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28 Geo. 2, c. 12.

Sect. 2. "If any hare, pheasant, partridge, moor, heath game, or grouse, shall be found in the shop, house, or possession of any poulterer, salesman, shopmonger, cook, or pastry-cook, the same shall be adjudged, deemed, and taken to be an exposing thereof to sale within the true intent and meaning of this act, and the said recited act, or any other act; which said forfeitures shall be recovered, and such penalties inflicted, by such means and in such manner, and from and within such time, and shall be applied to such uses, as are prescribed by the said recited act, or by any other act or acts since made for the preservation of the game; any thing in the said recited act, or by any other law or statute to the contrary thereof in any wise notwithstanding."

Game found in  
possession of  
poulterer, &c.

And by stat. 5 Anne, c. 14, s. 4, "that it shall and may be lawful to and for any of her Majesty's justices of the peace, in their respective counties, cities, towns corporate, or liberty, and the lords and ladies of his, her, their, or any of their respective manors, within the said manors, to take away any such hare, pheasant, partridge, moor, heath game, or grouse, or any other game, from any such higgler, chapman, innkeeper, victualler, or carrier, or any other person or persons not qualified to kill the same, and (a) shall be found in their custody or possession."

5 Anne, c. 14.  
Taking away the  
game.

We have seen that the penalties recoverable under the above provisions may be proceeded for by conviction or by action. In proceedings by action the whole penalty in general goes to the informer, and the action may be brought in six months, *ante*, 905.

These provisions being inefficient to prevent the destruction of game, the 58 Geo. III. c. 75, after reciting that "whereas the selling, exposing, offering to sale, any hare, pheasant, partridge, moor, heath game, or grouse, is by law prohibited: and whereas it is expedient, for the more effectual prevention of offences connected with the unlawful destruction and sale of game, to provide by law as hereinafter is enacted;" it is enacted, "that any person or persons whatsoever, whether qualified or not qualified to kill game, shall buy any hare, pheasant, partridge, moor, heath game, or grouse, or any such person or persons who shall so offend, and thereof shall be convicted before any one or more justice or justices of the peace, magistrate or magistrates, acting for the county, riding, city, town, borough, division, or place where such offence shall be committed, by the oath of one or more credible witness or witnesses, shall for every hare, pheasant, partridge, moor, heath game, or grouse, so bought as aforesaid, forfeit and pay the sum of 51. half to be paid to the informer, and the other to the poor of the parish in which such offence shall be committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of the justice or justices, magistrate or magistrates, before whom the offender shall be convicted, rendering the overplus of such distress and sale (if any) to the justice or parties, after deducting the charges of making the same; provided that such conviction be made within six calendar months after such offence committed."

58 Geo. 3, c. 75.  
Penalty on any  
persons buying  
game.

Limitation.

Sect. 2. "And for the better discovery of such person or persons as shall buy or sell any hare, pheasant, partridge, moor, heath game, or grouse," it is enacted, "that from and after the time of the passing of this act, any person who shall buy, sell, or offer to sell, or have unlawfully in his possession, any hare, pheasant, partridge, moor, heath game, or grouse, and shall make discovery of any person that hath, within six calendar months, bought or sold

For the better  
discovery of per-  
sons buying or  
selling of game.

(a) In the statute it is "and," not "which."

BUYING,  
SELLING, OR  
HAVING IN  
POSSESSION.

58 Geo. 3, c. 75.

Prosecution pending.

Penalties under this act may be sued for to the sole use of prosecutor.

What buying unlawful.

What is an exposing to sale or unlawful possession.

any such game as aforesaid, so as any one shall be convicted of any such offence by virtue of this or any other statute now in force, such discoverer shall be discharged of and from all pains, forfeitures, and penalties to which he may be and shall have become liable before and at the time of the making such discovery, by reason of the buying or selling, or offering to sell, or having unlawfully in his possession, any such game as aforesaid, any thing in any former statute contained to the contrary notwithstanding; and shall receive the same benefit and advantage as any other informer shall be entitled to, by virtue of this act, for such discovery and information; provided always, that nothing in this act contained shall be held or construed to discharge such discoverer of or from any pains, forfeitures, or penalties, in respect whereof a prosecution shall be actually pending, or a conviction or judgment shall have been had against him, at the time of the making such discovery as aforesaid."

Sect. 3. "Whosoever any person shall, for any offence to be committed against the provisions of this act, be liable or subject to any forfeiture or penalty upon conviction before any justice or justices, magistrate or magistrates as aforesaid, it shall and may be lawful for any other person whatsoever, either to proceed to recover the said forfeiture or penalty by information and conviction as aforesaid, or to sue for and recover the whole of such penalty for his own use by action of debt or on the case, bill, plaint, or information, in any of his Majesty's courts of record, wherein no esset, wager of law, or more than one imparlance shall be allowed, and wherein the plaintiff, if he recovers, shall have his double costs; and that no part of the said penalty recovered in any such suit or action shall be paid or applied to or for the use of the poor of the parish wherein such offence shall be committed: provided always, that no such action, suit, bill, plaint, or information shall be brought or exhibited, but within the space of six calendar months next after the offence committed; and that in case of any second prosecution for one offence, the person doubly prosecuted may plead in his defence the former prosecution pending, or the conviction or judgment thereupon had."

This act of 58 Geo. III. prohibits the buying of pheasants, &c. in all cases, and therefore by a contract for the sale of live pheasants no property passes to the purchaser. *Helps v. Glennister*, 8 B. & Cres. 553.

*Exposing to sale*—*Warneford v. Kendall*, 10 East, 19. Action upon stat. 5 Anne, c. 14, for the penalty of 5*l.* against the defendant for *exposing to sale a hare*, not being qualified in his own right to kill game, nor entitled thereto under any person so qualified. It was proved that the plaintiff went out coursing, and killed a hare on *Shipston* manor, when the defendant, who was employed as a carpenter and woodman by Mr. *Earl*, the lord of the manor, and had directions from him to take poachers, came up and took the hare from the dog, and carried it away, (notwithstanding the plaintiff claimed it,) to Mr. *Earl's* steward, according to his instructions. Upon the authority of *Molton v. Cheeseley*, 1 Esp. 123, *Lawrence*, J. against his own opinion, allowed a verdict for the plaintiff, with liberty to move to set aside the verdict and enter a nonsuit. A rule *nisi* having been obtained for that purpose, after cause shown, Lord *Ellenborough*, C. J. said, "the question is whether the possession of the defendant was such as to constitute an offence, and subject him to the penalty under the statute? He did not claim the hare as his property, nor acquire the possession of it for himself, but for his master, on whose manor it was taken; and if this be an offence, no case can be stated in which an unqualified person can innocently come in contact with game. The case of *Molton v. Cheeseley* must have been imperfectly stated." The other judges agreed, and the rule was made absolute.

In the late case of *Walker v. Mills*, 2 B. & B. 1; 4 Moore, 343, S. C.; where an unqualified person by the orders and in the presence of his master, a qualified person, set on his master's grounds a trap for hares, &c. and afterwards finding a hare therein, carried it accordingly to his master, who was not present when the hare was found; it was held, defendant was not

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liable to the penalties for using snares to destroy game, or for exposing same to sale. See the case fully reported, *ante*, 902.

It has been held in *Bluet v. Needs*, 2 Com. 522, upon the statutes of 5 Anne, c. 14, s. 2, and 9 Anne, c. 25, that the penalty is 5*l.* for every head of game, and that although it is more correct to describe the offence as *an exposing to sale*, yet that it is sufficient to allege that the defendant had the *game in his possession*, as that is in substance by virtue of the 9 Anne, c. 25, *an exposing to sale*. *Jones v. Bishop, Sayer*, 64.

It is not material to constitute an offence by a carrier within the 5 Anne, c. 14, s. 2, for having game in his possession *as carrier*, whether he be qualified or not. If he has the game in his possession in the course of his trade and business of a carrier, it is within the act. If it were not so, an unqualified person would incur the penalty by carrying the game of other people not qualified, and a qualified carrier would not, although each were doing the very same act; it is the act of carrying the game of persons not qualified that constitutes the offence. Accordingly in an information on stat. 5 Anne, c. 14, s. 2, against a carrier between Norwich and London, for having game in his possession *as carrier*, it was held not necessary to aver that the defendant was not a person qualified to kill game, nor that he had the game in his possession *knowingly*. The evidence for the prosecution was, that game was found in the defendant's waggon at an intermediate place between Norwich and London: it was held, that there was sufficient *prima facie* evidence that the defendant had it in his possession *as carrier*. The evidence for the defendant was, that his book-keeper living at that place did not know of any game having been put in there. Neither the driver of the waggon or his assistant was called as a witness: it was held, that this evidence did not vary the case, and that the defendant was properly convicted of having the game in his possession *as carrier*. *R. v. Marsh*, 2 B. & C. 717; 4 D. R. 260, S. C. (a)

BUYING,  
SELLING, OR  
HAVING IN  
POSSESSION.

What an exposure  
to sale.

(a) *R. v. Samuel Clark Marsh*, 2 B. C. 717; 4 D. & R. 260, S. C. This was a conviction against a carrier, for having game in his possession. The conviction stated, that Edward Howell, Thetford, St. Peter's, in the county of Norfolk, came before A. B. and C. D., justices, and gave them to understand he was informed, that within three months last past, viz. on August 25th, 23, Samuel Clark Marsh, of the city of Norwich, being a common carrier, lawfully had in his hands and custody 1 possession as such carrier, divers, to wit, 22 partridges and 22 pheasants of game of England (such partridges and pheasants not having been sent up delivered nor entrusted to the said C. Marsh, as such carrier as afore-  
said, or in anywise howsoever, by any person or persons, in any manner qualified to kill game,) contrary to the statute,

The conviction then stated the reasons of the defendant, his appearance, and that he pleaded not guilty. The following evidence, given by two witnesses for the prosecution, was then set out: that defendant was a common carrier, and that his waggon stopped in the parish of Elden, in the county of Norfolk, and that 22 live pheasants, two partridges, and 20 dead ones, were in the waggon, and in the possession of

the defendant, as such common carrier. The conviction then set out the evidence of one John Cole, a witness for the defendant, who stated, that he was in the employment of the defendant as book-keeper on the day in question; that his master's waggon stopped that day at Thetford, on its way to London, and that he, Cole, saw the waggon at about six o'clock in the evening; that it stopped about an hour afterwards; that he saw nothing put into it, except a parcel, which he booked (which was not the parcel in question); that the waggon had been in Thetford some time before he saw it, and that he did not know what might have been put into it before he saw it; that James Smith was the driver of the said waggon, who was accustomed to drive it; that he had not seen him since that time; that one Evans was with the said James Smith as helper; that he did not examine the waggon, nor did he know what was in it; that he did not see any Norwich way-bill, nor was he accustomed to see one, unless any goods were left at Thetford; that the said S. C. Marsh lived at Norwich, which is his constant residence; that he never saw him at Thetford, to see what was put into his said waggon; and that it was impossible for the said S. C. Marsh, if his waggoner or book-keeper

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But if the information and conviction be against the defendant for having game in his possession, but *not as a carrier*, or of the description of persons in the act, the defendant must be unqualified, and the same must be nega-

put any thing into the waggon at Thetford or on the road, to know of it, unless he was informed of it; that the waggon came into Thetford considerably loaded, but that he, John Cole, did not know what was in it; that he was dismissed from his master's service about a week after the 25th of August, on account of the game found in the waggon on that day, and he had not been since employed by the said S. C. Marsh; that he and his father had been book-keepers to S. C. Marsh for forty years before. The conviction then stated, that, inasmuch as the defendant had not adduced any evidence of the said pheasants and partridges having been sent as aforesaid, by any person or persons qualified to kill game, nor any evidence that the defendant was qualified, by the laws of the realm, to kill or destroy game, or to have the said pheasants or partridges in his possession as aforesaid; it appeared to the justices that the defendant was guilty of the premises charged upon him in the information, and that they therefore adjudged him guilty of the offence.—*Nolan and Chitty* were to have argued in support of the conviction, but the court called upon *Scarlett, contra*, who contended, that the information ought to have negatived the qualification of the defendant, and also to have averred that he had the game in his possession *knowingly*. As to the first objection, the uniform course of the precedents of convictions against carriers is to negative the qualification. *R. v. Turner*, 5 M. & S. 200, post, 920. It is consistent with this information that the carrier in this case may have been a qualified person, and may actually have sent his own game by his own waggon; and if so, he clearly would not have committed an offence within the act. [*Abbott, C. J.* Then he would not have had the game in his possession *as carrier*. *Boyley, J.* The effect of your argument is, that if the carrier be qualified to kill game, he may carry the game of any person whatever, whereas the 5 Ann. c. 14, s. 2, declares, "that any carrier having game in his possession is guilty of an offence, unless it be sent by a qualified person."] The information ought to have alleged, that the defendant had the game in his possession *knowingly*. The fact of his having it in his possession without knowledge cannot be an offence. Thirdly, the evidence does not show that he had

it in his possession *knowingly*. The bare fact of the goods having been found in his waggon is not *prima facie* evidence that he knew them to be there, and the knowledge of the servant is not sufficient; for a master is not criminally responsible for the acts of his servant; and there is no evidence to show that the parcel was put into the waggon at Norwich, where the defendant resided; and if it were put in at an intermediate place, it is impossible that he could have any knowledge of it.—*Abbott, C. J.* "I am of opinion that this conviction ought to be affirmed. Two objections have been taken to the form of the information. The first is, that it does not negative the qualification of the defendant. The second is, that it does not aver that the defendant had the game in his possession *knowingly*. As to the first objection, I am of opinion that it is unnecessary in an information against a carrier to negative the qualifications of the defendant. For, whether he be qualified or not, if he has the game in his possession in the course of his trade and business as carrier, it is an offence within the act. If that were not so, an unqualified carrier would incur the penalty by carrying the game of other people not qualified, and a qualified carrier would not, although each were doing the very same act. It is the act of carrying the game of persons not qualified that constitutes the offence. As to the second objection, I am of opinion that it is not necessary that the information should allege that the defendant had the game in his possession *knowingly*. The 5 Ann. c. 14, s. 2, has no such word. It merely says, 'if the carrier have any pheasant in his possession he shall be convicted.' If it were necessary to aver that the defendant had actual knowledge, it would cast on the prosecutor a burden of proof which could not easily be satisfied, particularly as the carriers themselves, usually residing in one place, cannot have any actual knowledge of that which may be done by their servants in the course of a long journey. I am of opinion that it is not a sufficient defence for a carrier, in any case of this description, to show that he did not know that the particular parcel contained game, although it might be a good defence to show that it was put into the waggon by the servant for his own benefit, and contrary to the orders of and in fraud of his master. As to the evidence, that was

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lived as in other cases, *ante*, 908, though the want of the qualification need not be proved by the prosecutor. *R. v. Turner*, 5 M. & S. 206.

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entirely for the consideration of the justices, but I think there was sufficient evidence to justify the conviction. It appeared that the hampers containing the game were in the defendant's possession, in his waggon employed in his business. That was, therefore, *prima facie* evidence that the game was in his possession as carrier. And that was not rebutted by the evidence given for the defendant. For it appears merely that the book-keeper at Thetford, at an intermediate place between Norwich and London, did not know of any game having been put into the waggon there. The Norwich way-bill was not produced, and the game may therefore have been put into the waggon at Norwich without the actual knowledge of the defendant. Neither the waggoner nor his helper was called as a witness. The evidence for the defendant left the case, therefore, at a point where the evidence for the prosecutor left it. That being so, I am of opinion that there was evidence that the defendant had the game in his possession as carrier, and, therefore, that this conviction ought to be affirmed. *Bayley, J.* The general rule as to convictions is this: The information must bring the case within the clause imposing the penalty, that contained the qualification, the information ought to have negatived it. Now, trying this case by that rule, it is not necessary to negative the qualification or to affirm knowledge. The words of the clause imposing the penalty are, not, if any *unqualified* carrier, but any carrier shall have game in his possession, such carrier (unless the game is taken out expressly by a person qualified to game) shall be convicted. Then as to knowledge, the clause itself says nothing about it. If that had been introduced, evidence to establish knowledge would have been given on the part of the prosecutor; but under this enactment, the party charged must show a degree of ignorance sufficient to excuse him. Here there was *prima facie* evidence that the game was in his possession as carrier. It lay on the defendant to rebut the evidence, and in considering how it was to be rebutted, we should consider it might have been rebutted. The defence for the defendant was, that a book-keeper living at Thetford, an intermediate place on the journey, did not know of the parcel having been put into the waggon. It might either have been put in with the assent of the carrier, or

in fraud of him by his servants. The way-bill made out at Norwich ought to have been produced to show that it was not put in with the assent of the master, or some evidence should have been given to show that the game was put into the waggon contrary to the order of the defendant, and for the benefit of his servant; and no such evidence having been given, I think the defendant was properly convicted. *Littledale, J.*—I am of opinion, that it is not necessary in an information against a carrier for having game in his possession to negative the qualification of the defendant. The 5 Anne, c. 14, s. 2, creates this offence, and it does not except the case of a carrier who is himself qualified to kill game. The clause does contain one exception, and that shows that it was not intended that any other exception should be allowed. I think, therefore, that it would not be any defence to a charge against a person for having game in his possession as a carrier to show that he was a person qualified to kill game. If he could show, indeed, that it was his own game, that would negative the fact of his having it in his possession in his character of a common carrier. The fourth section makes it an offence for persons not qualified to keep greyhounds, &c. or other engines to kill or destroy game, but nothing is said in the second section as to the qualification. I doubt much whether it would be any defence upon the merits that the defendant himself did not know that the particular parcel contained game. A master in some cases is answerable criminally for the act of his servant, when the act is done by the servant for the benefit of the master and in the course of his employment. Thus if a servant in the course of his employment sells a libel, the master is subject to an indictment. I think that, in this case, the master was properly convicted. The game was found in his waggon, employed in the course of his business as a carrier. That raises a presumption *prima facie* that he knew it was there, and that is not rebutted by the evidence given on the part of the defendant. Generally speaking, it is sufficient in an indictment or a declaration founded upon a statute to pursue the words of the statute. Thus in an action of debt for using a gun with intent to destroy game, it is sufficient to aver generally that the defendant is not a qualified person. It has been held necessary, in-

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Upon a conviction under stat. 5 Ann. c. 14, s. 2, against a carrier for having game in his possession, it is sufficient if in the information and adjudication, the qualifications mentioned in stat. 22 & 23 Car. II. c. 25, s. 3, be negatived, without negativing them in the evidence. (a)

deed, to negative in informations the particular qualifications. It is not necessary to enquire whether that rule were wisely introduced or not, for the word *knowingly* is not in the act at all. Therefore, according to the rule above laid down, it need not be stated in the information. For these reasons I am of opinion the conviction ought to be affirmed. Conviction affirmed.

(a) *R. v. Turner*, 5 M. & S. 206. Conviction by two justices upon the stat. 5 Ann. c. 14, s. 2, against a carrier for having game in his possession. The conviction was to this effect: "W. Taylor, of the parish, &c. cometh before me, J. M., one of the justices of our Lord the King, in and for the county of Surry, &c. and then and there giveth me, the said justice, to understand and be informed, that within three months now last past, that is to say, on the 5th day of February now instant, at the parish of Send and Ripley, in the said county, John Turner, of the parish of the Holy Trinity, in Guildford, in the county of Surry, carrier, being a person not then having lands, &c. (negativing the qualifications of the 22 & 23 Car. II. c. 25,) nor then being a person in any manner qualified or authorised by the laws of this realm to kill game, and being then and there a carrier, did then and there unlawfully have in his custody and possession sixteen pheasants and five hares, the same not being sent up or placed in the hands of the said J. Turner by any person or persons qualified to kill game, contrary to the form of the statute, &c. whereby he hath forfeited the sum of 105*l.*, that is, 5*l.* for each pheasant and hare." And the conviction prays, that the defendant may be summoned to answer the premises, and that the informer may have a moiety of the forfeiture. "Whereupon the defendant being summoned on the 10th of February, in the 56th year aforesaid, &c. appeareth before us, the said J. M. and G. M., one other of the justices, &c. and having heard, &c. pleads not guilty. Nevertheless, on the said 10th day of February, at, &c. two credible witnesses, to wit, T. T. and W. S. upon their oath affirm in the presence of the said J. Turner, that within three months next before the said information, to wit, on the said 5th day of February, in the 56th year aforesaid, at, &c. the said J. Turner being a carrier, did have in his custody and possession,

in his waggon, at the parish of Send and Ripley, in the county aforesaid, sixteen pheasants and five hares, the same not being sent up or placed in the hands of the said J. Turner by any person or persons qualified to kill game, contrary to the form of the statute, &c. Whereupon the said J. Turner, being asked what he hath to say or offer in his defence, produceth one witness, to wit, G. T., who, being duly sworn, deposeth, in the presence of the said J. Turner, and also of the said W. Taylor, that on the said 5th day of February, at the parish of the Holy Trinity, in Guildford aforesaid, he was present at, and did aid and assist in the packing and loading the said waggon of the said J. Turner, and that at the day and parish last aforesaid, when the said waggon of the said J. Turner left the warehouse of the said J. Turner, in the said parish last aforesaid, there was not in the custody and possession of the said J. Turner, in his said waggon, in the parish last aforesaid, any such quantity of game as is above laid to his charge, or any game whatever; and forasmuch as upon hearing the matters, &c. it appears to us, the said justices, that the said J. Turner is guilty of the premises, it is therefore adjudged by us the said justices, upon the testimony of the said T. T. and W. S., that the said J. Turner, on the said 5th day of February, at the parish of Send and Ripley aforesaid, within three months next before the said information was made before me the said J. M. by the said W. T. as aforesaid, unlawfully had in his custody and possession sixteen pheasants and five hares, contrary to the form of the statute, &c. and that the same were not sent up or placed in the hands of the said J. Turner by any person or persons qualified to kill game, and that the said J. Turner had not then any lands or tenements, or any other estate of inheritance in his own right, or in his wife's right, of the clear yearly value of 100*l.* per annum, &c. (negativing the other qualifications); and thereupon we the said justices do convict the said J. Turner of the offence aforesaid, and do adjudge that the said J. Turner, for his said offence, hath forfeited the sum of 105*l.*, that is to say, the sum of 5*l.* for each and every of the said pheasants and hares; and we do adjudge that one half of the said sum be paid to the poor of the parish of Send and Ripley aforesaid, where the said offence was

## VII. Inferior Tradesmen, &c. Sporting, &c.

By stat. 4 & 5 Wil. III. c. 23, s. 10, "whereas great mischiefs do ensue by inferior tradesmen, apprentices, and other dissolute persons neglecting

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TRADESMAN  
SPORTING.

4 & 5 W. 3, c. 23.  
Inferior trades-  
men killing  
game.

committed, according to the form of the statute, &c. And now it was argued by *Scarlett* and *Ross* that the conviction was ill; first, because the justices have neglected to set forth the evidence in support of the information, and have only stated the conclusion which they drew from it. For the justices have repeated the charge alleged in the information, as if it were the evidence given in support of that charge; but it is impossible to conceive that the witnesses should have deposed in the very same form and words as laid in the information. It was incumbent, therefore, on the justices to set forth the particulars of the evidence and not the result of it, in order that the court may see that there is sufficient to warrant the conviction. Secondly, it was objected, that it does not appear that any evidence as given in support of the information, negating the qualifications mentioned in the statute, which is necessary in order to found the jurisdiction of the justices; and if the party be qualified in any one respect, the justices have no jurisdiction. And herein a proceeding before a justice differs from an action. It seems, therefore, that *prima facie* evidence, at least, ought to be required, though it must be admitted that in *R. v. Stone* (1 East, 9,) the court were divided in opinion on this point. Lord *Ellenborough*, C. —The question is, upon whom the *onus bandi* lies; whether it lies upon the person who affirms a qualification to give the affirmative, or upon the informer who denies any qualification to give the negative. There are, I think, at ten different heads of qualification enumerated in the statute (22 & 23 Car. c. 25, s. 3,) to which the proof may be applied; and, according to the argument of to-day, every person who lays information of this sort is bound to produce satisfactory evidence before the magistrates to negative the defendant's qualification upon each of those several heads. The argument really comes to this, that there would be a moral impossibility of ever convicting upon such an information. If the informer should establish the negative of any part of these several qualifications, that would be sufficient, because it would be said, *non est*, but that the defendant may be proved under the other. And does not common sense show, that the burden of proof ought to be cast on the per-

son, who, by establishing any one of the qualifications, will be well defended? Is not the statute of Anne in effect a prohibition on every person to kill game, unless he brings himself within some one of the qualifications allowed by law; the proof of which is easy on the one side, but almost impossible on the other? I remember the decision of *R. v. Stone*, and the arguments of the learned judges, who held the necessity of giving negative proof, were undoubtedly urged with great force; but I felt at the time, that if they were right, it would in most cases be impossible to convict at all. But in *Spiers v. Parker*, (1 T. R. 144,) I find Lord *Mansfield* laying down the rule, that in actions upon the game laws, and I see no good reason why the rule should not be applied to informations as well as actions, the plaintiff must negative the exceptions in the enacting clause, though he throw the burden of proof on the other side. The same was said by *Heath, J.*, in *Jelfs v. Ballard*, (1 B. & P. 468,) and such I believe has been the prevailing opinion of the profession and the practice. I am, therefore, of opinion, that this conviction, which specifies negatively in the information the several qualifications mentioned in the statute, is sufficient, without going on to negative by the evidence those qualifications. *Bayley, J.* —I have always understood it to be a general rule, that if a negative averment be made by one party, which is peculiarly within the knowledge of the other, the party within whose knowledge it lies, and who asserts the affirmative, is to prove it, and not he who avers the negative. And if we consider the reason of the thing in this particular case, we cannot but see that it is next to impossible that the witness for the prosecution should be prepared to give any evidence of the defendant's want of qualification. If, indeed, it is to be presumed, that he must be acquainted with the defendant, and with his situation or habits in life, then he might give general evidence what those were; but if, as it is more probable, he is unacquainted with any of these matters, how is he to form any judgment whether he is qualified or not from his appearance only? Therefore, if the law were to require that the witness should depose negatively to these things, it seems to me that it might lead to the encouragement of much hardihood



INFERIOR  
TRADESMAN  
SPORTING.

their trades and employments, who follow hunting, fishing, and other game to the ruin of themselves, and damage of their neighbours; it is enacted that if any such person as aforesaid shall presume to hunt, hawk, fish, or fowl (unless in company with the master of such apprentice, duly qualified by law) such person or persons shall be subject to the penalties of this act, and shall or may be sued and prosecuted for their wilful trespass in such then coming on any person's land, and if found guilty thereof, the plaintiff shall not only recover his damages thereby sustained, but his full costs of suit; any former law to the contrary notwithstanding."

It has been doubted what is meant by "inferior tradesmen." In the case of *Buxton v. Mingay*, 2 Wils. 70, the question was, whether the defendant a surgeon and apothecary, not qualified to kill game, came within the description, and the judges were equally divided. The huntsman of a gentleman of fortune, hunting with his master's hounds and with his orders, is not a dissolute person within the act. *Pallant v. Roll*, 2 Bla. Rep. 900. A clothier or alehouse-keeper is. *Semble, Wickham v. Walter, Barnes*, 122. A case occurred at Hertford Assizes in which Lord Ellenborough, C. J. said, that he should direct the jury to find that the defendant was a dissolute person, if he came to kill game for the purpose of selling it, or if he were drunk or abusive, or, if questioned where he lived or what was his name, he gave a false account of himself. *Christian's G. L.* 98. A qualified person cannot be deemed a person within the act. *R. v. George*, 6 Mod. 40. See *post*, 948.

of swearing. The witness would have to depose to a multitude of facts; he must swear that the defendant has not an estate in his own or his wife's right of a certain value; that he is not the son and heir apparent of an esquire, &c.; but how is it at all probable that a witness should be likely to depose with truth to such minutiae? On the other hand, there is no hardship in casting the burden of the affirmative proof on the defendant, because he must be presumed to know his own qualification, and to be able to prove it. If the defendant plead to the information, that he is a qualified person, and require time to substantiate his plea in evidence, it is a matter of course for the justices to postpone the hearing, in order to afford him time and an opportunity of proving his qualifications. But if the *onus* of proving the negative is to lie on the other party, it seems to me that it will be the cause of many offenders escaping conviction. I cannot help thinking, therefore, that the *onus* must lie on the defendant, and that when the prosecutor has proved every thing, which, but for the defendant's being qualified, would subject the defendant to the penalty, he has done enough; and the proof of qualification is to come in as matter of defence. As to the objection that this evidence is consistent with the supposition, that the game was in the waggon of the defendant without his knowledge, I think the fact of its being in his waggon raises a presumption the other way, that it was there with his

knowledge. If the defendant could have shown by evidence satisfactory to the justices, that he did not know it, that would have presented a very different case; but where the witness has proved that the defendant had it in his custody and possession in his waggon, surely such evidence, being unanswered, warrants this conviction. *Holroyd, J.*—It is a general rule, that the affirmative is to be proved, and not the negative, of any fact which is stated, unless under peculiar circumstances, where the general rule does not apply. Therefore it must be shown, that this is a case which ought to form an exception to the general rule. Now the qualifications mentioned in the statute are peculiarly within the knowledge of the party qualified. If he be entitled to any such estate as the statute requires, he may prove it by his title deeds, or by receipt of the rents and profits: or if he is son and heir apparent, or servant to any lord or lady of a manor appointed to kill game, it will be a defence. All these qualifications are peculiarly within the knowledge of the party himself, whereas the prosecutor has, probably, no means whatever of proving a disqualification. If this be so, instead of saying that the general rule of law ought not to apply to this case, it seems to be the very case to which the rule ought peculiarly to apply. The other objections do not appear to me to be well founded; and, therefore, I think this conviction ought to be affirmed. Conviction affirmed.

### VIII. Soldiers killing Game.

#### SOLDIERS KILLING GAME.

By 11 Geo. IV. c. 7, s. 67, "For the better preservation of game and fish in or near such places where any officers shall at any time be quartered," it is enacted, "That every officer who shall, without leave in writing from the persons entitled to grant such leave, take, kill, or destroy any game or fish within the united kingdom of Great Britain and Ireland, and upon complaint thereof shall be, upon oath of one or more credible witnesses, convicted before any justice, shall, for every such offence, forfeit the sum of 5*l*." A similar provision is to be found in the annual Mutiny Acts.

Penalty on officers killing game.

The statute, it will be seen, makes no difference whether the officer or soldier be qualified or not.

### IX. Shooting in Cross-Bows, &c.

Stat. 33 Hen. VIII. c. 6, concerning shooting in cross-bows, hand-guns, gubbutts, or demihakes, although not repealed, seemeth now to be obsolete, and superseded as it were by several subsequent statutes, and a matter more of curiosity than of use; therefore, it is thought unnecessary to insert it here, it to refer the reader to the statute itself.

33 Hen. 8, concerning shooting in cross-bows, hand-guns, &c.

### X. Penalties for Killing, &c. Game in the Night or on a Sunday, &c.

The 9 Ann. c. 25, s. 3, enacts, "That if any person or persons whatsoever shall take, kill, or destroy any hare, pheasant, partridge, moor, heath game, grouse, in the night-time, the person or persons so offending shall likewise for every such offence incur such forfeitures, pains, and penalties, as aforesaid, be recovered likewise by such means, within such time and to such uses aforesaid." *Ante*, 886, 914. That is, 5*l*. half to the informer and half the poor, by distress and sale. For want of distress to be sent to the use of correction for three months for the first offence, and for every other offence four months.

9 Ann. c. 25, s. 3. Killing any hare, &c. in the night, to incur what forfeitures.

By the 13 Geo. III. c. 80, s. 1, reciting the 10 Geo. III. c. 19, and that doubts have arisen concerning the construction of some parts of the said act, and some inconveniences have followed therefrom; for obviating such doubts, and for remedying such inconveniences, it is enacted, "That from and after the 24th day of June, 1773, if any person or persons shall wilfully and wilfully kill, take, or destroy any hare, pheasant, partridge, or game, or heath game, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy, any hare, pheasant, partridge, moor game, or heath game, in the night, that is to say, between the hours of seven of the clock at night and six in the morning, from the 12th day of October to the 12th day of February, and between the hours of nine of the clock at night and four in the morning, from the 12th day of February to the 12th day of October, every such person, being convicted thereof, upon the oath or oaths of one or more credible witness or witnesses, before one or more justice or justices of the peace, acting for the county, riding, or place where the offence shall be committed, shall forfeit and pay for the first offence, any sum exceeding 20*l*. nor less than 10*l*.; and for the second offence, any sum exceeding 30*l*. nor less than 20*l*.: but in case any information shall be laid upon oath, as aforesaid, before any justice or justices against any person offending against this act, and if it shall appear that such offender is already been convicted of a first and second offence against this act, and in such case, such justice or justices shall and may commit such offender to the common gaol or house of correction, for the county, riding, place, there to remain till the next general quarter session of the peace for said county, riding, or place, unless such offender shall have entered into

13 Geo. 3, c. 80.

Rules to be observed by persons killing hares, &c. or using a gun, &c. in the night.

Penalty.

First offence.

Second offence.

Third offence, how punished.

**PENALTY FOR  
KILLING, &c.  
IN NIGHT OR  
ON SUNDAY, &c.**

13 Geo. 3, c. 80.  
Indictment.

Penalty.  
Imprisonment.

Whipping.

Form of conviction.

Conviction to be  
returned, &c.

Clerk to deliver a  
copy of conviction  
on payment of 1s.

Penalties and for-  
feitures how ap-  
plied, &c.

How to be en-  
forced.

a recognizance, with two sufficient securities, to appear at such general quarter session, then and there to be tried by indictment for the said offence; and also shall and may bind over the informer to prosecute the said offender by indictment as aforesaid; and the justices at their said general or quarter-sessions shall and may direct the said indictment to be tried accordingly; and if upon such indictment such offender shall be convicted, he shall forfeit and pay in court the sum of 50*l.*; and in case he shall neglect or refuse to pay the said sum of 50*l.* he shall be committed to the common gaol, or house of correction, for such county, riding, or place, for any term not less than six nor more than twelve calendar months, unless such penalty shall be sooner paid; and such offender shall, if the justices think proper, be once publicly whipped for such offence at the expiration of such commitment, in the town or place where such gaol or house of correction shall be, between the hours of twelve and one of the clock in the day."

Sect. 2. "That the justice or justices, before whom any offender shall be convicted as aforesaid, shall cause the said conviction to be made out in the manner and form following: that is to say,

"*BE it remembered, that on the* day of *in the year of our Lord*  
*A. B. is convicted before me* one of *his Majesty's justices of the peace for* *the*  
*county of* [specifying the offence, with the time and place where the same  
was committed, and also specifying that it was the first or second offence against  
this act, as the case shall be.]

"*Given under my hand and seal, the day and year aforesaid.*"

Which conviction the said justice shall cause to be fairly wrote over upon parchment, and returned to the next general quarter session of the peace for the county, riding, or place where such conviction was made, to be filed by the clerk of the peace, and remain and be kept among the records of the county."

Sect. 3. "That it shall and may be lawful for any clerk of the peace for any county, riding or place, and he is hereby required, upon application made to him by any person or persons for that purpose, to cause a copy or copies of any conviction or convictions, filed by him under the direction of this act, to be forthwith delivered to such person or persons, upon payment of 1*s.* for every such copy."

Sect. 4. "That the pecuniary penalties and forfeitures hereby to be incurred and made payable upon any conviction, for a first and second offence against this act, and also for a third offence, upon conviction at the quarter-sessions as aforesaid, together with the costs and charges previous to and attending such conviction, to be ascertained by the justice or justices before whom any offender shall be convicted, shall be forthwith paid by the person convicted, one moiety of the forfeiture to the informer, and the other moiety to the poor of the parish or place where the offence shall be committed: and in case such person shall refuse or neglect to pay the same, or to give security for the payment thereof, such justice or justices shall, by warrant under his or their hand and seal, or hands and seals, cause the same to be levied by distress and sale of the offender's goods and chattels, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner; and it shall and may be lawful for such justice or justices to order (a) such offender to be detained in safe custody, until return may conveniently be had and made to such warrant of distress, unless the party so convicted shall give sufficient security, to the satisfaction of such justice or justices, for his appearance before the said justice or justices, on such day as shall be appointed by the said justice or justices, for the day of the return of the said warrant of distress, such day not exceeding seven days from the time of taking such security; which security the said justice or justices are hereby empowered to take by way of recognizance, or otherwise; but if upon such return no sufficient distress can be had, then, and in such case, the said justice or justices shall and may commit such

(a) As to the necessity of its being in writing, see *ante*, *Commitment* Vol. I. p. 760, 769.

offender to the common gaol or house of correction of the county, riding or place, for the space of three calendar months, unless the money forfeited shall be sooner paid, or until such offender, thinking him or herself aggrieved by such conviction, shall give notice to the informer, that he or she intends to appeal to the justices of the peace at the next general quarter sessions of the peace, to be held for the county or place wherein the cause of complaint shall arise, and shall enter into recognizance before some justice or justices, with two sufficient securities, conditioned to try such appeal, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions; which notice of appeal, being not less than fourteen days before the trial thereof, such person so aggrieved is hereby empowered to give; and the said justices at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against, as they the said justices shall think proper; and the determination of such quarter sessions shall be final, binding and conclusive to all intents and purposes whatsoever."

Sect. 5 repeals the 10 Geo. III. c. 19.

Sect. 6. "That from and after the said 24th day of June, 1773, if any person or persons shall, upon a Sunday or on Christmas-day, in the day-time, knowingly and wilfully take, kill, or destroy any hare, pheasant, partridge, heath game, or moor game, or shall, upon a Sunday or on Christmas-day, use any gun, dog, net, or engine, for taking, killing, or destroying any hare, pheasant, partridge, moor game, or heath game; every such person being convicted thereof, in the manner and form prescribed by this act, shall be subject to the like forfeitures and penalties as are herein-before enacted to be inflicted for other offences against this act."

Sect. 7. "That in case any person shall commit an offence against this act, whereby a penalty or punishment is incurred, and dwells in another county than in that in which the offence was committed, the justice or justices, before whom such information or indictment was had or made, may direct his or their warrant of apprehension, and of distress and sale, to any constable within such county, riding, or place, where the offence was committed, to be by him carried to the justice near residing to the place where the offender dwells in such other county, riding, or place, to be signed by him on the back of the said warrant, upon proof on oath of the handwriting of the justice who first granted the warrant; which indorsement shall be sufficient authority for the constable of such parish or township where he dwells, where his goods and chattels, or distress, are to be had and found, or for such constable who shall bring the said warrant to be indorsed, to apprehend and convey such offender before the justice who first granted the warrant, or any other justice or justices of that county where the offence was committed, for such constable to levy such penalty by distress and sale, in the same manner and with the same powers as might have been done if the person lived in the county, riding, or place where the offence was committed; and also, in case where no sufficient distress can be had or found, to convey the offender before the justice who first granted the warrant of distress, or any other justice or justices of that county where the offence was committed, to be dealt with according to law; and the justice of such other county who indorsed the warrant of distress or apprehension shall direct such constable, or other person taking and making such distress and sale, to deliver over any sum of money for penalties arising from such distress and sale, to the justice of the county who first granted the warrant, to be by him distributed according to the meaning of this act; and in case such constable or other person shall neglect or refuse to pay such sums of money or deliver over all proceedings had upon such distress and sale or warrant of apprehension, such justice who first granted the warrant, or the justice who indorsed it, may commit such constable or other person so refusing or neglecting to account the sums of money received, or deliver over the proceedings so had upon, to the common gaol or house of correction for the space of six

PENALTY FOR  
KILLING, &c.  
IN NIGHT OR  
ON SUNDAY, &c.

13 Geo. 3, c. 80.

Repeal of  
10 Geo. 3, c. 19.  
Penalty for killing  
or using guns, &c.  
to kill game on a  
Sunday or Christ-  
mas-day.

How penalties to  
be recovered  
where defendant  
is in another  
county.

**PENALTY FOR  
KILLING, &c.  
IN NIGHT OR  
ON SUNDAY, &c.**

Proceedings not  
to be quashed, nor  
removeable by  
certiorari.

Information made  
on oath.

Limitation.

Observations.

months, or until the money shall be paid, and the proceedings delivered over to the justice who first granted the warrant; or in case of his absence or death, to any other justice of the same county, to be by him distributed according to the true intent and meaning of this act: and that no action of trespass, false imprisonment, information, or indictment, or other action or appeal, shall be brought, sued, commenced, or prosecuted, by any person or persons whatsoever, against the justice of such other county who indorsed such warrant, for or by reason of his indorsing the same."

Sect. 8. "That no order made concerning any of the matters aforesaid, or any other proceedings to be had touching the conviction or convictions of any offender or offenders against this act, shall be quashed for want of form, or be removed by writ of *certiorari*, or any other writ or process whatsoever, into any of his Majesty's courts of record at Westminster."

Sect. 9. "That no person shall be proceeded against for any of the offences against this act as aforesaid, unless information shall be made thereof upon oath before some justice of the peace for the county, riding, or place wherein such offence shall be committed, within one calendar month after such offence shall be committed."

In respect to the third offence here seems to be an inconsistency. The former part of the act says, if the offender shall not, upon conviction by indictment at the sessions, pay in the court the penalty of 50*l.* he shall be committed to the gaol or house of correction for not less than six months nor more than twelve. The latter part of the act says, the said penalty shall be levied by distress; and if no distress can be had, the offender shall be committed to the gaol or house of correction for *three* months; with power of appealing to the sessions then next following.

As to the offence of taking, &c. hares or conies in warrens, &c. in the night, see *post*, 935.

As to the offence of going armed at night under 9 Geo. IV. c. 64. see *infra*.

## XI. Offence of Night Poaching and going armed, &c. against 9 Geo. IV. c. 69.

Night poaching.

By the 9 Geo. IV. c. 69, entitled "An Act for the more effectual prevention of persons going armed by night for the destruction of game," the enactment of 57 Geo. III. c. 90, is repealed, except so far as the same repeals other acts.

It would be expedient to consider the provisions of this act as regards, *first*, its general clauses affecting all its provisions; *secondly*, the offences punishable thereunder by summary conviction and the apprehension of offenders; *lastly*, the offences punishable thereunder by indictment.

As to the offence of destroying *hares* and *rabbits* in warrens in the night, see *post*, 935.

### (1.) GENERAL CLAUSES OF 9 GEO. IV. c. 69.

9 Geo. 4, c. 69, s. 1.  
Repeal of  
57 Geo. 3, c. 90.  
What shall be  
deemed night.  
Sect. 12.

What shall be  
deemed game.  
Sect. 13.

By sect. 1, the stat. 57 Geo. III. c. 90, is repealed, "except so far as the same repeals any other acts."

Sect. 12. "That for the purposes of this act the night shall be considered, and is hereby declared to commence at the expiration of the *first hour after sunset*, and to conclude at the beginning of the *last hour before sunrise*." (a)

Sect. 13. "That for the purposes of this act the word 'game' shall be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards."

As to the limitation of proceedings, see sect. 3, *post*, 928.

(a) This time, it will be seen, differs from that stated in the 57 Geo. III. c. 90.

**NIGHT  
POACHING.**

**(2.) OFFENCES PUNISHABLE UNDER 9 GEO. IV. c. 69, BY SUMMARY  
CONVICTION AND APPREHENSION OF OFFENDERS.**

By 9 Geo. IV. c. 69, s. 1, after reciting the 57 Geo. III. c. 90, "and whereas the practice of going out by night for the purpose of destroying game has nevertheless very much increased of late years, and has in very many instances led to the commission of murder, and of other grievous offences; and it is expedient to repeal the said recited act, and to make more effectual provisions than now by law exist for repressing such practice, it is enacted, that the said recited act shall be and the same is hereby repealed, except so far as the same repeals any other acts; and if any person shall after the passing of this act, by night (b) unlawfully take or destroy any game (c), or any rabbits in any lands, whether open or inclosed, or shall by night unlawfully enter or be upon the land, whether open or inclosed, with any gun, net, engine, or other instrument for the purpose of taking or destroying game, (c) such offender shall, upon conviction thereof before two justices of the peace, be committed for the first offence to the common gaol or house of correction for any period not exceeding three calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognizance, or in Scotland by bond of caution, of himself in 10*l.* and two sureties in 5*l.* each, or one surety in 10*l.* for his not so offending again for the space of one year next following; and in case of not finding such sureties, shall be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties are sooner found; and in case such person shall so offend a second time, and shall be thereof convicted before two justices of the peace, he shall be committed to the common gaol or house of correction for any period not exceeding six calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognizance or bond as aforesaid, himself in 20*l.* and two sureties in 10*l.* each, or one surety in 20*l.* for his not so offending again for the space of two years next following; and in case of not finding such sureties, shall be further imprisoned and kept to hard labour for the space of one year, unless such sureties are sooner found; and in case such person shall so offend a third time, he shall be guilty of a misdemeanor, and being convicted hereof shall be liable, at the discretion of the court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour (d) in the common gaol or house of correction for any term not exceeding two years; and in Scotland, if any person shall so offend a first, second, or third time, he shall be liable to be punished in like manner as is hereby provided in each case." (e)

Sect. 2. "That where any person shall be found upon any land committing any such offence as is hereinbefore mentioned, it shall be lawful for the owner or occupier of such land, or for any person having a right or reputed right of free warren or free chase thereon, or for the lord of the manor or reputed manor wherein such land may be situate, and also for any gamekeeper or servant of any of the persons herein mentioned, or any person assisting such gamekeeper or servant, to seize and apprehend such offender upon such land, or in case of pursuit being made in any other place to which he may have escaped therefrom, and to deliver him as soon as may be into the custody of a peace officer, in order to his being conveyed before two jus-

Persons taking or destroying game by night to be committed, for the first offence for 3 months, and kept to hard labour, and to find sureties. (a)

2d offence, six months and kept to hard labour, and to find sureties;

3d offence to be liable to transportation.

Scotland.

Owners or occupiers of land, lords of manors, or their servants, may apprehend offenders. (a)

(a) See the observations on this section, *post*, 929.

(b) What is night, see sect. 12, *ante*, 6.

(c) What is game, see sect. 13, *ante*, 6.

(d) So by 3 Geo. IV. c. 114, he may be sent to hard labour. See *post*, *Hard Labour*, Vol. II.

(e) This is a new enactment.

**NIGHT  
POACHING.**

9 Geo. 4, c. 69.

Offenders assaulting or offering violence deemed guilty of misdemeanor, and liable to be transported for seven years, or imprisoned for two years.

Scotland.  
Power to issue a warrant for apprehension of offenders.

Limitation of time for proceedings under this act.

Form of conviction.

Notice of appeal and recognizance.  
Costs.

**Game—(Night Poaching, against 9 Geo. 4, c. 69.)** [XL(2)]

tices of the peace; (a) and in case such offender shall assault or offer any violence with any gun, cross-bow, fire-arms, bludgeon, stick, club, or any other offensive weapon whatsoever towards any person hereby authorised to seize and apprehend him, he shall, whether it be his first, second, or any other offence, be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyonds seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years; and in Scotland, whenever any person shall so offend, he shall be liable to be punished in like manner."

Sect. 3. "That where any person shall be charged on the oath of a credible witness, or in Scotland on the application of the procurator fiscal of court, before any justice of the peace, with any offence punishable upon summary conviction by virtue of this act, the justice may issue his warrant for apprehending such person, and bringing him before two justices of the peace, to be dealt with according to law."

Sect. 4. "That the prosecution for every offence punishable upon summary conviction by virtue of this act shall be commenced within six calendar months after the commission of the offence; and the prosecution for every offence punishable upon indictment or otherwise than upon summary conviction by virtue of this act, shall be commenced within twelve calendar months after the commission of such offence." (b)

Sect. 5. "That the justices of the peace before whom any person shall be summarily convicted of any offence against this act, may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case may require; that is to say,

"BE it remembered, that on the       day of       in the year of our Lord at       in the county of       [or riding, division, liberty, city, &c. as the case may be.] A. O. is convicted before us, [naming the justices,] two of his Majesty's justices of the peace for the said county, [or riding, &c.] for that he the said A. O. did [specify the offence, and the time and place when and where the same was committed, as the case may be, and on a second conviction state the first conviction;] and we the said justices adjudge the said A. O. for his said first offence to be imprisoned in the and there kept to hard labour for the period of       and at the expiration of such period to find sureties by recognizance or bond of caution in Scotland, himself in the sum of 10*l.* and two sureties in the sum of 5*l.* each, or one surety in the sum of 10*l.* conditioned that he the said A. O. shall not so offend again for the space of one year next following; and we further adjudge the said A. O. in case he shall not find such sureties as aforesaid, to be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties shall be sooner found. Given under our hands the day and year first above mentioned." (c)

Sect. 6. "That any person who shall think himself aggrieved by any such summary conviction may appeal to the next court of general or quarter sessions, which shall be holden not less than twelve days after the day of such conviction for the county, riding, or division wherein the cause of complaint shall have arisen; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or within such three days enter into a recognizance, or bond of caution in Scotland, with a sufficient surety, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such ap-

(a) See the observations on this section, *post*, 930.

(b) This latter part is new.

(c) Mr. Carrington observes, p. cxlv. Carr. C.L. "This appears to be a very awkward form of conviction, because this statute, after enacting that the justices may cause the conviction to be drawn up

'in the following form of words, or in any other form of words to the same effect,' gives a form which is not applicable to any but a first offence, because there is inserted in it only the smallest amount of recognizance, and the shortest term of imprisonment, in case the sureties are not found."

peal, and to abide the judgment of the court thereupon, and to pay such costs as shall be awarded by the court; and upon such notice being given, and such recognizance or bond being entered into, the justice before whom the same shall be entered into shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be dealt with and punished according to the conviction, and to pay such costs as shall be awarded; and shall, if necessary, issue process for enforcing such judgment." (a)

**NIGHT  
POACHING.**

9 Geo. 4, c. 69.

Sect. 7. "That no such conviction or adjudication made on appeal therefrom shall be quashed for want of form, or be removed by certiorari or otherwise into any of his Majesty's superior courts of record, or in Scotland by advocacy or suspension, into any superior court; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same."

No certiorari, &c.

Sect. 8. "That on every conviction under this act for a first or second offence, the convicting justices shall return the same to the next quarter sessions for the county, riding, division, city, or place wherein such offence shall have been committed; and the record of such conviction, or any copy thereof, shall be evidence in any prosecution to be instituted against the party thereby convicted for a second or third offence; and the clerk of the peace shall immediately on such return make or cause to be made a memorandum of such conviction in a register to be kept by him of the names and places of abode of the persons so convicted, and shall state whether such conviction be the first or second conviction of the offending party." (b)

Convictions to be returned to the quarter sessions registered, and may be given in evidence.

Clerk of peace to keep a register.

Sect. 10. "That in Scotland the sheriff of the county within which the offence shall have been committed, shall have a cumulative jurisdiction with the justices of the peace in regard to the same; and the conviction in Scotland may be proved in the same manner as a conviction in any other case, according to the law of Scotland."

Scotland.

*Observations*].—Mr. Carrington observes, in his work on the criminal law, c. cxlvii. that the first section of the above act applies where the party is named, and the scale of punishment is new. Under sect. 3 of the statute 7 Geo. III. c. 90, (now repealed,) persons out in the night with engines to destroy game, were liable to be apprehended and conveyed before a magistrate, "to be dealt with according to law." Before this act, the mere fact of killing game in the night subjected the party to a penalty only. (c) However, should be observed, that though the destroying of both game and rabbits included in this enactment, yet it does not extend to persons going out in the night with intent to destroy rabbits: and another point worthy of consideration is, whether, to constitute a second offence, it is necessary that the party should commit exactly the same species of offence in both instances: in short, if a party killed game in the night the first time, and was it with intent to kill it the second, it might be a question, whether, as this a penal statute, he could be considered as having committed a second offence. The third offence being a transportable misdemeanor, it is quite clear that one magistrate may commit the party for trial at the assizes or quarter sessions; but as it is a misdemeanor only, there seems to be no doubt at the prisoner is entitled to be admitted to bail. The difficulty mentioned above, as to whether the second offence must be exactly similar to the first, lies equally here. The stat. 57 Geo. III. c. 90, contained the words "forest, chase, park," &c. as well as the words "open or enclosed ground;" but the omission of them in the present statute makes no difference; because in the case of *Rex v. Pankhurst*, R. & R. C. C. 503, it was held, that those places are either open or enclosed grounds.

Observations.

(a) These provisions are, it seems, new.

(c) See *ante*, 923.

(b) See in general, *ante*, *Conviction*, Vol. I.



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He also observes, that "the clause respecting the apprehension of offenders is materially different from the enactments on this point, which were contained in the stat. 57 Geo. III. c. 90, (now repealed.) Under that statute any person or persons might apprehend offenders, which is not so now but under the present act it will be seen, that persons having a right or reputed right of free warren or free chase, and lords of manors or reputed manors, or their gamekeepers or servants, may now apprehend offenders: and not merely the owners or occupiers of the land, or persons acting under them; and this not merely at the place where the offence is committed, but in any place to which they may pursue the offender; and also offenders are now to be delivered to a peace officer, to be conveyed before two justices instead of one justice as formerly. It should also be observed, that this clause respecting apprehension only extends to offenders against sect. 1 of this act, and that there is no clause that expressly relates to the apprehension of armed poachers offending against sect. 9 of this act; however, this appears to be of the less consequence, as there could hardly be a case where parties guilty under sect. 9 would not come also within the terms of sect. 1."

The word "found" in the 57 Geo. III. was held to mean "having been seen or discovered." See *Att. Gen. v. Delano*, 1 Price, 383.

If gamekeepers attempt to apprehend persons armed with offensive weapons, who are poaching in the night, and one of the gamekeepers be shot by one of the poachers, this will be murder in all, unless it be shown that either of the poachers separated himself from the rest, so as to show that he did not join in the act. *R. v. Edmeads*, 3 C. & P.; see *R. v. Whit. R. & R. C. C. 99*.

Where gamekeepers had seized two persons who were poaching in the night, and they having surrendered called to a third, who came up, and he killed one of the gamekeepers: held to be murder in all, though the two struck no blow, and though the gamekeepers had not announced in what capacity they had apprehended them. *R. v. Whitorne*, *Id.*

**(3.) OFFENCES UNDER 9 GEO. IV. c. 69, PUNISHABLE BY INDICTMENT.**

9 Geo. 4, c. 69.

If persons to the number of three, being armed, enter any land for the purpose of taking or destroying game, &c. they shall be deemed guilty of a misdemeanor.

Jurisdiction of sheriffs in Scotland.

Proving of convictions in Scotland.

Third offences, &c. to be tried in certain courts.

By the 9 Geo. IV. c. 69, s. 9, it is enacted, "that if any persons, to the number of three or more together, shall by night (a) unlawfully enter or be in any land, whether open or inclosed, for the purpose of taking or destroying game (b) or rabbits, any of such persons being armed with any gun, cross-bow, fire-arms, bludgeon, or any other offensive weapon, each and every of such persons shall be guilty of a misdemeanor, and being convicted thereof before the justices of *gaol delivery*, or of the court of *great sessions* of the county or place in which the offence shall be committed, shall be liable, at the discretion of the court, to be transported beyond seas for any term not exceeding fourteen years nor less than seven years, or to be imprisoned and kept to hard labour for any term not exceeding three years; and in Scotland any person so offending shall be liable to be punished in like manner."

Sect. 10 enacts, "that in Scotland the sheriff of the county within which the offence shall have been committed shall have a cumulative jurisdiction with the justices of the peace in regard to the same; and the conviction in Scotland may be proved in the same manner as a conviction in any other case according to the law of Scotland."

Sect. 11 enacts, "that in all cases in Scotland of a third offence, or in other cases in Scotland where a sentence of transportation may, by the provisions of this act, be pronounced, the offender shall be tried before the high court or circuit court of judicary."

(a) What is night, see sect. 12, *ante*, 926.

(b) What is game, see sect. 13, *ante*, 926.

We have already seen, *ante*, 927, that a third offence of night poaching, by armed persons, is, by sect. 1 of this act, made a transportable misdemeanor.

We have also seen that the stat. 9 Geo. IV. c. 69, s. 2, enacts, "that in case such offender (as *ante*, 927,) shall assault, or offer any violence with any gun, cross-bow, fire-arms, bludgeon, stick, club, or any other offensive weapon whatsoever, towards any person hereby (*ante*, 927,) authorised to seize and apprehend him, he shall, whether it be his first, second, or any other offence, be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years; and in Scotland, whenever any person shall so offend, he shall be liable to be punished in like manner."

As to assaulting deer-keepers or their assistants, see *post*, 934.

We have seen that, by the 4th section of the act, "the prosecution for every offence punishable upon indictment, or otherwise than upon summary conviction, by virtue of this act, shall be commenced within twelve calendar months after the commission of such offence."

#### NIGHT POACHING.

Third offence.  
Assaulting game-keepers, &c. in apprehending night poachers, &c.

Transportation or imprisonment.

Limitation of proceedings.

*Observations.*]—If several persons are out with intent to kill game, and only one of them is armed, the rest who are unarmed are, it seems, liable to be convicted under the present act, 9 Geo. IV. In *R. v. Smith, Russ. & Ry. C. R. 368*, they were held liable under such circumstances to be convicted on the repealed act, 57 Geo. III.

Observations.

And it seems no answer to a charge, under the 9 Geo. IV., that the prisoners put down their arms and left them before they were seen, if it was received (by the flash of a gun, or otherwise) that some of them were armed before they were seen. *R. v. Nash, Russ. & Ry. C. C. R. 386*. So decided on the repealed act.

If several went into a close in the night, to kill game, and one had no, *without the knowledge of the others*, the others who were unarmed were not liable to be convicted under the repealed act of 57 Geo. III.; *R. v. Mathern, Russ. & Ry. C. C. R. 444*; but it seems they would be under the present act.

Upon the repealed statute, 57 Geo. III. c. 90, which is differently worded in the 9th section of the 9 Geo. IV., a prisoner being indicted for having entered a wood, called Kingshoe Spinney, with intent illegally to destroy game, and being found in the said wood, in the night, armed, &c.; and the grand count charging that having entered into the said wood with intent, he was found in a certain close, to wit, Kingshoe Close. It appeared that the prisoner was not seen in the wood; he was seen in a close adjoining but shortly before he was seen shots were heard and the flashes were seen in the wood: and the jury found that he was one of the persons who had been firing in the wood. The prisoner being found guilty, it was reserved for the opinion of the judges whether it was necessary to prove that the prisoner was seen in the place where the indictment stated him to have been found; and the judges held that as there was evidence to satisfy the fact that the prisoner had been in the wood armed, or one of the party who had been so, it was sufficient. *R. v. Charles Worker, R. & M. C. C. 165*.

Upon an indictment on the repealed statute, 57 Geo. III. c. 90, for having entered a certain close, situate, &c. in the occupation of Thomas Quaife, with intent then and there to destroy, take and kill game, &c. It appeared that the prisoner was taken in the close in question in the night time, armed with a gun and having two pheasants in his pockets; he was coming in a direction to a wood, which was a preserve for game, and going towards two other woods, which were also preserves; but the close in which he was taken was not a preserve: the judge left it to the jury to say, whether the defendant when taken, was returning home, or still in the pursuit of game; and, if not, whether his purpose was to kill game in the close mentioned in the indictment: the jury found that the prisoner was still in pursuit of game, but could not say whether in the close or elsewhere. The prisoner being

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convicted, the judges held the conviction to be wrong, because the entry with intent to kill game being confined by the indictment to the close therein specified, the intent should have been proved as to that particular close. *R. v. Thomas Barham, R. & M. C. C. 151.*

**The indictment.**

*Indictment*—Where the indictment was for entering a certain wood, called "Old Walk," belonging to and in the occupation of the Earl of Waldegrave, in the night time, armed, &c. with intent to destroy, take and kill game; and in evidence it appeared that the wood was called "Long Walk," and was never known by the name of "Old Walk;" the judges held the variance to be fatal. *R. v. William Owen and William Prickett, R. & M. C. C. 118.*

Where the land was described in one count as "a certain close," in another as "certain inclosed ground," but there was nothing in the indictment to show what particular close or what particular inclosed ground was meant, it not being described by name, ownership, occupation, or abutments: the prisoner being convicted, five of the judges held the description of the place insufficient, because the offence was substantially a local offence, and the prisoner was entitled to know to what specific place the evidence was to be directed; three of the judges thought differently. The judgment was arrested. *R. v. Thomas Ridley, R. & M. C. C. 515.*

Where an indictment alleged that "A. B., C. D., &c. on, &c. at, &c. to the number of three and more together, did, by night, unlawfully enter divers closes and inclosed lands there situate and being, in the occupation of E. F. and were then and there in the said closes and inclosed lands armed with guns, for the purpose of destroying game;" it was held, that it did not contain a sufficient averment that the defendants were by night in the closes armed for the purpose of destroying game. And the judgment given for the crown, at the Chester great sessions, was reversed. *Davies and others v. The King, (in error,) 10 B. & C. 89. Et per Lord Tenterden, C. J.*—"Assuming the indictment to be sufficient in that respect, it still appears to us that the judgment must be reversed. The phrase used is, that the defendants 'did by night unlawfully enter divers closes, and were then and there in the said closes,' &c., not that they 'by night did unlawfully enter, and, &c. If the words 'by night' had occurred at the beginning of the sentence, they might have governed the whole, or if they had been at the end of the sentence, they might have referred to the whole, but here they are in the middle of the sentence, and are applied to a particular branch of it, and cannot be extended to that which follows. The two members of the sentence are distinct; the first states the entry into the closes by night, but does not state that the defendants were armed, or the intent with which they entered; the second branch states that they were in the closes armed for the purpose of destroying game, but not that they were there by night. Neither of those branches of the sentence contains all that is requisite to constitute an offence within the statute, and the two being distinct, the indictment is bad, and the judgment must be reversed."

**XII. Laws relative to the Four-footed Game in particular.**

Which said laws seem to concern all persons whomsoever, whether qualified or not.

Now the four-footed game, or the game of beasts, are of three kinds, viz.

- (1.) *Deer, and herein of Deer stealing, &c.*
- (2.) *Hares, Hare stealing, &c.*
- (3.) *Conies.*

**(1.) Deer, Deer stealing, &c. and other Offences as to.**

Stealing, &c. deer in parks or inclosed parts of forests.

*Deer stealing*—The stat. 7 & 8 Geo. IV. c. 29, s. 26, enacts, "that if any person shall unlawfully and wilfully course, hunt, snare, or carry away,

or kill or wound, or attempt to kill or wound, any deer kept or being in the inclosed part of any forest, chase, or purlieu, or in any inclosed land wherein deer shall be usually kept, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable to be punished in the same manner as in the case of *simple larceny*; and if any person shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the *uninclosed* part of any forest, chase, or purlieu, he shall for every such offence, on conviction thereof before a justice of the peace, forfeit and pay such sum, not exceeding fifty pounds, as to the justice shall seem meet; and if any person, who shall have been previously convicted of any offence relating to deer, for which a pecuniary penalty is by this act imposed, shall offend a second time, by committing any of the offences hereinbefore last enumerated, such second offence, whether it be of the same description as the first offence or not, shall be deemed *felony*, and such offender, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny."

The general clauses which affect all the provisions of the 7 & 8 Geo. IV. c. 29, will be found *post*, tit. *Marriage*, Vol. III. p. 550 to 556.

By the stat. 7 & 8 Geo. IV. c. 27, so much of the Carta de Foresta, as relates to the King's venison; and so much of the stat. 3 Edw. I. c. 20, as relates to trespassers in parks and ponds; and so much of the stat. 3 Edw. I. c. 1, as relates to trespassers in the King's forests of vert and venison, are repealed; and by the same statute, the stat. 21 Edw. I. st. 2, intituled *Malefactoribus in Parcis*, and the 16 Geo. III. c. 30; 42 Geo. III. c. 107, and 51 Geo. III. c. 120, are wholly repealed.

In *R. v. Rogers*, at Worcester Spring Assizes, 1811, *Lawrence, J.*, decided, that to support an indictment on the now repealed statute, for coursing deer in an inclosed ground, it is necessary, on the part of the prosecution, to call the owner of the deer to prove that he did not give his consent to the prisoner to course them; 2 *Campb.* 654; but this, it is conceived, is not necessary under the 7 & 8 Geo. IV. c. 29. In *R. v. Allen*, *R. v. Ayen*, and *R. v. hamberlain*, *R. & M. C. C.* 155, on a conviction for taking fish, &c. it is held, that though there must be *some* evidence to negative the owner's consent, the owner need not be called for the purpose; his non-consent may be inferred from other circumstances, or proved by his agents. See *ante*, 761.

*Persons suspected of having Venison in their possession*—The stat. 7 & 8 Geo. IV. c. 29, s. 27, also enacts, "that if any deer, or the head, skin, or other part thereof, or any snare or engine for the taking of the deer, shall by virtue of a search warrant, be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person being carried before a justice of the peace shall not satisfy the justice that he came lawfully by such deer, or the head, skin, or other part thereof, or had a lawful occasion for such snare or engine, and did not keep the same for any unlawful purpose, he shall, on conviction by justices, forfeit and pay any sum not exceeding twenty pounds; and if such person shall not under the provisions aforesaid be liable to conviction, then for the discovery of the party who actually killed or stole such deer, it shall be lawful for the justice, at his discretion, as the evidence given in the circumstances of the case shall require, to summon before him every person through whose hands such deer, or the head, skin, or other part thereof, shall appear to have passed; and if the person from whom the same had been first received, or who shall have had possession thereof, shall satisfy the justice that he came lawfully by the same, he shall, on conviction by the justice, be liable to the payment of such sum of money as is hereinbefore last mentioned." (a)

The general clauses affecting all the provisions of the 7 & 8 Geo. IV. c. 29, *post*, *Marriage*, Vol. III. p. 550 to 556.

#### DEER STEALING, &c.

7 & 8 Geo. 4. c. 29.

Felony.

In uninclosed parts of forests, &c.

Summary conviction and penalty.

Second offence.

Felony.

Observations, &c.

Suspected persons having venison, or engines for destroying deer, and not accounting for it.

Penalty. How justices proceed if they cannot convict.

(a) In sect. 26, *supra*.

DEER STEAL-  
ING, &c.

The 16 Geo. III. c. 30, which was nearly similar in its 4th, 5th, and 6th sections to the above enactment, is wholly repealed by the 7 & 8 Geo. IV. c. 29.

7 & 8 Geo. 4, c. 29.

## Repeal.

Setting engines  
and destroying  
park paling, &c.

*Setting Engines and Destroying Park Paling, &c.*—The stat. 7 & 8 Geo. IV. c. 29, s. 28, enacts, "that if any person shall unlawfully and wilfully set or use any snare or engine whatsoever, for the purpose of taking or killing deer in any part of any forest, chase, or purlieu, whether such part be inclosed or not, or in any fence or bank dividing the same from any land adjoining, or in any inclosed land where deer shall be usually kept, or shall unlawfully and wilfully destroy any part of the fence of any land where any deer shall be then kept, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay such sum of money, not exceeding twenty pounds, as to the justice shall seem meet."

See the general clauses affecting all the provisions of the 7 & 8 Geo. IV. c. 29, s. 28, *post*, *Martens*, Vol. III. p. 550 to 556.

The stat. 16 Geo. III. c. 30, which was nearly similar in its 7th and 8th sections to the above enactment, is wholly repealed by the 7 & 8 Geo. IV. c. 27.

7 & 8 Geo. 4,  
c. 29, s. 29.

Seizing of dogs,  
guns, &c.

*Seizing Dogs, Guns, &c. Assaulting Keepers*—By sect. 29 of 7 & 8 Geo. IV. c. 29, it is enacted, "that if any person shall enter into any forest, chase, or purlieu, whether inclosed or not, or into any inclosed land where deer shall be usually kept, with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, it shall be lawful for every person intrusted with the care of such deer, and for any of his assistants, whether in his presence or not, to demand from every such offender any gun, fire arms, snare, or engine in his possession, and any dog there brought for hunting, coursing, or killing deer; and in case such offender shall not immediately deliver up the same, to seize and take the same from him in any of those respective places, or, upon pursuit made, in any other place to which he may have escaped therefrom, for the use of the owner of the deer; and if any such offender shall unlawfully beat or wound any person intrusted with the care of the deer, or any of his assistants, in the execution of any of the powers given by this act, every such offender shall be guilty of felony, and being convicted thereof shall be liable to be punished in the same manner as in the case of simple larceny."

Assaulting keep-  
ers, &c.

Felony.

The stat. 7 & 8 Geo. IV. c. 27, wholly repeals the stat. 16 Geo. III. c. 30, the former statute on this subject.

The 16 Geo. III. did not extend, it seems, to assistant keepers, and no previous demand was necessary before the seizure of guns, &c. *R. v. Amy. Russ. & Ry. C. C. 500.*

As to seizing offenders, &c. in night poaching, see *ante*, 927.

Destroying covert.

*Destroying Covert*—As to this offence see 7 & 8 Geo. IV. c. 30, s. 17. *ante*, *Burning*, Vol. I. p. 540.

## (2.) Hares, Hare stealing.

It is to be remembered that we have already, *ante*, 896 to 913, treated of those particulars, which are common to this with other species of the game, as to destroying the same by unqualified persons; we would here take notice of such things as belong to *hares* only, and which for the most part seem generally to concern all persons, whether qualified or not.

14 & 15 Hen. 8,  
c. 10.  
Tracing in the  
snow.

*Tracing in Snow*—By stat. 14 & 15 Hen. VIII. c. 10, no person of what estate, degree, or condition he be, shall trace, destroy, or kill any hare in the snow with any dog, bitch, bow, or otherwise. And the sessions or leet may inquire thereof; and after inquisition found, they shall for every hare so

killed, cess upon every offender 6s. 8d. to be forfeited to the King, if in the sessions; and to the lord of the leet, if in the leet.

And by stat. 1 Jac. I. c. 27, every person who shall trace or course any hares in the snow, shall, on conviction before two justices, by confession or oath of two witnesses, be committed to the common gaol, where the parties shall be apprehended, or offence committed, for three months, unless he pay to the churchwardens for the use of the poor 20s. for every hare which he shall take, kill, or willingly destroy; or after one month after his commitment become bound by recognizance with two sureties in 20l. a piece before two justices, that he shall not kill, take, or destroy any of the said games by any of the said means. *Qu. Whether this statute was repealed by 22 & 23 Car. II. c. 25?* See 7 T. R. 238.

The stat. 48 Geo. III. c. 93, s. 1, repeals so much of the 1 Jac. I. c. 27, relative to taking hares with harepipes, &c.

*Buying and Selling of, Penalties for*—As to this, see *ante*, 913 to 920.

*Killing in Night or on Sunday, &c., Penalty for*—As to this, see *ante*, 923 to 926.

*Killing, &c. in Warrens, Offence of*—The stat. 7 & 8 Geo. IV. c. 29, s. 30, enacts, "that if any person shall unlawfully and wilfully in the *night-time* take kill any hare or coney in any warren or ground lawfully used for the *breeding* keeping of hares or conies, whether the same be inclosed or not, every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be punished accordingly; and if any person shall unlawfully and wilfully in the *day-time* take or kill any hare or coney in any such warren or ground, or shall at any time set or use therein any snare or engine for the taking of any hares or conies, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay such sum of money, not exceeding five pounds, as to the justice shall seem meet: provided always, that nothing herein contained shall affect any person taking or killing in the *day-time*, any conies on any sea bank or river bank in the county of Lincoln, far as the tide shall extend, or within one furlong of such bank."

See the general clauses affecting all the provisions of this act, *post*, *Warrens*, 1. III., p. 550 to 556.

The stat. 7 & 8 Geo. IV. c. 27, wholly repeals the stats. 3 Jac. I. c. 13; ac. I. c. 13; 5 Geo. III. c. 14; and also the whole of the stat. 22 & 23 Car. II. c. 25, except so far as relates to "the appointment and powers of keepers, search warrants, and the description of persons who are thereby lured to be persons not allowed to have or keep for themselves or any other person, any guns, bows, greyhounds, or other animals or things therein merated," which exceptions appear to extend to the 1st, 2d, and 3d sections of that act.

Taking a rabbit in a wire was sufficient to constitute the offence within the stat. Geo. III. c. 14, s. 6, though the rabbit were not killed, and though the wire never took it away. *R. v. Glover, Russ. & Ry. C. C. R. 269.*

HARE STEALING, &c.

1 Jac. I. c. 27.

7 & 8 Geo. 4, c. 29.

Killing hares in warrens in the night. Misdemeanor.

Killing them in the day.

Penalty.

Proviso.

Observations, &c.

Repeal of acts.

### (3.) Conies.

We have already noticed the offence of killing, &c. conies in the day or night-time in warrens or grounds lawfully used for the breeding or keeping of conies. See the 7 & 8 Geo. IV. c. 29, s. 30, *supra*.

As to the necessary certificate to kill conies, see *ante*, p. 891.

Conies are out of the warren, no person hath any property in them; and any may justify killing them if they eat up his corn: but no action lies against the owner of the warren. 5 Rep. 104.

As to a person that hath a right of common may kill them when they are out of the warren, and destroy the common; but he cannot have an action on that against the lord, for that would be to create a multiplicity of actions.

*Eliz. 548; Cro. Jac. 195; Cro. Car. 388.*

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Killing in warrens.

Certificate.

No action against owners of warrens for injury by conies.

## CONIES.

For a man cannot have an action for another man's conies breaking into his ground, because they are no longer the other's than while they are in the warren or place where he hath a right to keep them; so that no violation hereby arises to the property of one man by the beasts of another; but the conies, being in their natural liberty, may be lawfully killed by the owner of the soil. 3 *Bac. Abr.* 326.

But if the lord hath a right to put conies upon the common, and by an excess in the number surcharges the common, and by the number of burrows made by the conies prevents the commoners' cattle from depasturing the common; an action in such case is the proper remedy, and the tenant may not of his own accord fill up the burrows and remove the nuisance. As in the case of *Cooper v. Marshall*, 1 *Burr.* 259. By *Ld. Mansfield, C.J.* "The question in this case is not, whether the act of the lord be or be not hurtful, or how far it may be so: but the question turns upon the remedy, whether it is abateable, whether the commoner can do himself justice! It may be prejudicial to the commoner, yet not injurious; it may be both prejudicial and injurious, yet not abateable. The lord by his grant of common gives every thing incident to the enjoyment of it, as ingress, egress, and the like; and thereby authorises the commoner to remove every obstruction to his cattle's grazing the grass which grows upon such a spot of ground; because every such obstruction is directly contrary to the terms of the grant. A hedge, a gate, or a wall, to keep the commoners' cattle out, is inconsistent with a grant which gives them a right to come in. But the lord still remains owner of the soil; and is not debarred from exercising any act of ownership. The commoner has no right to meddle with the soil. In the present case, the lord has done nothing contrary to the grant. He hath not obstructed the commoner from entering and putting in his cattle. The lord has a right to put conies upon the common. The conies themselves naturally make the burrows. So that they are incident to the right of putting on the conies. If the lord surcharges, the commoner is injured in his right of common, it is true: but what is the commoner's remedy? Not to abate; not to be his own judge in a complicated question, which may admit of nicety to determine. There is a certain line to be drawn. The lord has a right so far, but no farther. Yet the commoner cannot destroy or drive off the conies; nor, consequently, can he destroy the burrows, which is in effect destroying the conies."

### XIII. Law relative to the Winged Game in particular.

And herein that which is, strictly speaking, *Game*, is not the sole subject of consideration.

- (1.) *Of Hawks and Hawking.*
- (2.) *Of Swans.*
- (3.) *Of Partridges and Pheasants.*
- (4.) *Of Pigeons.*
- (5.) *Of Wild Ducks, Wild Geese, and other Water Fowl.*
- (6.) *Of Heath Fowl, Grouse, and Bustards.*
- (7.) *Of Herons.*
- (8.) *Of other Wild Fowl.*

#### (1.) Hawks and Hawking.

What hawks a man shall bear.

By stat. 11 Hen. VII. c. 17, no man shall bear any hawk of the breed of England, called a nysse, gohawk, tassel, laner, laneret, or falcon, on pain of forfeiting his hawk to the king. And if he bring any of them over sea, he shall bring a certificate thereof from the officer of the port; on the like pain of forfeiting the same to the king. And the person that bringeth any such

hawk to the king shall have a reasonable reward of the king, or else the hawk for his labour.

SWANS.

By the 7 & 8 Geo. IV. c. 27, so much of the 34 Edw. III. c. 22, and 37 Edw. III. c. 21, s. 3, as relates to hawks, is repealed.

By stat. 5 Eliz. c. 21, s. 3, if any person shall take away any hawk or hawks or their eggs by any means unlawfully out of the woods or ground of any person, and be thereof convicted at the assizes or sessions on indictment, bill, or information, at the suit of the King, or of the party, he shall be imprisoned three months, and shall pay treble damages; and after the three months expired shall find sureties for his good abearing for seven years, or remain in prison till he doth find such during the said time of seven years.

Taking hawks or eggs out of the woods.

But by stat. 11 Hen. VII. c. 17, no man shall take any ayre, faulcon, goshawk, tassel, laner, or laneret, in their warren, wood, or other place; nor purposely drive them out of their coverts accustomed to breed in, to cause them to go to other coverts to breed; nor slay them for any hurt done by them; on pain of 10*l.*, half to him that will sue before the justices of the peace, and half to the King.

And no manner of person of what condition or degree he be, shall take or use to be taken on his own ground or any other man's, the eggs of any falcon, goshawk, or laner, out of the nest; on pain (being convicted thereof before the justices of the peace) of imprisonment for a year and a day, and one at the King's will; half to the King, and half to the owner of the ground where the eggs were taken.

By stat. 23 Eliz. c. 10, s. 4, if any manner of person shall hawk in another man's corn, after it is eared, and whilst growing, and before it is shocked, and be convicted at the assizes, sessions, or leet, he shall forfeit 40*s.* to the owner; and if not paid in ten days, he shall be imprisoned for a month.

Hawking in corn.

## (2.) *Swans*.

A swan is a royal fowl; and all those the property whereof is not known, belong to the King by his prerogative. *Case of the Swans*, 7 Rep. 16.

A royal fowl.

By stat. 22 Edw. IV. c. 6, no person (other than the King's son) unless he have lands of freehold to the value of five marks a-year, shall have any hawk or game of swans; on pain of forfeiting the swans, half to the King, and half to any person (so qualified) who shall seize the same.

Qualification to keep swans.

It is felony to take any swans that be lawfully marked though they be at large. *Dalt.* c. 156.

Stealing swans marked.

As to swans unmarked; if they be domesticated or tame, that is, kept in a noat, or in a pond near to a dwellinghouse, to steal such is also felony.

Swans unmarked.

So it seemeth of swans unmarked, so long as they keep within a man's nor, or within his private rivers; or if they happen to escape from thence, they shall be pursued and taken, and brought in again. *Id.*

But if swans that are unmarked shall be abroad, and shall attain to their natural liberty, then the property of them is lost; and so long felony cannot be committed by taking them. *Id.*

And yet such unmarked and wild swans the King's officers may seize (being abroad) for the King's use by his prerogative. Also the King may hunt them, and by consequence another may prescribe to have them, within certain precinct or place. *Id.* 7 Rep. 18. And see title *Marriage*, Vol. III. p. 34, 572.

By stat. 1 Jac. I. c. 27, s. 2, every person who shall take the eggs of any swans out of the nests, or willingly break or spoil them in the nests, and shall be convicted thereof before two justices by confession, or oath of two witnesses, shall be committed to gaol three months, unless he pay to the churchwardens for the use of the poor, 20*s.* for every egg; or after one month his commitment become bound by his recognizance with two sureties in a-piecé, before two justices, never to offend again in like manner: which recognizance shall be returned to the next sessions.

Swans' eggs.



PARTRIDGES  
AND  
PHEASANTS.

But by stat. 11 Hen. VII. c. 17, no person shall take or cause to be taken on his own ground or any other man's the eggs of any swan, on pain (on conviction before the justices of the peace) of imprisonment for a year and a day, and fine at the King's will, half to the King, and half to the owner of the swan.

(3.) *Partridges and Pheasants.*

Are birds of warren.

Partridges and pheasants are birds of warren, and the law seems peculiarly to protect them, as appears by what follows.

Taking them in another man's ground.

By stat. 11 Hen. 7, c. 17, it is enacted, that no person of what condition he be shall take or cause to be taken any pheasants or partridges by nets, snares, or other engines, out of his own warren, upon the freehold of any other person, without the special license of the owner or possessor of the same, on pain of 10*l.*, half to him that shall sue, and half to the owner or possessor of the ground where they shall be taken.

Taking them with nets, dogs, or engines; or their eggs.

By stat. 1 Jac. I. c. 27, s. 2, every person who shall shoot at, kill, or destroy any pheasant or partridge with any gun or bow; or shall take, kill, or destroy them with setting dogs and nets, or with any manner of nets, snares, engines, or instruments whatsoever; or shall take their eggs out of the nests or spoil them in the nests, shall on conviction before two justices, by confession or oath of two witnesses, be committed to gaol three months, unless he pay upon conviction to the churchwardens for the use of the poor 20*s.* for every pheasant, partridge, or egg; or after one month after his commitment become bound by recognizance with two sureties before two justices in 20*s.* each not to offend again in like manner. The recognizance to be returned to the next sessions.

And by stat. 7 Jac. I. c. 11, every person who shall take, kill, or destroy any pheasant or partridge with setting dogs and nets, or otherwise with any manner of nets, snares, or engines, shall, on conviction before two justices, by confession or oath of one witness, be committed to the common gaol where the offence shall be committed or the party apprehended, for three months, unless he forthwith pay to the churchwardens or overseers 20*s.* for every pheasant or partridge; and further shall become bound by recognizance of 20*l.* before one justice that he shall not thereafter take, kill, or destroy any pheasant or partridge. The recognizance to be filed at the next sessions.

Selling or buying.

By stat. 1 Jac. I. c. 27, s. 4, every person who shall sell, or buy to sell again, any partridge or pheasant (except they be reared and brought up in houses, or brought from beyond sea,) shall on conviction at the assizes or sessions, or before two justices out of sessions, forfeit for every partridge 10*s.* and for every pheasant 20*s.*, half to him that will sue, and half to the poor. See further as to buying and selling Game, &c. *ante*, p. 913 to 920.

Taking in the night.

By stat. 23 Eliz. c. 10, s. 1, if any person, of what estate, degree, or condition soever, shall take, kill, or destroy any pheasants or partridges in the night-time, and be thereof convicted at the assizes, sessions, or leet, he shall forfeit for every pheasant 20*s.* and for every partridge 10*s.*, half to him that shall sue, and half to the lord of the liberty, lordship, or manor, unless such lord shall license or procure the said taking or killing, in which case the said half shall go to the poor, to be recovered by any one of the churchwardens; and if not paid in ten days next after conviction, he shall be imprisoned for one month: and moreover, besides such forfeiture or imprisonment, he shall give bond to some justice of the peace, with good sureties, for the space of two years, not to take, kill, or destroy any partridges or pheasants contrary to the true meaning of this act. See also the 9 Ann. c. 25, s. 3, *ante*, p. 923.

We have already noticed the provisions of the 9 Ann. c. 25, s. 3, and 13 Geo. III. c. 80, relative to the penalties for taking pheasants, &c. in the night, or on Sunday, or Christmas day, *ante*, p. 923.

At what time hawking at them shall be prohibited.

By stat. 7 Jac. I. c. 11, s. 2, every person whatsoever, who shall hawk at, destroy, or kill any pheasant or partridge with any kind of hawk or dog, by

colour of hawking, between the first of July and the last of August, shall, on conviction before two justices, by confession or oath of two witnesses, in six months after the offence, be committed to gaol for one month, unless he pay upon conviction to the churchwardens or overseers, for the use of the poor, 10s. for every such hawking at any pheasant or partridge, and 20s. for every such pheasant or partridge which he, his hawk, or dog, shall take or kill.

Finally, by stat. 2 Geo. III. c. 19, s. 1, 2, 4, no person shall, upon any offence whatsoever, take, kill, destroy, carry, sell, buy, or have in his possession or use any partridge between [1st of February and 1st of September, 9 Geo. III. c. 34, s. 3], or any pheasant between February 1st and October 1st, yearly, on pain of forfeiting on conviction by one witness, in any of the courts of record at Westminster, 5l. for every such partridge or pheasant, with full costs. But this is not to extend to any pheasant taken in the season allowed by this act, and kept in any mew or breeding place.

Prosecutions under this act to be commenced within six months.

J. Rough being convicted on an indictment for stealing a pheasant, value 0s., of the goods and chattels of H. S., all the judges on a second conference in Easter Term, 1779, after much debate and difference of opinion, agreed that the conviction was bad; for in cases of larceny of animals *feræ nature* the indictment must show that they were either dead, tame, or confined; otherwise they must be presumed to be in their original state; and that it is not sufficient to add, "of the goods and chattels of" such an one. *East's P. C.* 607. See tit. *Larceny*, Vol. III. p. 534 to 572.

## PIGEONS.

Within what times taking them in any kind shall be prohibited.

Stealing pigeons.

## (4.) Pigeons.

A lord of a manor may build a dove-cote upon his land, parcel of his manor; but a tenant of the manor cannot do it without license. 3 *Salk.* 248. It any freeholder may build a dove-cote on his own ground. *Cro. Jac.* 42, 490.

Who may erect a dove-cote.

And it hath been adjudged that erecting a dove-house is not a common nuisance, nor presentable in the leet. *Cro. Jac.* 490, 491.

Dove-cote not a nuisance.

The stat. 7 & 8 Geo. IV. c. 29, s. 33, enacts, "that if any person shall lawfully and wilfully kill, wound, or take any house dove or pigeon, under such circumstances as shall not amount to larceny at common law, every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay, over and above the value of the bird, any sum not exceeding two pence."

Killing, &c. house pigeons.

See the general clauses affecting all the provisions of this act, *post*, *Larceny*, Vol. III. p. 550 to 556.

The stat. 7 & 8 Geo. IV. c. 27, repeals so much of the stat. 2 Jac. I. c. 27, relates to house doves, pigeons, and deer; and so much of the stat. 4 W. M. c. 23, as relates to pigeons; and wholly repeals the stat. 2 Geo. III. c. 19.

If the pigeons come upon my land, and I kill them, the owner hath no remedy against me; though I may be liable to the statutes which make it illegal to destroy them. *Cro. Jac.* 492.

Pigeons trespassing.

Doves in a dove-house, young and old, shall go to the heir, and not the executor. 1 *Inst.* 8.

Pigeons to go to the heir.

## (5.) Wild Ducks, Wild Geese, and other Water Fowl.

By stat. 1 Jac. I. c. 27, s. 2, every person who shall shoot at, kill, or destroy, with any gun, or bow, any mallard, duck, teal, or widgeon, and the same be proved by confession or oath of two witnesses, before two justices, shall be committed to gaol for three months, unless he pay to the churchwardens, for the use of the poor, 20s. for each fowl, or after one month after commitment become bound by recognizance, with two sureties, before

Shooting water-fowl.

WILD DUCKS,  
&c.Not to be taken in  
the moulting  
season.

two justices, in 20*l.* each, not to offend again in like manner; which recognizance shall be returned to the next sessions.

By stat. 25 Hen. VIII. c. 11, no person, between the last day of May and the last day of August yearly, shall take or cause to be taken any wild ducks, mallards, widgeons, teals, or wild geese, with nets or other engines, on pain of a year's imprisonment, and to forfeit for every fowl so taken  $\frac{1}{2}$  half to the king, and half to him that will sue by action of debt; also the justices of the peace may enquire of, hear, and determine the same as in cases of trespass.

Nevertheless, any gentlemen, or any other that may dispend 40*s.* a year of freehold, may hunt and take such wild fowl with their spaniels &c. without using a net or other engine except the long bow. *Id.*

But by a subsequent stat. 9 Anne, c. 25, s. 4, if any person whatsoever [between June 1 and Oct. 1, yearly, 10 Geo. II. c. 32,] shall by hays, tunnels, or other nets, drive and take any wild duck, teal, widgeon, or any other water fowl, in any place or resort for wild fowl in the moulting season, and shall be convicted thereof before one justice, by the oath of one witness, he shall for every such fowl so taken forfeit 5*s.* half to the informer, and half to the poor, by distress and sale, rendering the overplus, above the penalty and charge of distress; for want of distress, to be committed to the house of correction, not exceeding one month nor less than fourteen days, to be whipped and kept to hard labour; and the nets to be seized and destroyed in the presence of the justice.

Destroying their  
eggs.

By stat. 25 Hen. VIII. c. 11, s. 5, no person from March 31 to June 30 yearly, shall take or destroy the eggs of any mallard, teal, or other water fowl, on pain of a year's imprisonment, and of forfeiting for every egg one penny, half to the king, and half to him that will sue by action of debt; or the justices of the peace may determine the same as in cases of trespass.

(6.) *Heath Fowl, Grouse, and Bustards.*

## Shooting.

By stat. 1 Jac. I. c. 27, s. 2, every person who shall shoot at, kill, or destroy with any gun or bow any grouse, heath-cock, or moor game, shall, on conviction before two justices where the offence shall be committed or the offender apprehended, by confession or oath of two witnesses, be committed to gaol for three months, unless upon conviction he pay to the churchwardens, for the use of the poor where the offence was committed or the offender apprehended, 20*s.* for every fowl, or after one month after his commitment become bound by recognizance, with two sureties in 20*l.* each, before two justices, not to offend again in like manner; the recognizance to be returned to the next sessions.

Within what times  
only to be killed.

By stat. 13 Geo. III. c. 55, s. 1, 2, 4, no person shall, upon any pretence whatsoever, wilfully take, kill, destroy, carry, sell, buy, or have in his possession or use, any heath-fowl, commonly called black game, between Dec. 10 and Aug. 20; nor any grouse, commonly called red game, between Dec. 10 and Aug. 12; nor any bustard, between March 1 and Sept. 1, in any year, on pain of forfeiting, for the first offence, any sum not exceeding 20*l.* nor less than 10*l.*; and for the second and every subsequent offence, not exceeding 30*l.* nor less than 20*l.*; half to the informer, and half to the poor.

Penalties how to  
be recovered.

Sects. 3, 4, 9. To be recovered in any of his Majesty's courts of record at Westminster, on prosecution within six calendar months after the offence committed. Or the same may be recovered before one justice, information on oath being made before him within three calendar months after the offence committed; which said justice may convict the offender by confession or oath of one witness; and on neglect or refusal to pay, shall levy the same by distress and sale, together with all costs and charges attending the same, rendering the overplus. And such justice may order the offender to be detained in safe custody until return may conveniently be had to the warrant of distress, unless the said offender shall give security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before him on the day

appointed for the return of the warrant of distress, such day not exceeding five days from the time of taking such security. And if no sufficient distress can be had, such justice shall commit the offender to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding six nor less than three calendar months, unless the forfeiture and all costs and charges attending the prosecution be sooner paid and discharged.

HEATH FOWL,  
GROUSE, &c.

13 Geo. 3, c. 53.

Secta. 6, 7. And the conviction shall be drawn up in this or the like form: Conviction.

*BE it remembered, that on the                      day of                      in the year of our Lord*  
*I, B. having appeared before me                      one of his Majesty's justices of the peace for*  
*the county of                      and due proof having been made upon oath by one or more credible*  
*witness or witnesses, or by confession of the party, [as the case may be,] is convicted*  
*of [specifying the offence, with the time and place where the same was committed,*  
*and also specifying, if known, that it is the first, second, or any subsequent offence*  
*against this act, as the case shall be.] Given under my hand and seal the day and*  
*ear aforesaid.*

Which conviction the justice shall cause to be written on parchment, and returned to the next sessions, there to be filed and kept amongst the records. And the clerk of the peace shall grant copies thereof on payment of 1s. for each copy.

Sect. 10. If any person shall think himself aggrieved, he may appeal to any general quarter sessions to be holden within four calendar months after the cause of complaint shall arise, giving fourteen day's notice in writing to the justice, and to every other person against whom complaint shall be made; and in four days after such notice entering into a recognizance before a justice with one sufficient surety, conditioned to try the appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at such sessions. And the justice having received notice of appeal shall return all proceedings had before him, touching the matter of the said appeal, to the justices at such sessions. And the said justices upon proof of the notice given, and of the entering into such recognizance, shall determine the appeal in a summary way, and award costs to either party, to be levied and recovered as herein before mentioned for the recovery of penalties and forfeitures under this act. And none of the proceedings shall be quashed for want of form, nor removed by *certiorari* or other process into any of the courts at Westminster.

Appeal.

By stat. 9 Anne, c. 25, if any person whatsoever shall take or kill any moor, heath game, or grouse in the night time, he shall, on conviction before a justice, on the oath of one witness, forfeit 5*l.* half to the informer, and half to the poor, by distress and sale; for want of distress, to be sent to the house of correction for three months for the first offence, and for every other offence four months.

Killing in the  
night.

And by stat. 13 Geo. III. c. 80, if any person shall knowingly and wilfully kill, take, or destroy, or use any gun, dog, snare, net, or other engine, with intent to kill, take, or destroy, any moor game or heath game, in the night, *viz.* between the hours of seven at night and six in the morning from the 12th day of Oct. to the 12th day of Feb. and between the hours of nine at night and four in the morning from the 12th day of Feb. to the 12th day of Oct. (or in the day time on a Sunday or Christmas-day,) he shall forfeit for the first offence not exceeding 20*l.* nor less than 10*l.*; for the second offence not exceeding 30*l.* nor less than 20*l.*; for the third and every other subsequent offence 50*l.*: to be levied and recovered as the like penalties for doing any hare in the night, or on a Sunday or Christmas-day, [as is before forth.] Vide *ante*, p. 923.

Killing in the  
night, or on  
Sunday or  
Christmas-day.

By stat. 50 Geo. III. c. 67, it is enacted, that no person shall on any day, or on any night, take, kill, or destroy, or attempt to take, kill, or destroy, in the counties of Somerset and Devon, any heath-fowl, commonly called *k* game, between the 10th of Dec. and the 1st of Sept. in any year, and any person shall for every heath-fowl so taken, killed, or destroyed, and for every attempt to kill, take, and destroy such heath-fowl, contrary to the true intent of this act, be liable to the same forfeitures and penalties, to be

Heath-fowl in  
Somerset and  
Devon.

- HEATH FOWL, &c.** recovered in the same manner and subject to the like appeal, and the same provisions in every respect whatever as by the 13 Geo. III. c. 55, as enacted in respect of any offence committed against the said acts.
- Black game in the New Forest.** And by stat. 43 Geo. III. c. 112, persons taking or killing in the New Forest any black game between Dec. 10 and Sept. 1, shall be liable to the forfeitures and penalties of stat. 13 Geo. III. c. 55.
- Burning ling.** The stat. 4 & 5 Will. III. c. 23, s. 11, relative to the burning of ling, &c. is repealed by the 7 & 8 Geo. IV. c. 27, s. 1, and as to that offence now, see *ante*, *Burning*, Vol. I. p. 540.
- Grouse not birds of warren.** In stat. 5 Anne, c. 14, there are particular directions concerning the burning of ling, heath, or brakes in Sherwood forest, and other places in Nottinghamshire, which not being of general concern are here omitted.
- Grouse are not birds of warren. *Duke of Devonshire v. Lodge*, 7 B. & C. 36.

## (7.) Herons.

- Shooting herons.** By stat. 1 Jac. I. c. 27, s. 2, every person who shall shoot at, kill, or destroy any heron with gun or bow, shall, on conviction before two justices by confession or oath of two witnesses, be committed to gaol for three months, unless on conviction he pay to the churchwardens for the use of the poor 20s. for each heron, or after one month from his commitment be bound by recognizance with two sureties in 20l. each, before two justices, not to offend again in like manner: the recognizance to be returned to the next sessions.
- None shall take but by hawking.** By stat. 19 Hen. VII. c. 11, no person, without his own ground, shall slay, take, or cause to be taken, by means of craft or engine, any heron, unless it be with hawking, or with long bows, on pain of 6s. 8d. to him who shall sue by action of debt; or the sessions may call before them persons suspected, and examine them; and if found in default, may commit them till they have found surety for payment of the forfeiture to the king; and the justices shall have the tenth part of the forfeiture for their labour.
- Young herons.** No person, without his own ground, shall take any young herons out of the nest, on pain of 10s. in like manner for every young heron. *Id.*
- Destroying eggs.** And by stat. 25 Hen. VIII. c. 11, if any person from March 31 to June 30, shall take or destroy the eggs of any heron, he shall be imprisoned for a year, and forfeit for every egg 8d. half to the king and half to him that will sue by action of debt, or before the justices of the peace.

## (8.) Other Wild Fowl.

- 25 Hen. 8, c. 11.** In general, by stat. 25 Hen. VIII. c. 11, no manner of person, from the last day of March to the last day of June yearly, shall by day or night take or destroy any eggs of any kind of wild fowl, from or in any nest or place where they shall chance to be laid by any kind of the same wild fowl, on pain of imprisonment for a year, and to forfeit for every egg of a bustard 20d., of a bittour or shovelard, 8d., and of other wild fowl (except crows, ravens, boscards, and other fowl not used to be eaten) 1d.; half to the king and half to him that will sue by action of debt. Also the justices of the peace may determine the same as in cases of trespass. (a)

8 Eliz. c. 15.

(a) With regard to fowl not used to be eaten, together with certain other noxious animals, there were provisions made by an ancient statute, viz. 8 Eliz. c. 15, entitled, "An Act for the preservation of Graine," which it were to be wished might be revived with a proper consideration of the difference of the value of money betwixt that time and the present; by which it was required that the churchwardens should levy by an assessment, and pay for the heads of every three old crows, choughs, or rookes, 1d.; of six young crows, choughs, or rookes, 1d.; and for every six eggs of any of them, 1d.; for every twelve stares' heads, 1d.; for every head of

## XIV. Power to Search, Seize and Kill, &amp;c. Dogs, Guns, &amp;c.

SEARCHING  
FOR GUNS,  
&c.

*Justices of the Peace, &c.*—The 7 Jac. I. c. 11, s. 9, enacts, "that every constable and headborough in every county, city, town corporate, and other place where they shall be sworn officers, shall and may, by virtue of this present act, (bringing with them to that purpose a lawful warrant under the hands of two justices of the peace of the county, city, liberties or town corporate,) have full power and authority to enter into and search the house or houses of any person or persons (other than such as by this present act are allowed to take pheasants and partridges with nets as aforesaid) being suspected to have any *setting-dogs or nets for the taking of pheasants and partridges*; and wheresoever they shall find any such setting-dogs or nets, the same to take, carry away and detain, kill, destroy and cut in pieces, as things prohibited by this act, and forfeited to such of the said officers as shall find out and take the same as aforesaid."

Powers of Justices  
of the peace, &c.  
7 Jac. I. c. 11,  
s. 9.

The 22 & 23 Car. II. c. 25, s. 2, amongst other things enacts, "that the said gamekeeper or gamekeepers, or any other person or persons being thereunto authorised by warrant under the hand and seal of any justice of the peace of the same county, division, or place, may in the daytime search the houses, outhouses, or other places of any such person or persons by this act prohibited to keep or use the same, as upon good ground shall be suspected to have or keep in his or their custody any *guns, bows, greyhounds, setting-dogs, ferrets, coney-dogs, or other dogs, to destroy hares or conies, hays, tramels, or other nets, lowbels, hare-pipes, snares, or other engines aforesaid*, and the same and every or any of them to seize, detain and keep, to and for the use of the lord of the manor or royalty where the same shall be so found or taken, or otherwise to cut in pieces or destroy, as things by this act prohibited to be kept by persons of their degree."

22 & 23 Car. 2,  
c. 25, s. 2.

The 4 & 5 W. & M. c. 23, s. 3, enacts, "that for the more easy conviction of such offenders as by the said laws are prohibited, every constable, headborough, and tythingman, being thereunto authorised by warrant of one or more justice of the peace, under his or their hands and seals, shall and may have full power and authority, and is hereby required to enter into and search in such manner, and with such power, as in and by an act for the more effectual discovery and punishment of deer stealers, made in the third and ourth years of their present majesties' reign, is provided, in case of venison or kin of any deer, or toys) (3 & 4 W. & M. c. 14) the *house or houses, outhouses, or other places belonging to such houses or suspected persons not qualified s aforesaid*; and in case any hare, partridge, pheasant, pigeon, fish, fowl, or

4 & 5 Will. 3,  
c. 23, s. 3.

berten, hawkes, fursekytte, moldkytte, busarde, chagge, carmeraunt, or ryngtale, 1d.; and for two egges of them, 1d.; for every iron or ospray's heade, 4d.; for the heade of every wood wall, pye, jay, raven, kyte, or king's fisher, 1d.; bulnec, or other bird that devoureth the blowth of fruit, 1d.; for the heade of every x or graye, 12d.; and for the heade of every fytchewe, polcate, wesel, stote, yre, bade, or wilde cat, 1d.; for the heade of every otter or hedgehogge, 2d.; for e heades of three rattes or twelve mise, 1d.; for the heade of every want or oldwarp, one halfpenny.

And by another ancient statute, 24 Hen. VIII. c. 10, every township was required to keep a crow net, to destroy crows, rookes, and choughs.

24 Hen. 8, c. 10.

There is some shadow of these regulations still remaining in some parishes, where they give a reward for destroying several of the above said noxious fowl and vermin. These statutes were suffered to expire, probably because in a short time there would be no need of their continuance; but it might be convenient, nevertheless, to revive like provisions from time to time; and amongst the rest of the ravenous tribe set a price now at length upon the head of that distinguished fowl, for the sake of which most of the ancient laws concerning the winged game were enacted, and which it was felony to destroy. But now the current hath received a contrary action; and the hawk himself destroys more game than gunpowder and hailshot, which hath usurped his empire.

SEARCHING  
FOR GUNS,  
&c.

4 & 5 W. & M.  
c. 23  
Penalty on per-  
sons not giving  
good account of  
how they became  
possessed of game,  
&c.

other game, shall (upon such search or otherwise) be found, the offender shall be carried before some justice of peace of the same county, riding, or division; and if such person do not give a good account how he came by such hare, partridge, pheasant, pigeon, fish, fowl, or other game, such as shall satisfy the said justice, or else shall not in some convenient time, to be set by the said justice, produce the party of whom he bought the same, or some other credible person, to depose upon oath such sale thereof, that then such person not giving such good account, nor producing any such witness as aforesaid, shall be convicted by the said justice of such offence, and upon such conviction shall forfeit for every hare, partridge, pheasant, pigeon, fish, fowl, or other game, any sum not under five shillings, and not exceeding the sum of twenty shillings, to be ascertained by the said justice; one moiety thereof to be paid to the informer, and the other moiety to the poor of the parish where the offence was committed; the same to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of the justice before whom the offender shall be convicted, rendering the overplus, if any be; and for want of distress, the offender or offenders shall be committed to the house of correction, for any time not exceeding one month, and not less than ten days, there to be whipt and kept to hard labour; and in case any person or persons, not qualified by the laws of this realm so to do, shall have, keep, or use any bows, greyhounds, setting-dogs, ferrets, coney-dogs, hays, lurchers, nets, tunnels, lowbels, hare pipes, snares, or any other instruments for destruction of fish, fowl, or other game, and shall be thereof convicted upon such evidence as aforesaid, the person or persons so convicted shall forfeit and be subject to the same pains and penalties as are hereby directed to be inflicted upon the person or persons who shall be found to have any hare, partridge, pheasant, pigeon, fish, fowl, or other game, as aforesaid; and if any person or persons, so produced or charged with the said offence, shall not before the same justice give such evidence of his innocence as aforesaid, he shall be convicted thereof in the same manner as the person or persons first charged therewith is hereby directed to be, and so from person to person, until the first offender shall be discovered."

Certiorari.

By sect. 7, "no *certiorari* shall be allowed to remove any conviction made or other proceeding of, for or concerning any matter or thing in this act, unless the party or parties, against whom such conviction shall be made, shall before the allowance of such *certiorari* become bound to the person or persons prosecuting in the sum of fifty pounds, with such sufficient sureties as the justice or justices of the peace, before whom such offender was convicted, shall think fit, with condition to pay unto the said prosecutors (within one month after such conviction affirmed, or *procedendo* granted) their full costs and charges, to be ascertained upon their oaths; and that in default thereof, it shall be lawful for the said justice and justices and others, to proceed to the due execution of such conviction, in such manner as if no *certiorari* had been awarded."

Rabbits in a private warren are not game within the meaning of this act. *R. v. Yaites*, 1 *Ld. Raym.* 151.

5 Ann. c. 14, s. 4.  
Lords of manors.

The 5 Ann. c. 14, s. 4, enacts, "that it shall and may be lawful to and for any of her majesty's justices of the peace, in their respective counties, ridings, cities, towns corporate, or liberty, and the lords and ladies of his, her, their, or any of their respective manors within the said manors, to take away any such hare, pheasant, partridge, moor, heath game, or grouse, or any other game, from any such higgler, chapman, innkeeper, victualler, or carrier, or any other person or persons not qualified to kill the same, and shall be found in their custody or possession; and likewise to take away such dogs, nets, or other engines, which shall be in the power or custody of any person or persons not qualified by the laws to keep the same, to their own proper use, without being accountable to any person or persons for the same."

9 Ann. c. 25, s. 4.

The 9 Ann. c. 25, s. 4, enacts, "that the justice or justices of the peace, before whom such person or persons so offending shall be convicted, shall order such hays, nets, or tunnels, that were used in driving and taking the

said wild fowl, as aforesaid, to be seized, and immediately destroyed, in the presence of such justice or justices."

A magistrate may, under the 5 Ann. c. 14, take a gun from an unqualified person without a previous conviction. *Deverness v. Martens*, 7 Mod. 215.

A magistrate who convicts an unqualified person of killing game under the stat 5 Ann. c. 14, and orders his dog to be brought for the purpose of seizing it, may order the dog to be killed without any formal adjudication of seizure. *Kingsnorth v. Bretton and another*. 1 Marsh. 106; 5 Taunt. 416, S. C. Gibbs, C. J. there said, "There is no doubt but the magistrate had a right to take the dog into his possession, neither is there any doubt that having so taken it, all the right of the former owner ceased, and the defendants could not be called to an account for any thing done by them afterwards. At the examination of the plaintiff before the magistrate it appeared that he was unlawfully possessed of the dog, and he was therefore ordered to deliver it up; that being done, the magistrate, after he had communicated with his clerk on the subject, ordered it to be killed; undoubtedly, therefore, he meant to exercise the power which had been given him by the statute."

But a justice cannot enter a house for the purpose of seizing, &c., since he can only grant his warrant. *Briggs v. Evelyn*, 2 H. Bla. 114.

And though a magistrate may, under 5 Ann. c. 14, s. 4, within his county take any hare, &c. from an unqualified person, either by himself or others, he must exercise his judgment on the question in what case it is to be done, and when he has exercised his judgment on the case, and is satisfied the game is in the hands of an unqualified person, he may use the hands of another to take it; but he cannot delegate to another the jurisdiction given him by that act of judging whether the person in possession of the game is or is not qualified. *Bird v. Dale*, 7 Taunt. 560; 1 Moore, 290, S. C.

If the lord of a manor is also a justice of the peace, and he takes away game, dogs, or engines from an unqualified person, and an action is afterwards brought against him, he is entitled to notice conformably to stat. 24 Geo. II. c. 44, for it will be presumed he acted as a justice. *Briggs v. Sir Frederick Evelyn*, 1 H. Bla. 114; and see *post*, **Justices**, Vol. III. p. 491.

Outer doors cannot in general be broken open under a search warrant. *ce R. v. Birt*, 2 Keb. 530; *post*, **Search Warrant**, Vol. V. p. 355.

**Park-Keepers and others**—We have already noticed the 29th section of the 7 & 8 Geo. IV. c. 29, empowering deer keepers and their assistants to seize guns, &c. *ante*, 934. Park-keepers.

Also the 2d section of the 9 Geo. IV. c. 64, empowering owners or occupiers of land, lords of manors, and their servants, &c. to apprehend offenders night poaching, *ante*, 927.

The statute *de malefactoribus in parvis*, 21 Edw. I. st. 2, authorising resters, park-keepers, and warreners, to kill trespassers who resist or refuse yield, is, it seems, repealed by the 7 & 8 Geo. IV. c. 27.

Park-keepers, by the common law, may take and kill a dog which has used a deer in his park, to prevent more mischief. *Barrington v. Turner*, Lcv. 28. So a warrener may kill a dog used to infest the warren, whilst minding after rabbits in the warren. *Wadhurst v. Damne*, Cro. Jac. 45; *right v. Ramscot*, 1 Saund. 84. In both cases the park or warren must be a strictly legal one, *ante*, 876, 877. See further *Chit. G. L.* 148.

**Lords of Manors, &c.**—We have already noticed the 5 Ann. c. 14, empowering lords of manors to seize guns, &c. *ante*, 944. In construction of the act, it has been held in *Bird v. Dale*, 7 Taunt. 560; 1 Moore, 290, S. C., that it does not empower lords of manors, &c. to delegate to another a general authority to take away game from an unqualified person. The lord must go for himself in each specific case before giving the authority, *supra*. A lord of a manor has no power as such, or as the owner of private lands, to kill the dog of a qualified person running after game. *Vere v.* Lords of manors, &c.



**Game—(Searching for, &c. Guns, Dogs, &c.)** [XIV.]

*Lord Cawdor*, 11 East, 568.(a) Though it is otherwise of an unqualified person. *Kingsworth v. Bretton*, 5 Taunt. 416; 1 Marsh. 106, S. C. ante, 945.

*Gamekeepers and others*—The 22 & 23 Car. II. c. 25, s. 2, enacts, "that all lords of manors, or other royalties, not under the degree of an esquire, may from thenceforth, by writing under their hands and seals, authorise one or more gamekeeper or gamekeepers within their respective manors or royalties, who being thereunto so authorised, may take and seize all guns, bows, greyhounds, setting-dogs, lurchers, or other dogs, to kill hares or conies, ferrets, tramels, lowbels, hays, or other nets, hare-pipes, snares, or other engines, for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of such respective manors shall be used by any person or persons who by this act are prohibited to keep or use the same."

4 & 5 W. & M.  
c. 23.

The 4 & 5 W. & M. c. 23, s. 4, enacts, "that to the end all keepers and gamekeepers, mentioned in and duly authorised according to the act made in the reign of the late King Charles the Second, may be indemnified in the execution of the said office, all lords of manors or other royalties, or any person or persons authorised by them as gamekeepers, shall and may, within their respective manors or royalties, oppose and resist such offender in the night time, in the same manner, and be equally indemnified for so doing, as if such fact had been committed within any ancient chase, park, or warren inclosed whatsoever."

The deputation of a gamekeeper should specify all the powers given to him under the 22 & 23 Car. II. c. 25, s. 1. And in a late case, where the deputation by its words only authorised the keeper to seize greyhounds, setting dogs, ferrets, and to do all things belonging to the office of gamekeeper according to the directions of the acts of parliament, it was held he was not thereby authorised to seize hounds. *Grant v. Hulton*, 1 B. & Ald. 134. And under a general deputation under the 48 Geo. III. c. 93, a gamekeeper cannot seize game in possession of an unqualified person. *Bird v. Dale*, 1 Moore, 290; 7 Taunt. 560, S. C., ante, 945.

If a gamekeeper be uncertain of the qualification of a person whom he finds sporting on his manor, it would be imprudent to incur the risk of an action of trespass by seizing the gun of his own accord, but he should obtain a warrant from a justice of peace, in which case, unless he acted maliciously, he would not be liable to an action, though it should turn out that the person was qualified. *Carpenter v. Adams*, Comb. 183.

A gamekeeper cannot legally seize a gun, unless the unqualified person be at the time using it for the destruction of game. *Wingfield v. Stratford*, 1 Wils. 315. Neither can he kill the dog of a person following game within the boundaries of the manor, unless it be actually used at the time by an unqualified person for the purpose of destroying game; for the power of a gamekeeper is very distinguishable from that of a park-keeper or warrenter, who, we have seen, ante, 876, 877, may destroy or kill any dog whilst pursuing deer or rabbits. *Vere v. Lord Cawdor*, 11 East, 568.

A gamekeeper cannot justify killing the dog of a person following game within the boundaries of the manor.

(a) *Vere v. Lord Cawdor and King*, 11 East, 568. In this case, which was an action of trespass for shooting and killing a dog of the plaintiff, there was a plea of not guilty, and a special plea that Lord Cawdor was lord of the manor, and the defendant gamekeeper, duly deputed and appointed to preserve the game upon the manor; that the dog was in a close, parcel of the manor, running after, chasing, and hunting divers hares there, and that the defendant, King, as such gamekeeper, in the said close, for the preservation of the said hares, shot and killed the said dog.—To this plea there was a demurrer; and after argument, Lord Ellenborough, C. J. said, The question is, whether the plaintiff's dog incurred the penalty of death for running after a hare in another's ground? And if there be any precedent of that sort, which outrages all reason and sense, it is of no authority to govern other cases. There is no question here as to the right of the game. The gamekeeper had no right to kill the plaintiff's dog for following it. The plea does not even state that the hare was put in peril, so as to induce any necessity for killing the dog in order to save the hare. *Per curiam*. Judgment for the plaintiff.

#### XIV.] Game—(*Searching for, &c. Guns, Dogs, &c.*)

947

And the statute of Charles does not authorise a gamekeeper to seize the gun of another gamekeeper duly appointed, though trespassing out of his proper manor. *Rogers v. Carter*, 2 Wils. 337.

SEARCHING  
FOR GUNS,  
&c.

The statutes do not seem to give any power to the lord of a manor or his gamekeeper in the *day-time* to seize the unqualified person himself, but merely empower them to seize the dogs and engines, though they have that authority in the night time. *Chit. G. L.* 156.

As to the powers given to seize night poachers, &c. see *ante*, 927.

#### XV. Trespasses in general in Pursuit of Game.

And herein we will slightly notice, 1st, what will amount to a Trespass— 2dly, the Remedies for Trespasses—and 3dly, the Means of preventing them. Division of subject.

##### (1.) What a Trespass.

The land of every owner or occupier is inclosed and set apart from that of his neighbour, either by a visible or tangible fence, as one field is separated from another by a hedge, wall, &c. or by an ideal, invisible boundary, existing only in contemplation of law, as when the land of one man adjoins to that of another in the same open or common field. Hence every unwarrantable entry upon the land of another is termed a trespass by breaking his close. 2 *Selv. N. P.* tit. *Trespass*.

What a trespass.

It seems that a person discharging a gun from the outside of a field into, so as the shot must have struck the soil, was guilty of breaking and entering the field. See *Pickering v. Rudd*, 4 *Campb.* 220; 1 *Stark. N. P.* 58; *C. per Ellenborough, C. J.*

In general no man can come upon another's close to kill or take game without being liable to an action of trespass. 2 *Bac. Ab.* 613; 2 *Bla. Com.* 417; *Bla. Rep.* 900. And in general no person, though he find game upon his own land, has a right to pursue, nor can he justify pursuing it into the land of another, either to kill it or take it when killed, or for any other purpose. *Beane v. Clayton*, 7 *Tunst.* 489, *post*, 950. And in a late case, *Baker v. Crkelcy*, 3 *C. & P.* 32, it was held that if a stag, hunted by the hounds of A., B. and his servants have no right to enter the ground to take the stag; and if they do they are trespassers.

Pursuing game  
and beasts of  
prey, as foxes, &c.

The common law allows persons to enter the lands of others to follow beasts of prey, as a fox or badger, for the destruction of them is to the public benefit. *Gundry v. Feltham*, 1 *T. R.* 334. But the digging and breaking up ground to unearth them is held to be unlawful, and the owner of the ground may maintain an action of trespass in that case. *Cro. Jac.* 321. With respect to the case of *Gundry v. Feltham*, Mr. *Christian* observes, that his judgment was only justified by the pleadings, which admitted that the digging after the fox, in that case, was the only means of killing it. *Christian's G. L.* 114. But in the case of *The Earl of Essex, v. Capel*, at Hertford Ass. 1809, where the subject was properly pleaded upon the record, Lord *Ellenborough, C. J.* directed the jury to find for the plaintiff, if they thought from the evidence that the defendant pursued the fox for his own pleasure and amusement, and if they thought the good of the public was not his governing motive. *Christian's G. L.* 114; *Chit. G. L.* 31, S. C. And hunters, like all other hunters, may be warned off; and the plaintiff by judge's certificate will have full costs, though the jury do not give 40s. damages. *Id.*

##### (2.) The Remedies for Trespasses.

The remedies for trespasses in pursuit of game may be by action at law, suit in equity, by agreement, or by indictment.

TRESPASSES IN  
PURSUIT OF.Remedy for a  
trespass by action,  
&c.Costs.  
8 & 9 Will. 3,  
c. 11, s. 4.Notice not to tres-  
pass.Inferior trades-  
men, &c.  
4 & 5 W. & M.  
c. 23, s. 10.Penalty for a  
trespass.  
11 Hen. 7, c. 17,  
s. 17.Hunting amongst  
growing corn.Malicious trespass  
act.

*Remedy by Action, &c.*]—If a person commit a trespass by entering the close of another, he becomes subject to an action of trespass. 2 Bac. Ab. 613; 2 Bla. Com. 117.

On such mere trespass, however, the owner should be cautious before bringing an action, for if he could not prove damages to the amount of 40s. or that the trespass was *wilful and malicious*, he would not, on a verdict for less than 40s., get more costs than damages. Formerly indeed, before the 8 & 9 Will. III. c. 11, s. 4, the plaintiff would not in such a trespass, on such a verdict, get more costs than damages, though the trespass were wilful and malicious. That act, however, enacted that in all actions of trespass, where at the trial (a) it shall appear and be certified by the judge under his hand upon the back of the record, that the trespass was wilful and malicious, the plaintiff shall recover not only his damages, but his full costs of suit.

This act does not make it compulsory on the judge to certify, but it is usual to do so where the trespass is in pursuit of game *after notice*. *Reynolds v. Edwards*, 6 T. R. 11; 7 T. R. 449; 3 East, 495.

On this account therefore, independently of others, it is usual and best to give a trespasser, or person about to trespass, notice not to trespass. Such notice may be verbal; it is best however, when practicable, to be in writing. The notice had better be explicit, showing where the party must not trespass. A general printed notice stuck up, purporting to be a notice that "The St. James's Association" would prosecute all persons trespassing, but not signed by the plaintiff, nor addressed to the defendant, was held not a sufficient notice not to trespass. *Sellon v. Huntsmen of Berkeley Hunt*, Chit. G. L. 2 ed. 229.

If *personal property*, as game, &c., were injured in the trespass, the plaintiff would in an action for it get full costs, though he got less than 40s. damages, unless indeed the judge certified under the 43 Eliz. c. 6.

The 4 & 5 W. & M. c. 23, s. 10, enacts, that if inferior tradesmen, apprentices, or other dissolute persons, shall presume to hunt, hawk, fish, or fowl, they may be sued not only for the penalties on sporting as unqualified persons, but also for their *wilful trespass* on any person's land, and, if found guilty, the plaintiff shall not only recover his damages, but full costs. In *Buxton v. Mingay*, 2 Wils. 70, the court were equally divided in opinion whether a surgeon and apothecary, not qualified to kill game, was an inferior tradesman within this statute. The huntsman of a gentleman of fortune, hunting with his master's hounds, and with his orders, is not a dissolute person within the act. *Pallant v. Roll*, 3 Bla. Rep. 900. A clothier, or ale-house keeper, is, *semble*. *Wickham v. Walter, Barnes*, 125. A qualified person cannot be deemed a person within the act. *R. v. George*, 6 Mod. 40. A person who kills game for the purpose of selling it, or if he were drunk or abusive, or if questioned where he lived, or what was his name, he gave a false account of himself, is within the act. *Christ. G. L.* 98.

The 11 Hen. VII. c. 17, s. 17, enacts, that it shall not be lawful to any person, of what condition he be, to take or cause to be taken any pheasants or partridges by nets, snares, or other engines, out of his own warren upon the freehold of any other person, without the assent, agreement, and special license of the owner or possessor of the same, upon pain of forfeiture of 10l., half to the party who will sue for the same by action of debt, or by bill or otherwise, and the other half to the owner or possessor of the said ground upon which the said pheasants and partridges be also taken.

By stat. 23 Eliz. c. 10, s. 4, no person shall hunt with his spaniels in any ground where corn or other grain shall grow (except in his own ground) at such time as any eared corn shall be growing, nor before it be shocked, on pain of forfeiting to the owner of the grain 40s.

The malicious trespass act, 7 & 8 Geo. IV. c. 30, s. 24, for the summary punishment of malicious trespasses, and giving a magistrate power to award 5l. satisfaction, (see *post*, *Malicious Injuries to Property*, Vol. III. p. 741.)

(a) The certificate need not be granted at the trial. 2 B. & Cress. 580; 4 D. & R. 147, S. C.

exempts persons committing trespasses *not wilful and malicious* in hunting, shooting, or in the pursuit of game.

**TRESPASSES IN  
PURSUIT OF.**

Damages in  
general.

The amount of the damages to be given in an action must depend on the nature of the case submitted to the jury. In trespass for breaking and entering the plaintiff's closes and sporting there, under circumstances of aggravation, the jury gave 500*l.* damages. The court refused to set aside the verdict. *Merest v. Harvey*, 1 *Marsh.* 139; 5 *Taunt.* 442, S. C. This was an action of trespass for breaking and entering the plaintiff's closes, and with dogs and guns beating and hunting for game. The defendant suffered judgment to go by default, the damages to be assessed before a judge of assize, and which were assessed accordingly before *Heath, J.* at Thetford Spring Assize, 1814, to the amount of 500*l.* being the extent of the damages laid in the declaration. On motion for rule to set aside the verdict, on the ground of excessive damages, *Heath, J.* chiefly stated the circumstances, which were that the defendant, who was a magistrate, had committed a trespass before the plaintiff's face, in defiance of the plaintiff's notice, that he was a trespasser, and accompanying the injury every kind of insult and aggravation. *Gibbs, C. J.* said, "When a man regards the conduct and principles of a gentleman and of a magistrate, what is to prevent the repetition of such conduct but large damages? what could we say to a man in any inferior station in life, who should so conduct himself? I know not on what principle we could grant a rule in this case, except on the ground that the jury should only have found to the amount of the actual pecuniary damage sustained by the plaintiff; suppose I had a walk before my house, which I had a pleasure in looking at, or in walking upon, could it be allowed that a man should walk there to my annoyance, and offer me a halfpenny in satisfaction, alleging that I had received no actual damage? This is a much stronger case, for no conduct could have been more outrageous than that of the defendant on this occasion." *Heath, J.*—"I leave it to the jury to say what damages would be a compensation, and it never will be contended that these were too much. I remember a case many years ago, where the jury gave 500*l.* for merely throwing off a man's hat, and the court refused to set aside the verdict." *Per curiam.* Rule refused. In *Hume v. Oldacre*, 1 *Stark.* 551, it was held, that the jury might give damages not only in respect of the huntsman's own individual trespass, but the damage done by his followers. And again, in *Baker v. Berkeley*, 3 *P.* 32, in trespass for breaking into plaintiff's farm, &c., where the plaintiff received 100*l.* damages, Lord Tenterden, *C. J.* said, "If a gentleman sends out his hounds and his servants, and invites other gentlemen to hunt with him, *although he does not himself go on the lands of another*, but other gentlemen do, he is answerable for the trespass they commit in so doing, *unless he distinctly desires them not to go on those grounds*; and if (as in the present case) he does not so desire them, I think he is answerable, in point of law, for the damage they do."

Damages by fol-  
lowers.

**Remedy by Suit in Equity**—A court of equity will, in some cases, interpose to prevent a repetition of trespasses. *Ld. Teynham v. Herbert*, 2 *Atk.* See further *Chit. G. L.* 224, 5.

By suit in equity.

**Remedy by Agreement**—The owner of land may take a bond to prevent commission of trespasses thereon. *Roy v. Duke of Beaufort*, 2 *Atk.* 190. though unless game be excepted in a demise of the land, the possessory estate will vest in the lessee; (*Year Book*, 14; Hen. VIII. p. 1;) yet a tenant may be restrained by bond or covenant from sporting, and the lord may reserve that right to himself, and make his tenant stipulate to sue actions against trespassers; *Id.*; *Roy v. Duke of Beaufort*, 2 *Atk.* 190. A court of equity will restrain an improper use of such a covenant. If one who has given leave to another to hunt over his premises, it would not give him the liberty of shooting there. *Per Gibbs, C. J.*, *Moore v. Ld. Plymouth*, *Ant.* 627; 1 *Moore*, S. C. As to the effect of a grant to A. and his heirs of a liberty to sport, see *3 Cres.* 639; 7 *D. & R.* 49, S. C.

By agreement.

TRESPASSES IN  
PURSUIT OF.

## Remedy by indictment.

*Remedy by Indictment, &c.*—No indictment can be supported for a mere civil trespass. 3 *Burr.* 1701; 8 *T. R.* 357. Nor can a party be imprisoned for a mere trespass. *Id.* And see 4 *D. & R.* 217; 2 *B. & Cra.* 699, S.C. But an indictment or information in case of a battery might be supported as in other cases. *Jenning v. Mott, Barnard. Rep.* 16. See *add. Assault*, Vol. I.

An indictment will not lie for a conspiracy to commit a civil trespass on property, by agreeing to go into another's preserve to snare hares, though done in the night by defendants armed with offensive weapons to resist any endeavours to apprehend them. *R. v. Turner*, 13 *East*, 228; *R. v. Marshall*, 2 *Keb.* 594; *ante*, 913.

## (3.) Mode of Preventing Trespasses.

## Resisting entry or forcing off land.

If a person attempt to enter by force the property of another, he may be opposed in such attempt by force. 8 *T. R.* 78; 1 *Salk.* 141. In the case of *Holt v. Wilkes*, 3 *B. & A.* 304, *Best, J.* said, "Every proprietor of property is allowed to use the force that is absolutely necessary to vindicate it. If he uses more force than is absolutely necessary, he renders himself responsible for all the consequences of the excess. Thus if a man comes on my land, I cannot lay hands on him to remove him off until I have desired him to go off. If he will not depart on request, I cannot proceed immediately to beat him, but must endeavour to push him off. If he is too powerful for me, I cannot use a dangerous weapon, but must first call in aid other assistants. I am speaking of out-door felony, and of cases in which no felony is to be apprehended. It is evident also that this doctrine is applicable only to trespasses committed in the presence of the owner of the property trespassed on."

## Seizing, &amp;c. dogs, &amp;c.

The owner of land cannot in general seize a dog which is pursuing game: *Athel v. Corbett*, *Cro. Jac.* 463; nor could he shoot it; *Vere v. Lord Cardor*, 11 *East*, 568; *Carpenter v. Adams*, *Comb.* 183. We have already noticed several statutes giving the owners of land and others powers relative to the seizing of the dogs, &c. of trespassers, *ante*, 943.

## Setting spears.

In the case of *Dean v. Clayton*, 7 *Taunt.* 489; 2 *Marsh.* 577; 1 *Moore*, 203, S.C., the judges of the Court of Common Pleas were equally divided in opinion whether a private person has a right to set dog-spears to preserve hares in his woods, and prevent them from being killed by dogs and foxes. (a)

(a) *Dean v. Clayton, Bart.*; 7 *Taunt.* 489; 2 *Marsh.* 577; 1 *Moore*, 203, S.C. Sir William Clayton, the defendant, was owner and occupier of a wood adjoining a wood of B., divided therefrom by a low bank and a shallow ditch, not being a sufficient fence to prevent dogs from passing from B.'s wood into the defendant's wood. There were public footpaths through the defendant's wood, not fenced off therefrom. The defendant, to preserve hares in his wood, and to prevent them from being killed therein by dogs and foxes that came therein in pursuit of hares, kept iron spikes (called dog-spears) screwed and fastened into several trees in his wood, each spike having two sharp ends, and so placed that each end should point along the course of a hare-path, and purposely placed at such a height from the ground as to allow a hare to pass under them without injury, but to wound and kill a dog that might happen to run against one of the sharp

ends thereof, the spikes being, from their nature and positions, adapted to effect the purpose for which the defendant fastened them there: none of them was at a less distance than 50 yards from any footpath, and some were from 150 to 160 yards distant therefrom. The defendant kept notices painted on boards placed at the outside of some parts of the wood, that steel-traps, spring-guns, and dog-spears were set in that wood for vermin. The plaintiff, with B.'s permission, was sporting in his wood with a valuable pointer; a hare rose in his wood, and was pursued by the dog thereon, over the bank and ditch, into the defendant's wood, and in the pursuit there, ran against one of the sharp spikes, and was killed. The plaintiff endeavoured, as much as in him lay, to prevent his dog from pursuing the hare into the defendant's wood, but was unable so to do. The plaintiff having brought an action upon the case against the defendant to recover a compensation

**TRESPASSES IN  
PURSUIT OF.****Setting dog traps.**

It has been satisfactorily established, however, that if a man place dangerous traps, baited with flesh, in his own ground, so near to a highway, or to the premises of another, that dogs passing along the highway, or kept in his neighbour's premises, must probably be attracted by their instinct into the traps; and in consequence of such act his neighbour's dogs be so attracted, and thereby injured, an action on the case lies. *Townsend v. Wathen*, 9 *ast*, 277. In an action for placing traps baited with flesh and strong-scented articles, by which the plaintiff's dogs were enticed from the public highways to the said traps, and were caught therein and wounded, there was verdict for the plaintiff; and the Court of King's Bench refused to arrest judgment, there being no doubt but the action was maintainable. A rule nisi was, however, granted for setting aside the verdict, as against the evidence; and after hearing the grounds of objection against it, Lord Ellenborough, C. J. said, "It appears by the evidence reported, that the traps were set so near to the plaintiff's court yard, where his dogs were kept, that they might scent the bait, without committing any trespass on the defendant's soil. Every man must be taken to contemplate the probable consequences of the act he does; and, therefore, when the defendant caused traps scented with the strongest meats to be placed so near to the plaintiff's house as to induce the instinct of those animals, and draw them irresistibly to their destruction, he must be considered as contemplating this probable consequence of his act. That which might be taken as general evidence of malice against all dogs, coming accidentally within the sphere of attraction which he placed there, must surely be evidence of it against those in particular which were placed nearest to the source of attraction, and within the constant influence of it. What difference is there in reason between drawing the animal into the trap by means of his instinct, which he cannot resist, and putting him there by manual force? If a man knowingly keep a dog accustomed to bite, and any person coming by chance in his way be bitten, an action lies against the owner, though he had no malice against the particular individual." (a) Here there is evidence that the defendant's purpose in setting the traps was to catch dogs in general, as well as vermin; for he afterwards recommended his servant for dogs taken in the traps. The rule, therefore, *omnis habitio retro trahitur et mandato equiparatur*, applies to this case. With- therefore, considering what had happened before the plaintiff came to his place in the defendant's neighbourhood; when he did come, he came to the place where the mischief existed and continued to operate within the sphere where he might lawfully have his dogs, and which in fact did afterwards operate upon them to the plaintiff's prejudice. The other judges agreeing, rule was discharged.

Until the late act 7 & 8 Geo. IV. c. 18, it was undecided whether a person might set spring guns in woods or enclosed grounds. It was held, however, in *olt v. Wilkes*, 3 B. & A. 304, that a trespasser, having knowledge that there are spring-guns in a wood, although he might be ignorant of the particular spots where they are placed, could not maintain an action for an injury received in consequence of his accidentally treading on the latent wire communicating with the gun, and thereby letting it off. But where a defendant, for the protection of his property, some of which had been stolen, set a spring gun without notice, in a garden completely walled round and at a distance from his house, and the plaintiff, who had climbed over the wall in pursuit of the fowled fowl, was shot thereby; it was held, an action was maintainable, and the defendant liable in damages. *Bird v. Holbrook*, 4 Bingh. 628; 3 P. 607, S. C.; *Joy v. Whitfield*, 3 B. & A. 308; 4 Bingh. 644, S. C. by the 7 & 8 Geo. IV. c. 18, entitled, "An Act to prohibit the set-

Spring guns.

7 &amp; 8 Geo. 4, c. 18.

loss of his dog, the Court of Common Pleas were equally divided in opinion whether the action were maintainable. *Gibbs*, C. J. and *Dallas*, J. holding that it was not, and *Parke* and *Burroughs*, Js. holding that the plaintiff was entitled to recover. (a) See *ante*, *Dogs*, Vol. I.

## FORMS.

## Pigeons.

CONVICTION ON 7 &amp; 8 Geo. IV. c. 29, s. 33, for Killing a Pigeon, (No. 58.)

## Heath Fowl.

INFORMATION ON 13 Geo. III. c. 55, for Killing Heath Fowl out of Season, (No. 59.)

## Searching for Engines, &amp;c.

SEARCH-WARRANT ON 22 &amp; 23 Car. II. c. 25, (No. 60.)

## NOTICE NOT TO TRESPASS, (No. 61.)

(No. 1.)

Appointment of  
a gamekeeper to  
kill game. (a)

I, A. L. Esquire, lord of the manor of \_\_\_\_\_, in the county of \_\_\_\_\_, do hereby nominate, authorise and appoint A. G. of \_\_\_\_\_, in the county of \_\_\_\_\_, [or gentleman, as the case may be], to be a gamekeeper of, in and to my said manor, with full power, license and authority, within and upon my said manor, to kill any hare, pheasant, partridge, or any other game whatsoever, for my sole use and benefit (b) [or, for the use and benefit of him the said A. G., or, for the use and benefit of A. B. of \_\_\_\_\_, in the county of \_\_\_\_\_, as the case is]; and also to take and seize all such guns, bows, greyhounds, setting dogs, lurchers, or other dogs to kill hares or conies; ferrets, trammels, low-bells, hays, or other nets, harepipes, snares, or other engines, for the taking and killing of conies, hares, pheasants, partridges, or other game, as within the precincts of my said manor of \_\_\_\_\_ shall be used by any person or persons who by law are prohibited to keep or use the same. Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the year, &c.

Signed, sealed, and delivered in  
the presence of E. F.

(No. 2.)

The like for pre-  
servation of the  
game only.

TO all to whom these presents shall come, I, W. L. Esquire, lord of the manor of \_\_\_\_\_, in the county of \_\_\_\_\_, send greeting: Know ye, that I, the said W. L. have appointed, constituted and empowered, and by these presents do appoint, constitute and empower A. G. of \_\_\_\_\_, to be gamekeeper of, in and to my said manor of \_\_\_\_\_, and all the royalties, rights, members, and appurtenances thereto belonging, during my pleasure, to keep and preserve the game within and upon the said manor, but not to kill or in anywise to pursue or destroy the same; and for the purpose of enabling the said A. G. to preserve the game within the said manor, I do hereby give and grant unto him, during such my pleasure, full power and authority to seize and take all and all manner of guns, greyhounds, setting dogs, ferrets, trammels, low-bells, hays, or other nets, harepipes, snares, or other engines for taking conies, hares, pheasants, partridges, or other game, and all manner of fishing nets, angles, leashers, pitchers, and other instruments or engines for taking of fish and within the said manor, and the royalties, members and precincts thereof, by any person or persons whomsoever prohibited by the laws of this realm to use, employ, and keep the same, as any other gamekeeper may lawfully do. And further, I do hereby give and grant unto him the said A. G. during my pleasure, full power and authority to do all and every act and acts, thing and things, which by the laws of this realm are requisite and necessary for the preservation of the game within the said manor and premises, and for the discovery and conviction of offenders in the destruction and pursuit of the same, against the laws and statutes in that case made and provided. In witness whereof, I the said W. L. have hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ in the year, &c.

Signed, sealed, and delivered in  
the presence of E. F.

(a) This appointment is under the 22 & 23 Car. II. c. 25, s. 2, 5 Ann. c. 14, s. 4, and 48 Geo. III. c. 93. See the Gamekeeper's Certificate according to the 52 Geo. III. c. 93, post, *Game*, Vol. I. 842. See other forms, *Chit. G. L.* 730.  
(b) These words are not necessary. See 1 Camp. 457, ante, 890.

## Forms of Proceedings under 5 Anne, c. 14, s. 4, against Unqualified Persons using Guns, &amp;c.

(No. 3.)

— BE it remembered that on, &c. at, &c. in the said county of \_\_\_\_\_, A. I. of \_\_\_\_\_ in the said county of \_\_\_\_\_, [labourer,] personally came before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, and informed me that A. O. of \_\_\_\_\_, (b) in the said county, [labourer.] (being a person not then having lands and tenements or any other estate of inheritance in his own right in his wife's right of the clear yearly value of one hundred pounds per annum, nor for term of life, nor then having any lease or leases of ninety-nine years or for any longer term of the clear yearly value of one hundred and fifty pounds, nor then being the son and heir apparent of an esquire or other person of higher degree, nor then being the owner or keeper of any forest, park, chase, or warren, being stocked with deer or conies for his necessary use in respect of such forest, park, chase, or warren, nor then being lord of any manor, lordship or royalty, nor then being gamekeeper of or to any lord or lady of any lordship, manor, or other royalty, [or if he be a gamekeeper sporting out of his manor, &c. say, within the lordship, manor or royalty within which the offence hereinafter mentioned was committed.] duly made, constituted, or appointed by writing under his or her hand and seal to take, kill, or destroy the game or any sort of game whatsoever in or upon any lordship, manor, or royalty, nor then being a person duly appointed and deputed by any lord or lady of any manor to be a gamekeeper to any manor, with authority as gamekeeper to kill game within any manor for the use of such lord or lady, or for his own use, for the use of any other person or persons whatsoever, nor then being a person in any manner whatsoever duly qualified, empowered, or authorised by the laws of this realm either to take, kill or destroy any sort of game whatsoever, either for himself for any other person or persons whatsoever, or to keep or use any greyhounds, hunting dogs, hays, lurchers, tunnels, or any other engine for the destruction of the game of this kingdom,) within three months now last past, that is to say, on the \_\_\_\_\_ day of \_\_\_\_\_, &c. at the parish of \_\_\_\_\_, in the said county of \_\_\_\_\_, did unlawfully keep and use [or keep, or use, as the case is,] a setting dog [or as the case is, see ante, 903,] to kill and destroy the game, \* contrary to the form of the statute in that case made and provided; whereby he hath forfeited the sum of 5*l*.; and thereupon he the said A. I. prayeth the judgment of me the said justice in the premises, and that he may have one moiety of the said forfeiture according to the form of the statute in that case made, and that the said A. O. may be summoned to answer the premises before me the justice aforesaid. A. I.

Taken before me J. P.

(No. 4.)

To the Constable of \_\_\_\_\_ in the county of \_\_\_\_\_.

— } WHEREAS information and complaint have been made before me J. P. Esquire, one of his Majesty's justices of the peace for the said county, that A. O. of the parish of \_\_\_\_\_ in the said county, [labourer,] being a person not then qualified, &c. [negative the qualifications, and state the offence as in the Information, ante, to the \*] contrary to the form of the statute in that case made and provided: whereby he hath forfeited the sum of 5*l*., to be applied as the act directs. These I therefore, to require you forthwith to summon the said A. O. to appear before me at \_\_\_\_\_ in the said county, on, &c. at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon, to answer to the said information and complaint, and to be further dealt with according to law; and be you then there to certify what you shall have done in the execution hereof. Herein fail not. Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

J. P. (L. S.)

(\*) See the act, and observations as to these forms, ante, 897, 906 to 912. (b) State the parish accurately if you state it at all.



## FORMS.

(No. 5.)

Conviction on  
5 Anne, c. 14, s. 4,  
for keeping and  
using a setting  
dog to kill and  
destroy the game  
(a).

— } BE it remembered that on, &c. at in the county of , A. I.  
} of in the county of , [labourer,] personally came before me,  
J. P. Esquire, one of his Majesty's justices of the peace for the said county  
, and informed me that A. O., of in the county of , [labourer,]  
being a person not then having lands and tenements, &c. [deny the qualifications, and  
state the offence as in the Information, *supra*, (No. 3,) to the \*] contrary to the tenor  
of the statute in such case made and provided: Whereupon the said A. O., after being  
duly summoned to answer the said charge, appeared before me on the day of  
in the said year , at in the said county of , and having  
heard the charge contained in the said information, declared he was not guilty of  
the said offence: [or, did not appear before me pursuant to the said summons; or  
did neglect and refuse to make any defence against the said charge.] Whereupon  
the said justice, did proceed to examine into the truth of the charge contained in the  
said information; and on the said day of at aforesaid, one credible  
witness, to wit, A. W. of in the county of , upon his oath deposed and  
saith, [if A. O. be present, say, in the presence and hearing of the said A. O.]:  
within three months now last past, to wit, on the day of  
year , the said A. O., at the parish of in the said county of  
did, [here state the evidence in support of the charge, and as nearly as possible the  
the words used by the witness or witnesses (b), and if more than one witness be  
examined, state the evidence given by each, or if the defendant confess, instead  
of stating the evidence, say, and the said A. O. acknowledged and voluntarily con-  
fessed the same to be true.] Therefore, it manifestly appearing to me that he the  
said A. O. is guilty of the offence charged upon him in the said information, I  
hereby convict him of the offence aforesaid; and do declare and adjudge that he the  
said A. O., hath forfeited the sum of [5*l.*] of lawful money of Great Britain for the  
offence aforesaid, to be distributed according to the form of the statute in that behalf  
made and provided. Given under my hand and seal the day of in the  
year of our Lord one thousand eight hundred and

(No. 6.)

County of To the constable of

Warrant to dis-  
train 5*l.* for keep-  
ing dogs or en-  
gines, on 5 Anne,  
c. 14, s. 4.

WHEREAS A. O. of in the said county, [labourer,] is this day convicted  
before me, J. P. Esquire, one of his Majesty's justices of the peace in and for the said  
county, upon the oath of A. W. a credible witness, for that he the said A. O. being a  
person not qualified by the laws of this realm so to do, on the day of in the  
year of the reign of did keep and use, [or keep, or use,] in the parish of  
aforesaid, in the county aforesaid, a [setting dog] to kill and destroy the game,  
by virtue whereof he the said A. O. hath forfeited the sum of 5*l.* to be distributed as  
herein-after is mentioned: These are therefore in his said Majesty's name to command you  
to levy the said sum by distress of the goods of him the said A. O., and if within the space  
of (c) days next after such distress by you taken, the said sum, together with  
reasonable charges of taking and keeping the said distress shall not be paid, that then  
you do sell the said goods so by you distrained, and out of the money arising by such  
sale that you do pay one-half of the said sum of 5*l.* to A. I. of in the said county,  
[yeoman,] who informed me of the said offence, and the other half of the said sum of  
5*l.* to the overseers of the poor of the parish of aforesaid, where the said offence  
was committed, for the use of the poor of the said parish; returning the surplus on  
demand unto him the said A. O. the reasonable charges of taking, keeping, and selling  
the said distress being first deducted. And if sufficient distress cannot be found of the  
goods of the said A. O. whereon to levy the said sum of 5*l.* that then you certify the  
same to me, together with the return of this precept. Given under my hand and seal  
the day of in the year of

(a) See *ante*, 898.

(b) See *ante*, 907, 909, and *ante*, *Con-*  
*tribution*, Vol. I. p. 840, 841. The evi-  
dence need not negative the qualifications.  
*R. v. Turner*, 5 M. & S. 206, *ante*, 920.

(c) Not less than four, nor more  
than eight days. 27 Geo. II. c. 20.  
s. 1, *ante*, Vol. I. p. 1017.

## (No. 7.)

*L. M. constable of* within mentioned, maketh oath this day of Constable's return of insufficiency of distress.  
 the year within mentioned, that he hath made diligent search for, but doth not know  
 nor can find sufficient goods and chattels of A. O. within mentioned whereon to levy  
 the within mentioned sum of 5*l.* L. M.  
 Sworn before me the justice within mentioned.  
 R. B.

## (No. 8.)

*\_\_\_\_\_* } To the Constable (a) of in the said county, and to the Keeper of the Commitment for want of distress for keeping dogs or engines, on 5 Anne, c. 14, s. 4.  
 } House of Correction at in the said county.  
 WHEREAS A. O. of in the said county, [labourer,] was on the day in the year of duly convicted before me J. P. Esquire, one of his Majesty's stices of the peace in and for the said county, upon the oath of A. W. a credible witness, for that he the said A. O. not being a person by the laws of this realm qualified so do, on the day of in the year aforesaid, did keep and use, [or keep or e,] in the parish of aforesaid, in the county aforesaid, a [setting dog, as the se may be, see the conviction,] to kill and destroy the game, by virtue whereof he said A. O. hath forfeited the sum of 5*l.*; and whereas on the said day of the year aforesaid, I did issue my warrant to the constable of to levy the said m of 5*l.* by distress and sale of the goods of him the said A. O. and to distribute the me according as is directed by the statute in that behalf made: and whereas it duly appears to me, as well on the oath of the said constable as otherwise, that he the said nstable hath used his best endeavours to levy the said sum on the goods of the said O. as aforesaid, but that no sufficient distress can be had whereon to levy the same: these are therefore to command you the said constable of aforesaid to apprehend e body of the said A. O. and him safely to convey to the house of correction at the said county, and there deliver him to the said keeper thereof, together with this receipt. And I do hereby command you the said keeper of the said house of correction receive into your custody in the said house of correction the said A. O. and him there to keep for the space of three months; and for so doing this shall be your sufficient warrant. Given under my hand and seal the day of in the r, &c.

## (No. 9.)

the matter of the conviction of J. S.  
 I DO hereby give you and each of you notice, that I do intend to move the Court King's Bench at Westminster, in the county of Middlesex, on the [first] day of next [ilary] Term, or so soon after as counsel can be heard, for a rule to show cause why a t of certiorari should not be granted to remove into his Majesty's said court a certain viction of me the undersigned J. S. founded on the information of you T. C. under hands and seals of you the said S. B. Esquire, and the Rev. E. G. clerk, two of his festy's justices of the peace for the county of bearing date the day of last past, for having on the day of then last, at the parish of within the manor of in the said county of unlawfully [used two dogs 'ed setting dogs,] to kill and destroy the game, contrary to the statute in that case le and provided, and also the information and proceedings on which the conviction and is founded.  
 To S. B. Esquire, the Rev. E. G. clerk, J. S.  
 and to Mr. T. C.

## (No. 10.)

King's Bench.  
 V. H. of in the county of attorney at law, maketh oath and saith, that Affidavit on appli-  
 he desires of Lieutenant General P. of in the county of he did on or cation for a cer-  
 at the day of last apply at the office of Mr. J. W. the clerk to the ma-tiorari.

(a) See as to commitments in general, ante, Commitment, Vol. I.

## FORMS.

gistrates for the division of \_\_\_\_\_ in the county of \_\_\_\_\_ situate in \_\_\_\_\_ aforesaid, for a copy of the conviction of J. S. gamekeeper to Lieutenant General P. under the hands and seals of S. B., M. B. Esquires, and the Rev. E. G. clerk, two of his Majesty's justices of the peace for the said county, for having, as this deponent had heard and understood, on the \_\_\_\_\_ day of \_\_\_\_\_ last, at the parish of \_\_\_\_\_ in the county of \_\_\_\_\_ used certain dogs to kill and destroy game, contrary to the statute in that case made and provided, whereby the said J. S. had forfeited and paid the sum of 5*l.*: and the deponent saith, that on such application as aforesaid a paper writing purporting to be a copy of the conviction of the said J. S. as aforesaid was delivered to this deponent by a clerk in the office of the said J. W. situate at \_\_\_\_\_ aforesaid, and a true copy of which said paper writing is hereunto annexed; and deponent further saith, that he this deponent is advised and believes that the information on which the said conviction was founded and also the said conviction are defective; and deponent further saith, that he did on the \_\_\_\_\_ day of \_\_\_\_\_ deliver to the said S. B., M. B. and the said Rev. E. G. and also to T. C. the informer, described in the said conviction, notices signed by the said J. S. stating therein that he the said J. S. did intend to move this honourable court in the [first] day of [Hilary] Term next, or as soon after as counsel could be heard, for a rule to show cause why a writ of certiorari should not be granted to remove the said information and conviction and all proceedings relating thereto in his Majesty's said Court of King's Bench.

W. H.

Sworn, &c.

(No. 11.)

Certiorari bond on a conviction for keeping dogs or engines, on 5 Anne, c. 14, s. 2. (a)

KNOW all men by these presents, &c. Whereas the above-bound A. O. was lately convicted before J. P. Esquire, one of his Majesty's justices of the peace in and for the county of \_\_\_\_\_ aforesaid, of keeping and using at \_\_\_\_\_ aforesaid, in the said county, a [greyhound] to kill and destroy the game; and whereas the said A. O. hath since his said conviction sued out his Majesty's writ of certiorari to remove the same and the proceedings thereupon before the King himself wherever he shall be in England on [the day of the return of the certiorari]: The condition of the above obligation is such, that if the above-bound A. O. do and shall (according to the true intent and meaning of the statute in that case made) well and truly pay to the said A. I. within fourteen days after the said conviction shall be confirmed, or a proocondo granted thereupon, his full costs and charges which he shall sustain touching or concerning the said conviction, and removal thereof by the said writ of certiorari; then the above-written obligation shall be void, otherwise of force.

## Forms of Proceedings relative to Game Certificates.

[See forms of Game Certificates, post, Vol. V. p. 842.]

(No. 12.)

Information on 52 Geo. 3, c. 93, Sch. L. Rule XI. for not producing a certificate on demand. (b)

BE it remembered that on, &c. at, &c. A. I. of, &c. [labourer,] in his presence per person cometh before me J. P. one of his Majesty's justices of the peace in and for the county of \_\_\_\_\_ and also being a commissioner acting in the execution of the statutes relating to assessed taxes for the district of \_\_\_\_\_ [or cometh before us and being commissioners acting in the execution of the acts relating to assessed taxes for the district of \_\_\_\_\_] and now here before me, [or us,] maketh information and complaint that A. O. of, &c. [labourer,] within three calendar months now last past, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_ at the parish of \_\_\_\_\_ in the county aforesaid, and within the district aforesaid, did use (c) a dog, [gun, net,

(a) See ante, 912.

(b) See ante, 893; the statute gives the form of conviction, ante, 895. See the 54 Geo. III. c. 141, ante, 891.

(c) If the offence be for refusing to produce a certificate, &c. where the party is assisting an uncertificated person, &c. then say, "did aid and assist [one E. F.] in the taking and killing of game, [woodcocks, snipe, or conies, and if for conies observe the next note,] by means of a gun, [dog, net, or other means, naming them,] there, the said act of aiding and assisting as aforesaid not being then and there done

in the company or presence and for the use of any person who had obtained such certificate as is directed by the statute in that case made and provided, nor being then and there done in the company or presence and for the use of any person who by virtue of such a certificate then and there used his own dog, [gun, net, or other engine,] for the taking or killing of such game, [woodcock, snipe, quail, landrail, or coney,] and who did not act therein by virtue of any deputation or appointment by one J. J. &c. [concluding as above.]"

r other engine, as the case may be, naming the engine,] (a) for the purpose of taking and killing game (b), [woodcock, snipe, quail, landrail, or conies,] there,\* and one J. J. he the said J. J. then and there being an assessor, (c) [or collector,] of the said parish of \_\_\_\_\_ did then and there demand and require from the said A. O. so acting as aforesaid, the production of a certificate issued to him for that purpose, as is directed by the statute in that case made and provided, and that the said A. O. wilfully refused to produce, and did not produce any such certificate, and that no such certificate was produced to the said J. J. and that thereupon the said J. J. having made such demand as aforesaid, and no such certificate being produced to him, the said J. J. then and there required the said A. O. forthwith to declare to him the said J. J. the Christian and surname, and place of residence of him the said A. O. and also the parish or place (if any) in which he the said A. O. had been assessed to the duties by the said statute granted or consolidated therewith: And that the said A. O. after such demand made, and in default of the production of a certificate issued to him for the purpose of using such dog, &c. as the case is,] as aforesaid, for the purpose aforesaid, [or for the taking or killing, or the aiding and assisting in the taking or killing of such game, &c. as the case is,] then and there wilfully refused to give in to the said J. J. the Christian and surname, and place of abode, of him the said A. O. [or then and there produced to the said J. J. a false certificate or a fictitious certificate: or then and there gave to the said J. J. a false name, or a false place of residence, or a false place of assessment, or a fictitious place of assessment, as the case is,] contrary to the form of the statute in that case made and provided, and by means of the premises, and by force of the statute in that case made and provided, the said A. O. hath forfeited for his said offence the sum of 20l. [may be mitigated to 10l.]: Whereupon the said A. I. prays the judgment of me the said justice and commissioner, [or the said commissioners,] in the premises, and that the said A. O. may be summoned to answer the premises before me the said justice and commissioner, [or us the said commissioners.] Exhibited before me, [or us,] this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_ A. I.

## (No. 13.)

Proceed as in the above information, (No. 12,) to the \*, and then thus:] *with-* having obtained such certificate as is directed by the statute in that case made provided, in order to an assessment for the year wherein the said A. O. did so such [dog, &c. as before; or did so take game, &c. or did so kill game, &c. or did assist in the taking or in the killing game, &c. as before, and as the case may be,] contrary to the form of the statute in that case made and provided; *whereby,* by force of the statute in that case made and provided, the said A. O. hath forfeited for his said offence the sum of 20l. [may be mitigated to 10l.] Whereupon the said A. I. prayeth the judgment of us the said commissioners, [or us the

Information on 52 Geo. 3, c. 83, Sch. L. Rule XII. for using a dog, &c. without a certificate. (d)

(c) It will be seen, ante, 891, that a person may use nets or springs for woodcock or snipes without a certificate.

(d) If the using the gun, &c. was for taking conies, here add, "conies in a certain warren there called \_\_\_\_\_ situate and being in the parish and district of \_\_\_\_\_; or in certain lands situate being in the parish and district of \_\_\_\_\_ in the tenure of A. B. (he the said \_\_\_\_\_ then and there not being the proprietor or tenant of the said warren, nor the said act by the direction or and of the proprietor or tenant of it.)"

Or according to the fact, a commissioner for the execution of the acts relating to assessed taxes, acting for the county, [riding, division or place.] of \_\_\_\_\_ a lord, [or lady, or gamekeeper,] of

the manor of \_\_\_\_\_ in which the said A. O. then was.

Or inspector, [or surveyor,] of taxes, acting in the execution of the acts for assessed taxes for the district in which the said A. O. then was.

Or a person duly assessed to the duties granted in the schedule of an act made and passed in the fifty-second year of the reign of his late Majesty King George the Third, intituled An Act for granting to his Majesty certain new and additional duties of assessed taxes, and for consolidating the same with the former duties of assessed taxes, and consolidated therewith.

Or the owner, [or landlord, or lessee, or occupier,] of the land called \_\_\_\_\_ in which the said A. O. then was.

(d) See the act, ante, 894; the statute gives a form of conviction, ante, 895.

## FORMS.

said justice and commissioner,] in the premises, and that the said A. O. may be summoned to answer the premises before us the commissioners aforesaid, [or me the said justice and commissioner.] A. I.

Exhibited before me, [or us,] the                      day of, &c.

(No. 14.)

Summons thereon.        } To                      of the parish of                      in the county of

WHEREAS information and complaint have been made before me one, &c. [or us two, &c.] [describe the justice or commissioner, as in the information,] at that you, on the                      day of                      at the parish of                      in the said county, &c. [here state the offence as in the information.]

These are to require you the said A. O. to appear before me [or us] at                      in the said county of                      on the                      day of                      at the hour of                      in the                      month of                      the same day, [to answer to the said information and complaint, and to be further dealt with according to law]; [if the summons be to a witness, omit the words in brackets, and say, to give evidence touching the matters contained in the said information, on the part of the said A. I. [or of the said A. O.] Given under my [or our] hands and seals, this                      day of, &c.

(No. 15.)

Conviction for killing game without a lawful certificate.

The stat. 52 Geo. III. c. 93, Sch. L. Rule XV. prescribes the form, which see ante, 895.

(No. 16.)

Warrant of distress thereon.

      } To the Constable of                      in the said county, and others whom this may concern.

WHEREAS A. O. of                      in the said county, [labourer,] is this day convicted before me J. P. Esquire, [or us,] one [or two] of his Majesty's justices of the peace in and for the said county, [and, if the fact, say one of the commissioners, &c. as in the conviction,] upon the oath of A. B. a credible witness, for that he the said A. O. on, &c. [describe the offence as in the conviction]; whereby the said A. O. has forfeited the sum of 20l.: these are therefore in his said Majesty's name to command you to levy the said sum by distress of the goods of the said A. O. and if within the space of four days next after such distress by you taken, the said sum shall not be paid, that then you do sell the said goods so by you distrained, and out of the money arising by such sale you do pay the sum of                      to J. J. of                      in the said county, one of the collectors of the assessed taxes for the parish of                      aforesaid, for the use of his Majesty; returning the overplus (if any) on demand unto the said A. O.: and if sufficient distress cannot be found of the goods of the said A. O. whereon to levy the said sum of [20l.] that then you certify the same to me, together with the return of this precept. Given under my hand and seal, the                      day of, &c.

(No. 17.)

Indorsement thereon of costs.

I the within named justice of the peace [and commissioner] do hereby indorse and declare the sum of                      to be the reasonable costs attending the information, conviction, and warrant of distress, (as on the other side hereof expressed,) settled by me to be levied by the said constable of                      and paid to the said informer. Given under my hand the day and year last within written. J. P.

(No. 18.)

Commitment thereon for want of distress.

      } To the Constable of                      in the said county, and to the Keeper of the House of Correction at                      in the said county, and others whom this may concern.

WHEREAS A. O. of, &c. [labourer,] was on, &c. convicted before me, &c. [as in the information,] upon the oath of A. B. a credible witness, for that he the said A. O. on, &c. [here state the offence as in the conviction,] by virtue whereof he the said A. O. hath forfeited the sum of [20l.]; and whereas on the said                      day of                      in the year aforesaid I did issue my warrant to the constable of                      to levy the said sum of [20l.] by distress and sale of the goods of the said A. O., and to apply the same

## VI.] Game—(Forms relative to Buying, Possession, &c.)

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According to law; and whereas it duly appears to me, as well on the oath of the said constable as otherwise, that he the said constable hath used his best endeavours to levy the said sum of [20l.] on the goods of the said A. O. as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you the said constable of aforesaid, to apprehend the body of the said A. O. and him duly to convey to the house of correction at in the said county, and there deliver him to the said keeper thereof, together with this precept. And I do hereby command you the said keeper of the said house of correction to receive into your custody in the said house of correction the said A. O., and him there safely to keep for the space of six calendar months, unless such penalty shall be sooner paid; and for so doing you shall be your sufficient warrant. Given under my hand and seal the day of, &c.

(No. 19.)

— I BE it remembered, that on the day of in the year of the reign of our sovereign Lord William the Fourth, of the United Kingdom of Great Britain and Ireland King, defender of the faith, A. O. of [labourer,] [if with sureties say, A. S. of [farmer,] and C. S. of [tailor,] came before and acknowledged to owe to our said Lord the King the sum of of lawful money of Great Britain, to be levied of his [or their] lands and chattels, lands, and tenements, [respectively, if with sureties,] to the use of our said Lord the King, his heirs and successors, if the said A. O. shall make default in the condition hereunder written:— Whereas the above bound A. O. has been this day duly convicted before me the said Justice of the peace and commissioner, [or us, &c.] upon the oath of A. W., a credible person, for that he the said A. O., on, &c., at, &c., did use a certain dog called a [r, [as the case is,] for the taking or destruction of game, without having such certificate as is required by law for that purpose, whereby the said A. O. has forfeited the sum of 20l. (a) Now the condition of this recognizance is such, that if the above bound A. O. shall appear at the next general quarter sessions of the peace, to be held at in and for the said county of, and shall then and there try such trial and abide the judgment of the said court of quarter sessions, and pay the costs taxed by such information, conviction, and appeal, as shall seem meet to and be ordered by the justices at such general quarter sessions, then this recognizance to be void, otherwise of force. A. O. acknowledged before me [or us.]

Recognizance on appeal against a conviction for sporting without a certificate, on 32 Geo. 3, c. 93, s. 13, sch. L.

under 5 Ann. c. 14, s. 2, 9 Ann. c. 25, 28 Geo. II. c. 12, and 58 Geo. III. c. 75, for having in Possession, Buying or Selling, &c., Game.

(No. 20.)

Commencement as in information, ante, 955,] that C. D. of, &c. on, &c. at, &c. lawfully had in his possession, and did expose to sale, divers, to wit, [two] hares, of the county of England, the said C. D., at the time when he so had the said hares in his possession, so exposed the same to sale as aforesaid, not having lands, &c. [negative the allegations, as ante, 955, (No. 3.) and then say] not being entitled to the said hares or any person or persons so qualified, contrary to the form of the statute in such matter made and provided, whereby he the said C. D. hath forfeited for his said offence the sum of 5l. for each of the said hares, making together the sum of [10l.] and arrears, &c. [conclude as in information, ante, 955.]

Information on 5 Ann. c. 14, s. 2, and 9 Ann. c. 25, for having hares in possession, and exposing to sale, defendant being unqualified. (b)

(No. 21.)

— I THE information and complaint of A. B., of the parish of, in the county of [labourer,] made before me, J. P., Esquire, one of the Justices of our Lord the King, assigned, &c. [proceed as in the information, ante, 955,

Information for two or more distinct offences and penalties on different days in same information.

If the penalty be mitigated, say, "I have mitigated to 10l." See ante, 913, 914. If the offence be actually selling the hares, there is no objection, since 28 Geo. II. c. 12, to negative the qualifications, as a qualified person is equally liable to a penalty for actually selling game. A conviction may be readily framed from this information.

**Game—(Forms relative to Buying, Possession, &c.)** [XVI.]

to the statement of the forfeiture of *5l.* and then proceed as follows:] And further, the said *A. B.* on the said day of \_\_\_\_\_, in the year aforesaid, informeth me maketh complaint before me, the said justice, that on, &c., at the said parish of \_\_\_\_\_ in the said county, the said *C. D.* did keep and use, &c. [state the second offence, and again fully negative the qualifications, as ante, 955, (No. 3.) to the statement of the forfeiture of *5l.*, and then conclude as follows:] And thereupon the said *A. B.* prayeth the judgment of me the justice aforesaid in the premises, and that the said *C. D.* may be convicted of his said offences, and that the said *A. B.* may have one moiety of the said forfeitures, according to the form of the statute in such case made and provided, and that the said *C. D.* may be summoned to answer the premises before me the justice aforesaid.

Before me, *J. P.*

(No. 22.)

Information on  
5 Ann. c. 14, s. 2,  
and 28 Geo. 2,  
c. 12, against an  
innkeeper for  
having in posses-  
sion, &c. game. (a)

— } BE it remembered, that on, &c., at, &c. *A. F.*, of, &c. personally came  
(to wit.) before me, *J. P. Esquire*, one of his Majesty's justices of the peace  
for the said county, and on his oath informeth, that within three months next  
past, that is to say, on the, &c., *C. D.*, of \_\_\_\_\_, in the parish of \_\_\_\_\_, in the  
county aforesaid, innkeeper, at \_\_\_\_\_ aforesaid, in the said parish of \_\_\_\_\_, in the  
said county, in the house of the said *C. D.*, there had in his possession [or sold, or  
exposed to sale] [two] partridges, the said *C. D.* then and there being an innkeeper,  
and being a person not then having, &c. [here negative the qualifications, as ante,  
955, (No. 3.)] (b) and then proceed as follows:] not then being a person in any manner  
whatsoever qualified or authorised to kill or destroy game, or to have the said [two]  
partridges in his custody or possession,\* contrary to the form of the statute in such  
case made and provided, whereby he the said *C. D.* hath forfeited for his said offence  
the sum of *5l.* for each of the said partridges, and thereupon, &c. [proceed as in in-  
formation, ante, 955, to the end].

(No. 23.)

Warrant against  
an innkeeper for  
having game in  
his possession, on  
5 Ann. c. 14,  
s. 2. (a)

— } To the Constable of \_\_\_\_\_

WHEREAS *A. B.* of \_\_\_\_\_ hath this day made information and complaint upon  
oath before me, *J. P. Esquire*, one of his Majesty's justices of the peace in and for  
the said county, that on the day of \_\_\_\_\_ now last past, *C. D.* of \_\_\_\_\_ in the  
parish of \_\_\_\_\_ in the county aforesaid, [innkeeper,] at \_\_\_\_\_ aforesaid, in the  
parish and county aforesaid, in the house of the said *C. D.* then and there had in his  
possession [two] partridges [or did offer to sell two partridges, or as the case shall  
be, see the information,] the said *C. D.* being a person not then having lands or ten-  
ements, or any other estate, &c. [negative the qualifications, as ante, 955, (No. 3.)]  
nor then being a person in any manner whatsoever qualified or authorised to kill game,  
or to have the said [two partridges] in his custody or possession, against the form of  
the statute in that case made and provided; these are therefore to command you to  
bring the said *A. O.* before me or some other of his Majesty's justices of the peace for  
the said county to answer the premises, and to be further dealt with according to  
law. Given under my hand and seal, the day of \_\_\_\_\_ in the year, &c.

(No. 24.)

Conviction of an  
innkeeper, for  
having par-  
tridges in his  
custody and sell-  
ing the same, on  
5 Ann. c. 14, and  
28 Geo. 2, c. 12. (a)

— } BE it remembered, that on, &c. at, &c. in the county of \_\_\_\_\_, *A. I.* of, &c.  
personally came before me, *J. P. Esquire*, one of his Majesty's justices of the  
peace in and for the said county of \_\_\_\_\_, and on his oath informeth me that *A. O.*  
of \_\_\_\_\_ in the county of \_\_\_\_\_, [innkeeper,] on, &c., at, &c., being a person not  
then having lands, &c. [negative the qualifications, and state the offence as in the in-  
formation, ante, 955, to the \*] contrary to the form of the statute in such case made  
and provided; whereupon the said *A. O.*, after being duly summoned to answer the  
said charge, appeared before me on the day of \_\_\_\_\_ in the year of our Lord  
aforesaid, at \_\_\_\_\_ in the said county of \_\_\_\_\_ and having heard the charge  
contained in the said information, declared he was not guilty of the said offence [or as  
the case may happen to be; if he do not appear, see ante, 956, (No. 5.) how to state it.]  
Whereupon I the said justice did proceed to examine into the truth of the charge con-  
tained in the said information, and on the day of \_\_\_\_\_ aforesaid, at the

(a) See ante, 914, 915.

(b) See ante, 961, n. (b.)

[.] **Game—(Forms relative to Buying, Possession, &c.)**

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h of aforesaid, in the said county of one credible witness, to wit,  
of in the said county of [labourer,] upon his oath deposeth and  
in the presence and hearing of the said C. D., that, &c. [state the evidence as  
y as possible in the words used by the witness, and if more than one witness  
ramined, state the evidence given by each. If the defendant be not present  
ar the evidence, or if he confesses the charge, see form, ante, 956.] Therefore  
nifestly appearing to me that he the said A. O. is guilty of the offence charged  
him in the said information, I do hereby convict him of the offence aforesaid, and  
clare and adjudge that he the said A. O. hath forfeited the sum of [10l.] of law-  
oney of Great Britain, (that is to say, the sum of 5l. for each of the said par-  
s,) for the offence aforesaid, to be distributed according to the form of the statute  
t case made and provided.  
ven under my hand and seal this day of , in the year of our Lord  
ousand eight hundred and J. P. (L.S.)

Though stat. 5 Ann. c. 14, makes no distinction between those innkeepers who  
are qualified by estate and those who are not, it is more safe to allege want  
of qualification, unless the defendant actually sold the birds, or offered them  
to sale; in which case, as stat. 28 Geo. II. c. 12, inflicts the penalty, whe-  
ther the person be qualified or not, it may be proper to omit the whole of  
what is stated in the conviction respecting qualifications.

(No. 25.)

- } To the Constable of , and others whom this may concern.

HEREAS A. O. of, &c., innkeeper, is on this day of, &c. duly convicted  
me, J. P. Esquire, one of his Majesty's justices of the peace in and for the  
county, upon the oath of A. W. a credible witness, for that the said A. O. on the  
day of, &c. at the parish of aforesaid, in the county aforesaid, had in  
tody and possession [two partridges,] the said A. O. being no way qualified by  
cs of this realm to have the said [two partridges] in his custody or possession,  
t the form of the statute in that case made, by reason whereof the said A. O.  
rfeited the sum of [10l.]: These are therefore to require you to levy the said  
[10l.] by distress of the goods of the said A. O.; and if within the space of  
(b) days next after such distress by you taken, the said sum of [10l.] to-  
with the reasonable charges of taking and keeping the said distress shall not be  
hat then you do sell the said goods so by you distrained as aforesaid, and out  
money arising by such sale that you do pay one half of the said sum of [10l.]  
. of [labourer,] who informed me of the said offence, and the other half  
oor of the parish of aforesaid, within which parish the said offence was  
ted; returning to the said A. O. the overplus on demand; the reasonable  
of taking, keeping, and selling the said distress being first deducted; and if  
t distress cannot be had of the goods of the said A. O. that you certify the  
me, together with the return of this precept. Given under my hand and seal  
day of in the year of

Warrant to levy  
10l. on the goods  
of an innkeeper  
convicted of hav-  
ing game in his  
custody, on 5 Ann.  
c. 14, s. 2. (a)

(No. 26.)

} To the Constable of in the said county, and to the Keeper of the  
\$ House of Correction at , in the said county.

HEREAS A. O. of in the said county, [innkeeper,] was on the day  
duly convicted before me, J. P. Esquire, one of his Majesty's justice of the  
and for the said county, upon the oath of A. W. of , a credible wit-  
that the said A. O. on the day of, &c., at the parish of afore-  
the county aforesaid, had in his custody and possession [two partridges,] the  
O. being no way qualified by the laws of this realm to have the said [two par-  
in his custody or possession, against the form of the statute in that case made,  
n whereof the said A. O. hath forfeited the sum of [10l.]: And whereas on  
day of in the year aforesaid, I did issue my warrant to the con-

Commitment (c)  
on the same for  
want of distress,  
on 5 Ann. c. 14,  
s. 2.

see ante, 914, 915.

(c) As to commitments in general,  
y 27 Geo. II. c. 10, s. 1, ante, see ante, Commitment, Vol. I.  
§ 17, it is to be not less than four  
; than eight days.



**Game—(Forms as to Killing, &c. in general, in the Night, &c.****FORMS.**

stable of \_\_\_\_\_ to levy the said sum of [10l.] by distress and sale of the goods of the said A. O. and to distribute the same according as is directed by the said statute; and whereas it duly appears to me, as well on the oath of the said constable of \_\_\_\_\_ as otherwise, that he the said constable of \_\_\_\_\_ hath used his best endeavours to levy the said sum on the goods of the said A. O. as aforesaid, but that no sufficient distress can be found whereon to levy the same: these are therefore to require the said constable of \_\_\_\_\_ aforesaid to carry the said A. O. to the said house of correction aforesaid, and deliver him to the said keeper thereof together with this precept. And you the said keeper are hereby commanded to receive into your custody the said house of correction him the said A. O. and him there safely to keep for the space of three months, without bail or mainprize; and for your so doing this warrant is your sufficient warrant. Given under my hand and seal the \_\_\_\_\_ day of, &c.

(No. 27.)

Conviction against a carrier for carrying game.

See form of a conviction of a carrier, ante, 917, n. held good.

(No. 28.)

Conviction on 58 Geo. 3, c. 75, s. 1, for buying game. (a)

— } BE it remembered, that on, &c., at, &c., A. J., of, &c., personally came before me, J. P., clerk, one of his Majesty's justices of the peace for the county of \_\_\_\_\_ and on his oath informed me, that A. O., late of, &c., within the calendar months now last past, on, &c., at the parish of, &c., did buy of E. F. (b) [two] hares, [pheasant, partridge, moor-game, heath-game, or grouse,] contrary to the form of the statute in such case made and provided; whereupon the said A. O., after being duly summoned to answer the said charge, appeared before me, &c., [here state the appearance before the magistrate, the defence and the evidence, as is usual in other convictions, see the forms, ante, 956 and 962, and then conclude thus:] Therefore it manifestly appearing to me that he the said A. O. is guilty of the offence charged upon him in the said information, I do hereby convict him of the offence aforesaid, and do declare and adjudge, that he the said A. O. hath forfeited the sum of [10l.] of lawful money of Great Britain, that is to say, the sum of \_\_\_\_\_ for each of the said [hares] for the offence aforesaid, to be distributed according to the form of the statute in that case made and provided. Given under my hand and seal this \_\_\_\_\_ day of, &c. J. P. (L.S.)

**Forms as to Penalties for Killing, &c. Game in the Night or on Sunday, &c.**

(No. 29.)

Information on 13 Geo. 3, c. 80, s. 1, for killing game in the night. (c)

[Commencement as usual, stating the information to be on oath, and state the offence thus:] that C. D., late of the parish of \_\_\_\_\_, in the county aforesaid, [labourer,] within the space of one calendar month now last past, to wit, on, &c., the hour of eleven in the night of the same day, at the parish of \_\_\_\_\_, in the county, did knowingly and wilfully kill, [take, or destroy,] a hare, [pheasant, partridge, moor-game, or heath-game,] contrary to the form of the statute in such case made and provided; and which is the [first] offence of the said C. D. against the said statute; whereby and by force of the statute in such case made and provided the said C. D. hath forfeited, &c. [as usual to the end. See Information, ante, 955.]

(No. 30.)

Conviction for like offence. (c)

— } BE it remembered, that on, &c., C. D., late of, &c., is convicted before me to wit. } J. P., one of his Majesty's justices of the peace for the said county of \_\_\_\_\_ for that the said C. D., within the space of one calendar month now last past, to wit, on, &c., [describe the offence as in the information, supra, (No. 29,)] contrary to the form of the statute in such case made and provided; and which was the [first] offence of the said C. D. against the said statute. Therefore I do declare and adjudge, that

(a) As to the offence see ante, 915. An information and other proceedings may be readily framed from this conviction and the preceding forms.

(b) Or if the party be not known omit this.  
(c) The statute itself gives a very loose form of conviction. See ante, 923, 924.

he said C. D. hath forfeited the sum of \_\_\_\_\_, of lawful money of Great Britain, the offence aforesaid, to be distributed according to the form of the statute in that made and provided; and also that the said C. D. shall pay the further sum of \_\_\_\_\_, for the costs and charges previous to and attending this conviction, by me retained at such sum. Given under my hand and seal, the day and year first esaid.

FORMS.

J. P.

(No. 31.)

The description of the offence in this case may be thus:] That the said \_\_\_\_\_, within the space of one calendar month now last past, to wit, on, &c., at the \_\_\_\_\_ of [eleven] in the night of the same day, at the parish of \_\_\_\_\_, in the said county, did use a certain gun, [dog, snare, net, or other engine,] with intent then there to kill, take, and destroy a hare, [pheasant, partridge, moor-game, or h-game,] contrary to the form of the statute in such case made and provided; which is the [first] offence of the said C. D. against the said statute. [The rest of the information or conviction may be readily collected from the last two precedents.]

The like for using a gun, &c. to kill in the night.

(No. 32.)

Commencement as usual, stating the information on oath, ante, 962, and describing the offence according to the fact, which may be thus:] That the said C. D., in the space of one calendar month now last past, to wit, on Sunday [or Christmas] the \_\_\_\_\_ day of, &c., in the day-time of the same day, at the parish of \_\_\_\_\_, in the said county, did knowingly and wilfully kill, [take or destroy,] a hare, pheasant, partridge, heath-game, or moor-game,] contrary to the form of the statute in such case made and provided; and which is the [first] offence of the said C. D. against the said statute. [Conclude as usual, stating the adjudication in the indictment, as ante, 994, (No. 30.)]

Information or conviction on 13 Geo. 3, c. 89 s. 6, for killing game on a Sunday. (a)

(No. 33.)

Commence as directed in the last precedent. The offence may be described thus:] That the said C. D., within the space of one calendar month now last past, to wit, on Sunday, [or Christmas-day,] the \_\_\_\_\_ day of, &c., in the day-time of the same day, at the parish of \_\_\_\_\_, in the said county, did use a certain gun, [dog, or engine,] for the purpose then and there of killing, [taking or destroying,] a [pheasant, partridge, moor-game, or heath-game,] contrary to the form of the statute in such case made and provided; and which is the [first] offence of the said C. D. against the said statute. [Conclude as directed in the last precedent.]

The like for using a gun, &c. on that day.

(No. 34.)

If a third offence the offender may be indicted, ante, 923, 924. See form of indictment for a third offence against 9 Geo. IV. c. 64, post, (No. 28,) most of which assist in the framing of an indictment on the 13 Geo. III. c. 80.

Indictment.

Forms on 9 Geo. IV. c. 69, against Night Poaching and going Armed.

(No. 35.)

— } BE it remembered, that on, &c., at, &c., in the county of \_\_\_\_\_, A. O. is } convicted before us, J. P. and S. P., two of his Majesty's justices of the } for the said county,\* for that the said A. O., within six calendar months now } last, to wit, on, &c., at and about the hour of \_\_\_\_\_ in the night of the same } t, &c., in the said county, did, by night as aforesaid, then and there unlaw- } take and destroy certain game, [or rabbits,] to wit, [two pheasants,] in a cer- } tain enclosed [or open] land of one A. B., (c) there situate, contrary to the form of } tute in that case made and provided; and we the said justices adjudge the

Conviction on 9 Geo. 4, c. 60, for a first offence in destroying, &c. game in the night. (b)

The statute, ante, 925, prescribes the formal points of the conviction. See the enactment, ante, 927. The act prescribes the formal parts (c) See ante, 932.

## FORMS.

said A. O., for his said offence, to be imprisoned in the \_\_\_\_\_ at \_\_\_\_\_, and there kept to hard labour for the period of \_\_\_\_\_ calendar months, and at the expiration of such period to find sureties by recognisance, himself in the sum of [10l.] and two sureties in the sum of [5l.] each, or one surety in the sum of [10l.] conditioned that he the said A. O., shall not so offend again for the space of one year then next following; and we further adjudge the said A. O., in case he shall not find such sureties as aforesaid, to be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties shall be sooner found. Given under our hands and seals the day and year first above mentioned.

J. P. (L.S.)  
S. P. (L.S.)

## (No. 36.)

Conviction on  
9 Geo. 4, c. 99,  
s. 1, for a first  
offence in being  
on land in night-  
time armed to  
destroy game. (a)

[Commencement as in last preceding precedent to the \*], for that he the said A. O. within six calendar months now last past, to wit, on, &c., at and about the hour of \_\_\_\_\_, in the night-time of the said day, at \_\_\_\_\_, in the county aforesaid, did, by night as aforesaid, unlawfully enter certain inclosed [or open] land of the said A. B. (b) there situate, and was then and there unlawfully in the said land, with certain gun, [net, engine, or instrument, to wit, an instrument called a \_\_\_\_\_], for the purpose of then and there taking and destroying game and rabbits, contrary to the form of the statute in that case made and provided, and we the said justices do judge, &c. [as in the last form, to the end.]

## (No. 37.)

Conviction on  
9 Geo. 4, c. 99,  
s. 1, for a second  
offence in night  
poaching. (a)

[Proceed according to the offence as in either of the last two forms to the words,] contrary to the form of the statute in that case made and provided; and it is now proved before us, the said J. P. and S. P., that the said A. O. was heretofore, as before the said offence, to wit, on, &c., at, &c., duly convicted before O. P. and Q. R. two of his Majesty's justices of the peace for the county of \_\_\_\_\_, for that the said A. O. on, &c., in the night-time, &c. [describe the offence according to the fact, see the last two precedents,] contrary to the form of the statute in such case made and provided; and the said A. O. was therefore then and there adjudged by the said O. P. and Q. R. for his said last-mentioned offence to be imprisoned in the \_\_\_\_\_ at \_\_\_\_\_, there to be kept to hard labour for the period of \_\_\_\_\_ calendar months, and at the expiration of such period to find sureties by recognisance, himself in the sum of [10l.] and two sureties in the sum of [5l.] each, or one surety in the sum of [10l.] conditioned that he the said A. O. should not so offend again for the space of one year then next following; and in case he should not find such sureties as aforesaid, he should be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties should be sooner found, [see the prior conviction]. We, the said J. P. and S. P., justices as aforesaid, do therefore now adjudge the said C. D. for such his said second offence, for which he is now convicted as aforesaid, to be imprisoned in the \_\_\_\_\_ at \_\_\_\_\_, and there kept to hard labour for the space of \_\_\_\_\_ calendar months, and at the expiration of such period to find sureties by recognisance, himself in the sum of [20l.] and two sureties in the sum of [10l.] each, or one surety in the sum of [20l.] conditioned that he the said A. O. shall not so offend again for the space of two years next following; and we further adjudge the said A. O., in case he shall not find such sureties as aforesaid, to be further imprisoned and kept to hard labour for the space of one year, unless such sureties shall be sooner found. Given under our hands and seals the day and year first above mentioned.

J. P. (L.S.)  
S. P. (L.S.)

## (No. 38.)

Indictment on  
9 Geo. 4, c. 99,  
for a third offence,  
on s. 1, after two  
convictions. (a)

— THE jurors for our Lord the King, upon their oath present, that C. D., late of, &c., on, &c., at, &c., was duly convicted before L. M. and J. N., Esquires, two of his Majesty's justices of the peace for the county of \_\_\_\_\_, for that he the said C. D., on, &c. [here set out the first conviction at length in the past tense.] And the jurors aforesaid, on their oath aforesaid, do further present that the said C. D., being so convicted as aforesaid, afterwards, on, &c., at, &c. was again duly convicted before J. P. and R. S., Esquires, two of his Majesty's justices of the peace for the county of \_\_\_\_\_.

(a) See the act, ante, 927.

(b) See ante, 932.

that he the said C. D., on, &c. [here set out the second conviction in like manner.] And the jurors aforesaid, on their oath aforesaid, do further present, that said C. D., late of, &c.; having been so twice convicted as aforesaid, and the said convictions being and remaining in full force, after the said convictions, and within the calendar months now last past, to wit, on, &c., at and about the hour of the night of the same day, at, &c. aforesaid, did by night, as last aforesaid, unlawfully take and destroy certain game, to wit, [two pheasants,] [or certain rabbits, to wit, rabbits,] in certain inclosed [or open] land, there situate, the property of one [describe the offence according to the fact, if it be the entering only the land and destroying game,] against the form of the statute in that case made and provided, and to the peace of our said Lord the King his crown and dignity.

(No. 39.)

— THE jurors for our Lord the King upon their oath present, that C. D., late of, before the commission of the offence hereinafter mentioned, on, &c. at and about the night of the same day, at the parish aforesaid, in the county aforesaid, did, by night as aforesaid, unlawfully enter certain land (b) of one A. B., owner or occupier, &c., ante, 927.] there situate, and was then and there during the night unlawfully in the said land, with a certain gun, [net, engine, or instrument to wit, an instrument called a ] for the purpose then and there of taking and destroying game, contrary to the form of the statute in such case made and provided, and he the said C. D. then and there upon the said land, in the night-time as aforesaid, with the gun, [net, engine, or instrument,] aforesaid, for the purpose aforesaid, as found by one E. F., [or by one G. H., who was then and there assisting one ] which said E. F. was then and there the gamekeeper [or servant] of the said land and had then and there lawful authority to seize and apprehend the said C. D., as about to do so, and that the said E. F., being then and there about to seize and apprehend the said C. D. for the said offence, he the said C. D., with a gun, bow, fire-arms, bludgeon, stick, club, or offensive weapon, to wit, an offensive weapon called a ] which the said C. D. in both his hands then and there had and did then and there unlawfully assault and offer violence towards the said E. F., said E. F. then and there being lawfully authorised to seize and apprehend the said C. D. as aforesaid, against the form of the statute in that case made and provided, and against the peace of our said Lord the King his crown and dignity. [Add counts as the case may suggest.]

Indictment on 9 Geo. 4, c. 96, s. 2, against a night poacher assaulting a gamekeeper. (a)

the offence were committed off the land, and during pursuit, proceed to the \* in the above form, and then say, "the said C. D. from the said land escaped into a certain close there situate, and the said E. F. then and there pursued the said C. D. into the said close, for the purpose of so seizing and apprehending him the said C. D. as aforesaid, he the said E. F., as such gamekeeper as aforesaid, having then and there lawful right so to do as aforesaid, and, &c." [Conclude as in above form from the asterisk.]

(No. 40.)

THE jurors for our Lord the King upon their oath present, that A. O., late of, labourer,] C. D., late of the same place, [labourer,] and E. F., late of the same place, [labourer,] (together with divers other evil disposed persons, to the number of and more, to the jurors aforesaid unknown,) [if they be all known omit the words,] on, &c. at and about the hour of in the night of the same day, with arms, at the parish aforesaid, in the county aforesaid, being then and there lawfully armed with guns, [cross-bows, fire-arms, bludgeons, or certain offensive weapons, to wit, [three] offensive weapons, respectively called ] then and there by night as aforesaid, and armed as aforesaid, did unlawfully enter certain [or open] land, of one A. B., (c) there situate, and were then and there so armed unlawfully in the said land, for the purpose then and there of taking and destroying game, against the form of the statute in that case made and provided, and against the peace of our said Lord the King his crown and dignity. [Add counts as the case may suggest.]

Indictment on 9 Geo. 4, c. 96, s. 9, against three or more for entering land in the night armed for the purpose of taking game. (b)

See section 1 of the act, ante, v. Rex, in error, 10 B. & Cres. 89, ante, 932.

See the act, ante, 930, and Davies (c) See ante, 931.

## FORMS.

## Forms relating to Deer.

## (No. 41.)

Commitment on  
7 & 8 Geo. 4,  
c. 29, s. 26, for  
stealing, &c. deer  
in inclosed land,  
&c.

[Commencement as usual, *ante*, 11, (No. 2.)] *on, &c. at, &c. in the* county, *in a certain inclosed land there situate, the property of* [or *in the occupation of*] *A. B., wherein deer had been and then were usually kept,* [in the inclosed part of any forest, chase or purlieu, or in any inclosed land wherein deer shall be usually kept,] *one deer, (the property of the said A. B.,) then and there kept and detained, then and there in the said inclosed land unlawfully, wilfully, and feloniously: course, kill, and carry away,* [course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound,] *against the form of the statute in that case made and provided. And you the said keeper, &c., [as usual, as ante, 11, to the end.]*

## (No. 42.)

Indictment for  
like offence.

— *THE jurors for our Lord the King upon their oath present, that C. D., of, &c., on, &c., at, &c., in certain inclosed land there situate, [in the inclosed part of any forest, chase or purlieu, or in any inclosed land wherein deer shall be usually kept,] the property [or in the occupation] of A. B., wherein deer had been and then were usually kept, one deer, of the value, to wit, of 40s., the property of the said A. B., then and there (to wit, in the said inclosed land) being found, then and there unlawfully, wilfully and feloniously did hunt, kill, and carry away, [hunt, snare, or carry away, or kill or wound, or attempt to kill or wound,] against the form of the statute in such case made and provided, and against the peace of our said Lord King his crown and dignity. [Add other counts as the case may suggest.]*

## (No. 43.)

Conviction on like  
statute for killing,  
&c. deer in an  
uninclosed forest,  
&c. (a)

— *BE it remembered, that on, &c., at, &c., C. D., late of, &c., is convicted to wit, before me, J. P., one of his Majesty's justices of the peace for the county, for that the said C. D., on, &c., at the parish of, &c., in a certain part of a certain forest [chase or purlieu] called, there situate, one deer of the value of 40s., then and there [kept and] being, then and there in the said inclosed part of the said [forest] unlawfully and wilfully did course, kill, and carry away, [course, hunt, snare or carry away, or kill or wound, or attempt to kill or wound,] against the form of the statute in that case made and provided: I the J. P. do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of [50l.] and also to pay the sum of shillings\* (b) for costs, with a fault of immediate payment, to be imprisoned in the [and there to be kept at hard labour] for the space of (c) calendar months, unless the said sum be sooner paid; and I direct that the said sum of 50l. shall be paid to A. B., aforesaid, in which the said offence was committed, to be by him applied according to the directions of the statute in that case made and provided; and I order that the sum of shillings for costs shall be paid to [the complainant]. Given under my hand and seal the day and year first above mentioned.*

J. P.

## (No. 44.)

Commitment on  
like statute for  
second offence,  
killing, &c. deer  
in an uninclosed  
forest, &c.

[Commencement as usual, *ante*, 11, (No. 2.)] *on, &c. at, &c., in a certain uninclosed part of a certain forest, [chase or purlieu,] called, there situate, one deer, then and there being, unlawfully, wilfully, and feloniously did course, kill, and carry away, [course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound,] against the form of the statute in that case made and provided.*

(a) See the enactment, *ante*, 932, 933. The act gives the formal parts of the conviction. See it, *post*, Vol. III. p. 554. An information may be readily framed from this form.

(b) If time be given for the payment of the penalty, the form of the conviction may be the same as above to the\* [for costs; and I order that the said sums

shall be paid by the said C. D. on or before the day of next; and I direct that the said sum of [50l.] shall be paid, &c. [as in the above form to the end.]

(c) See the 67th section, *post*, Vol. III. p. 553.

(d) See the 66th section, *post*, Vol. III. p. 553, and *ante*, 764.

the said C. D. having been previously convicted before J. P., one of his Majesty's justices of the peace in and for the said county, of having unlawfully and wilfully used, killed, and carried away a certain other deer, in the unclosed part of the forest, [according to the fact.] And you the said keeper, &c. [as usual, as in, 11, to the end.]

FORMS.

## (No. 45.)

An indictment for the second offence may be readily framed from the above precedents, and the one ante, 966, (No. 38,) stating the offence to have been done previously.

Indictment for second offence.

## (No. 46.)

To the Constable of \_\_\_\_\_ and others whom this may concern.

WHEREAS A. I. of, &c. hath this day made oath before me J. P. Esq. one of his Majesty's justices of the peace in and for the said county, the said A. I. being a credible person in this behalf, that he the said A. I. hath reasonable cause to suspect and doth set that C. D. of \_\_\_\_\_ in the same county, [labourer,] hath in his possession, or on premises, and with his knowledge, a deer, or some part thereof, [any deer, or the skin, or other part thereof, or any snare or engine for the taking of deer]: These therefore, in the name of our Lord the King, to authorise and require you, with necessary aid and proper assistants, to enter in the [day-time] into the dwellinghouse premises of the said C. D. at \_\_\_\_\_ aforesaid, in the county aforesaid, and there only to search for the said deer or part thereof, and if the said deer or any thereof shall be found upon such search, that you bring the same, and also the said C. D. before me, or some other of his Majesty's justices of the peace for the county aforesaid, to be disposed of and dealt withal according to law. Herein fail not. Given under my hand and seal at \_\_\_\_\_ in the county aforesaid, this \_\_\_\_\_ J. P. &c.

Warrant on 7 & 8 Geo. 4, c. 29, s. 27, to search for venison or engines, &c. (a)

## (No. 47.)

to wit: BE it remembered, that on, &c. at, &c. C. D. late of, &c. is convicted before me J. P. one of his Majesty's justices of the peace for the said county, for that he the said C. D. on, &c. at the parish of, &c. had in his possession [or on his premises at \_\_\_\_\_ aforesaid, and with his knowledge] a part of a deer [or snare, &c. see supra]; and upon the said part being found in the possession [and upon the premises] of the said \_\_\_\_\_ as aforesaid, by virtue of a certain search warrant, and the said C. D. being before me, the said J. P. now here as such justice as aforesaid, the said C. D. did not satisfy me, the said J. P. that he came lawfully by the said part of a deer, here a snare or engine for taking deer has been found, that he hath or then had any occasion for such snare or engine, and that he did not keep the same for any unlawful purpose, but hath altogether failed in so doing; against the form of the statute in that case made and provided: I the said J. P. do therefore adjudge the said C. D. said offence to forfeit and pay the sum of [20l.] and also to pay the sum of \_\_\_\_\_ s<sup>d</sup> (c) for costs, and in default of immediate payment to be imprisoned in the \_\_\_\_\_ here kept to hard labour for the space of \_\_\_\_\_ calendar months, (d) unless the same shall be sooner paid; and I direct that the said sum of [20l.] shall be paid to \_\_\_\_\_ of \_\_\_\_\_ aforesaid, in which the said offence was committed, to be by him apportioned according to the directions of the statute in that case made and provided; and that the said sum of \_\_\_\_\_ shillings for costs shall be paid to [the complainant.] under my hand and seal the day and year first above-mentioned. J. P.

Conviction on same statute for not accounting for possession, &c. (b)

See the act, ante, 933. The act prescribes the formal parts of conviction. See it, post, Vol. III.

If time given for payment of the \_\_\_\_\_, &c. the form of the conviction is the same as the above to the \_\_\_\_\_: and I order that the said sums be paid by the said C. D. on or before

the \_\_\_\_\_ day of \_\_\_\_\_ next; and I direct that the said sum of [20l.] shall be paid to A. J. of \_\_\_\_\_ [&c. as in the above form to the end.]

(d) See the 67th sect. post, Vol. III. p. 553.

(e) See the 66th sect. post, Vol. III. p. 553, and ante, 764.

## FORMS.

Summons on like act against person through whose hands such venison may have passed.

— to wit. } To the Constable of

(No. 48.)

and others whom this may concern.

WHEREAS lately, upon a part of a deer being by virtue of a search warrant found upon the possession [or the premises] of one C. D. at in the county aforesaid and the said C. D. being thereupon brought before me, J. P. one of his Majesty's justices of the peace for the county aforesaid, I was informed and given to understand that E. H. of in the county aforesaid, [labourer,] had had possession thereof from person from whom the same shall have been first received, or who shall have possession thereof.] These are, therefore, to require you forthwith to summon the said E. H. to appear before me at in the said county, on, &c. at the hour of o'clock in the forenoon of the same day to answer to the said information, and to certify me that he hath come lawfully by the said part of a deer, and to be further dealt with according to law; and be you then there to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal this day of year of our Lord J. P.

(No. 49.)

Conviction thereon. (a)

— to wit: BE it remembered, that on, &c. at, &c. E. F. is convicted before J. P. one of his Majesty's justices of the peace for the said county, for that on, at, &c. C. D. late of, &c. had in his possession [or on his premises at, &c. and with knowledge] a part of a deer, and upon the said part being found in his possession [or premises] as aforesaid, by virtue of a search warrant, the said C. D. was on, &c. at, &c. brought before me, the said justice, and was required by me to satisfy me that he came lawfully by such part, when he then and there satisfied me he had come lawfully by the same, and he was not nor is liable to conviction under the statute in that case made and provided; and I the said J. P. was then and there informed and given to understand that E. F. of, &c. had had possession thereof; and thereupon I the said justice then and there duly summoned him to appear before me on, &c. at, &c. for the discovery of the party who actually killed or stole the said deer, to satisfy me that he had come lawfully by the said part of the said deer, and to be further dealt with according to law; and also for that the said E. F. on, &c. at, &c. had possession of the said part of the said deer, and that the said E. F. although duly summoned by me, as such justice aforesaid, hath not appeared before me, or satisfied me that he came lawfully by the said part of the said deer [or that the said E. F. now appeareth before me, having been summoned for that purpose, but doth not satisfy me, the said J. P. that he came lawfully by the said part of the said deer]; against the form of the statute in that case made and provided; I the said J. P. do therefore adjudge the said E. F. for his said offence to forfeit and pay the sum of, &c. [Conclude as in the form (No. 47,) ante, 969.]

(No. 50.)

Conviction on 7 & 8 Geo. 4, c. 20, s. 28, for setting snares to take deer. (a)

— to wit: BE it remembered, that on, &c. at, &c. C. D. late of, &c. is convicted before me, J. P. one of his Majesty's justices of the peace for the county aforesaid, for that he the said C. D. on, &c. at the parish of, &c. in a part of a certain forest called [in any part of any forest, chase or purlieu, whether such part be inclosed or not; or in any fence or bank dividing the same from any land adjoining; or in any inclosed land where deer shall be usually kept] there situate, unlawfully and wilfully did set and use a certain snare and engine called a for the purpose of taking and killing deer; against the form of the statute in that case made and provided; and I the said J. P. do therefore adjudge the said C. D. for his said offence to forfeit and pay the sum of [20l.] and also to pay the sum of shillings\* (b) for costs, and in default of immediate payment to be imprisoned in the [and there kept to hard labour] for the space of calendar months, (c) unless the said sums shall be sooner paid; and

(a) The act prescribes the formal parts of the conviction. See it, post, Vol. III. p. 554.

(b) If time be given for payment of the penalty, &c. the form of the conviction may be the same as the above to the\* [for costs: and I order that the said sums

shall be paid by the said C. D. on or before the day of next; and I direct that the said sum of [20l.] shall be paid to A. J. of, &c. [as in the above form to the end.]

(c) See the 67th sect. post, Vol. III. p. 553.

irect that the said sum of 20l. shall be paid to A. I. (a) of aforesaid, in  
ch the said offence was committed, to be by him applied according to the directions of  
statute in that case made and provided: and I order that the said sum of  
lings for costs shall be paid to [the complainant.] Given under my hand and  
the day and year first above-mentioned. J. P.

FORMS.

## (No. 51.)

— to wit: BE it remembered, that on, &c. at, &c. C. D. late of, &c. is convicted  
re me, J. P. one of his Majesty's justices of the peace for the county aforesaid, for  
he the said C. D. on, &c. at the parish of, &c. a part, to wit, twenty feet of the  
e of certain land of A. B. there situate, wherein deer were then kept, unlawfully and  
lly did destroy; against the form of the statute in that case made and provided:  
I the said J. P. do therefore adjudge the said C. D. for his said offence to forfeit  
pay, &c. [as in last precedent to the end.]

Conviction on  
same statute for  
pulling down park  
fences, &c.

## (No. 52.)

Commencement as usual, ante, p. 11.] on, &c. at, &c. in and upon A. B. (the  
A. B. then being a person intrusted with the care of the deer then and usually  
and being within certain [inclosed] land [forest, chase, or purlieu, whether  
sed or not] there situate, and the said A. B. then and there being in the due  
tion of his duty as keeper of the said deer, and in execution of the powers given  
m in that behalf by a statute passed in the seventh and eighth years of the reign  
r late sovereign lord King George the Fourth, intituled "An Act for consoli-  
g and amending the laws in England relative to larceny and other offences  
cted therewith," unlawfully and feloniously did make an assault, and him  
id A. B. then and there, and whilst in the execution of the powers aforesaid,  
fully and feloniously did beat and wound: against the form of the statute in  
case made and provided. And you the said keeper, &c. [as usual, as ante,  
o the end.]

Commitment on  
7 & 8 Geo. 4,  
c. 20, s. 20, for  
assaulting, &c.  
gamekeeper. (b)

## (No. 53.)

— THE jurors for our Lord the King upon their oath present, that C. D., late  
on, &c. at, &c. with force and arms, into certain [inclosed] land then belonging  
F., where deer had been and then were usually kept [or into a certain forest,  
or purlieu called .] there situate, did unlawfully enter, with intent  
ind there unlawfully and feloniously to hunt, kill, snare, and carry away deer,  
hat one A. B., then and there being a person intrusted with the care of the deer  
said [inclosed] land then and there being, then and there [or then and there  
an assistant of E. F., then and there being a person intrusted, &c.], after the  
. D. had so entered into the said [inclosed] land as aforesaid [forest, &c.], and  
the said C. D. there remained, did demand from the said C. D. an engine, to  
gun,] then and there in the possession of the said C. D., and that upon the said  
then and there failing to deliver up the said engine, and altogether refusing to  
he the said A. B. did then and there attempt to seize and take the same from  
id C. D. for the use of the owner of the said deer, as was the duty of the said  
so to do, and as he lawfully might for the cause aforesaid. And the jurors  
id, upon their oath aforesaid, do further present, that the said C. D. then and  
with force and arms, in and upon the said A. B., the said A. B. then being a  
having been intrusted with the care of the deer within the said [inclosed] land  
esaid [or then and there being such assistant as aforesaid], and then and there  
in the due execution of his said duty as aforesaid, and of the powers given to  
that behalf by the statute in that case made and provided, unlawfully and  
ruly did make an assault, and him the said A. B., so being in the execution of  
d duty and of the powers aforesaid, then and there unlawfully and feloniously  
it and wound; against the form of the statute in such case made and pro-  
and against the peace of our lord the King his crown and dignity. [Add other  
as the case may suggest.]

Indictment for  
like offence.

another general count in Archb. Forms on Peel's Acts, 2d edit. 93.

See the 66th sect. post, Vol. III. (b) See the enactment, ante, 934.  
and see ante, 764.



## FORMS.

## Forms relating to Hares or Conies.

(No. 54.)

Commitment on  
7 & 8 Geo. 4,  
c. 20, s. 30,  
for killing, &c.  
hares or conies in  
the night-time.

[Commencement as usual, ante, p. 11.] on, &c. in the night-time, to wit, about the hour of [eleven] in the night of the same day, at, &c. in a certain warren and ground of A. B., there situate, then lawfully used for the breeding and keeping of conies [or hares], five conies [or hares] then and there in the said warren and ground unlawfully and wilfully did take and kill; against the form of the statute in that case made and provided. And you the said keeper, &c. [as usual, as ante, 11, to the end]

(No. 55.)

Indictment for  
like offence.

— THE jurors for our Lord the King upon their oath present, that C. D. late of, &c. on, &c. in the night-time, that is to say, about the hour of [eleven] o'clock in the night of the same day, at, &c. in a certain warren and ground of A. B. there situate, then lawfully used for the breeding and keeping of conies [or hares], two conies [or hares] then and there being found then and there in the said warren and ground, unlawfully and wilfully did take and kill; against the form of the statute in such case made and provided, and against the peace of our said Lord the King his crown and dignity. [Add other counts as the case may suggest.]

(No. 56.)

Conviction on  
7 & 8 Geo. 4,  
c. 20, s. 30, for  
taking hares or  
conies in breeding  
grounds in the  
day-time. (a)

— } BE it remembered, that on, &c. at, &c. C. D. late of, &c. [labourer,] is convicted before me, J. P. one of his Majesty's justices of the peace for the said county, for that he the said C. D. on, &c. about the hour of [six] of the morning of the same day, at, &c. in a certain warren and ground of A. B. there situate, then lawfully used for the breeding and keeping of conies [or hares], five conies [or hares] then and there being found then in the said warren and ground, unlawfully and wilfully did take, against the form of the statute in that case made and provided; I the said J. P. do therefore adjudge the said C. D. for his said offence, to forfeit and pay the sum of \_\_\_\_\_ pounds, and also to pay the sum of \_\_\_\_\_ shillings for costs, and in default of immediate payment to be imprisoned in the house of correction [or county gaol] of the said county, and there kept to hard labour for the space of \_\_\_\_\_ calendar months, unless the said sums shall be sooner paid, and I direct that the said sum of \_\_\_\_\_ pounds shall be paid to E. F. one of the overseers of the poor of the said parish of \_\_\_\_\_ in which the said offence was committed, to be by him applied according to the direction of the statute in that case made and provided, and I order that the sum of \_\_\_\_\_ shillings for costs shall be paid to [the complainant]. Given under my hand and seal the day and year first above mentioned.

(No. 57.)

Conviction under  
the same section  
for setting snares  
for taking hares  
or conies in war-  
rens or breeding  
grounds.

— } BE it remembered, that on, &c. at, &c. C. D. of, &c. [labourer,] is convicted before me J. P. one of his Majesty's justices of the peace for the said county, for that he the said C. D. on, &c. at, &c. in a certain warren and ground of G. H. there situate, then lawfully used for the breeding and keeping conies, unlawfully and wilfully did set a snare for the taking of conies, for the purpose and with the intent to take conies in the said warren and ground; against the form of the statute in that case made and provided; I the said J. P. do therefore adjudge, &c. [as in the last form to the end.]

## Forms relating to Pigeons.

(No. 58.)

Conviction on  
7 & 8 Geo. 4,  
c. 20, s. 33, for  
killing a house  
pigeon (b).

— } BE it remembered, that on, &c. at, &c. C. D. late of, &c. is convicted before to wit, { me, J. P. Esquire, one of his Majesty's justices of the peace for the said county, for that he the said C. D. on, &c. at, &c. one house pigeon, of the value of sixpence, the property of A. B. then and there being found, unlawfully and wilfully did kill and take [kill, wound, or take], against the form of the statute in that case made and provided; I the said J. P. do therefore adjudge the said C. D. for his said offence,

(a) See the enactment, ante, 935. The act prescribes the formal parts of the conviction. See it, post, Vol. III. p. 554.  
(b) See the enactment, ante, 939. The statute prescribes the formal parts of the conviction. See it, post, Vol. III. p. 554.

## VI.] Game—(Forms relating to Pigeons, Heath-Fowl, &c.)

973

FORMS.

forfeit and pay the sum of [two] pounds, over and above the value of the said pigeon, killed and taken as aforesaid, and the further sum of [sixpence], being the value of the said pigeon, and also to pay the sum of shillings\* (a) for costs; and in default of mediate payment of the said sums, to be imprisoned in the [and there kept to] d labour] for the space of (b) calendar months, unless the said sums be sooner paid; and I direct that the said sum of two pounds shall be paid to A. J. (c), of [resaid, in which the said offence was committed, to be by him applied according to directions of the statute in that case made and provided, and that the said sum of pence] shall be paid [to the said A. B. or if he have been examined in proof of the offence, then thus: also to the said A. J., A. B. the owner of the said pigeon, having examined in proof of the offence aforesaid;] and I order that the said sum of [pounds for costs shall be paid to (the complainant)]. Given under my hand and seal the day and year first above mentioned. J. P.

### Forms relating to Heath Fowl.

(No. 59.)

Commencement as usual, as ante, 955, (No. 3.)) on oath informeth me, that D., late of, &c., [labourer,] within the space of three calendar months now last, between the 10th day of December in the year of our Lord [and the 20th of August in the year of our Lord] aforesaid, to wit, on, &c. at the parish of, &c., did wilfully kill [take, kill, destroy, carry, sell, buy, or have in his possession] a certain heath-fowl; commonly called black game, contrary to the form of statute in such case made and provided; and which is the [first] offence of the said C. D. against the said statute; whereby and by force of the statute in such case made and provided, the said C. D. hath forfeited, &c., [as usual, ante, 955, (No. 3.),] &c. end.]

Information on 13 Geo. 3, c. 55, for killing heath-fowl out of season. (d)

### Form relative to Seizing Dogs, &c., under 22 & 23 Car. II. c. 25.

(No. 60.)

My of } To E. F. of, &c.

WHEREAS complaint hath been made unto me J. P., Esquire, one of his Majesty's justices of the peace in and for the said county, upon the oath of A. I. of [in the said county, [yeoman,] that he the said A. I. hath good ground to suspect that A. O. of] aforesaid, in the county aforesaid, [yeoman] being a person in no respect qualified by the laws of this realm so to do, hath kept in his custody a greyhound [gun, net, &c.] to kill and destroy the game; are therefore to command you in his Majesty's name to enter into and search in any-time the houses, out-houses, and other places of him the said A. O. at [said, and if you there find any greyhound, &c. that you seize and keep the same] use of A. L., Esquire, lord of the manor of [in which manor the said] s, out-houses, and other places are situate and do lie, [or if net, gun, &c., that] ut in pieces or destroy the same.] Given under my hand and seal the [of] in the [year, &c.]

Warrant to search for dogs and engines, on 22 & 23 Car. 2, c. 25, s. 2. (e)

N.B. Though this warrant is drawn in the terms of the act, a justice of peace will do well (except he has very strong grounds for extending it) to confine the search and cutting to hays, trammels, lowbels, harepipes, and snares.

### Form relative to Trespasses.

(No. 61.)

R.—I do hereby give you notice, and require you not to enter, or cause or procure to be entered, any of my closes, land, or premises, situate and being in the parish

Notice not to trespass.

If time be given for payment of penalty, &c. the form of the conviction may be the same as the above, to [for costs; and I order that the said] shall be paid by the said C. D. on or the [day of] next; and I that the said sum of two pounds shall be paid to A. J. of, &c.] as in the above to the end.

(b) See the 67th sect. post, Vol. III. p. 553.

(c) See the 66th sect. post, Vol. III. p. 553.

(d) See the act, ante, 940. The act prescribes a form of conviction, ante, 941.

(e) See the provisions, ante, 943.

FORM.

of \_\_\_\_\_, or elsewhere, in the county of \_\_\_\_\_, with horses, dogs, or otherwise, in order to beat for, follow, or pursue, any game, or for any other purpose whatever, and in case you do not know the local situation of such my said closes, lands, and premises, I hereby give you notice, that the same will be pointed out and shown to you, upon reasonable application at my dwelling-house, situate at \_\_\_\_\_: and I do hereby further give you notice, that in case, after your being served with this notice, you shall commit any trespass upon any part of my said closes, lands, or premises, you will not only be proceeded against as a wilful and malicious trespasser, pursuant to the statute in that case made and provided, but will also be otherwise prosecuted for such offence according to law. Dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord

A. B.

To Mr. \_\_\_\_\_, and all others attempting to trespass on the above-mentioned lands.

## Gaming. (a)

WE will for the most part confine our considerations under this title to the criminal law relative to gaming, and the duties of justices and peace officers therein.

And herein of,

### I. Gaming in General, 974.

[16 Car. II. c. 7; 9 Ann. c. 14; 18 Geo. II. c. 34; 4 Geo. IV. c. 64 s. 10; 5 Geo. IV. c. 83.]

### II. Keeping or Haunting Gaming Houses, 979.

[33 Hen. VIII. c. 9; 31 Eliz. c. 5; 2 Geo. II. c. 28; 18 Geo. II. c. 34 25 Geo. II. c. 36; 58 Geo. III. c. 70; 3 Geo. IV. c. 114.]

### III. Lotteries and Little Goes, 983.

[10 & 11 Will. III. c. 17; 9 Ann. c. 6; 10 Ann. c. 26; 8 Geo. I. c. 2 9 Geo. I. c. 19; 6 Geo. II. c. 35; 12 Geo. II. c. 28; 13 Geo. II. c. 19; 42 Geo. III. c. 119.]

### IV. Forms as to, List of, 990.

## I. Gaming in general.

Gaming not an offence at common law.

Mr. Dalton says, that playing at cards and dice, and the like, are not prohibited by the common law; neither are they *mala in se* of their own nature, but only prohibited by statute; *Dalt.* c. 46; but there must be no cheating: see *Da Costa v. Jones*, *Cowp.* 729; 2 *Vent.* 175; and the playing must, it seems, be innocently and moderately. *Bac. Ab. Gaming*, (A.) And see *per Abbott, C. J.*, *post*, 979.

Cock fighting.

Cock fighting is illegal; 3 *Camp.* 146; and seems indictable. *Bac. Ab. Gaming*, (A.)

Wagers.

As to what wagers are legal or not, see *Chit. jun. Contr.* 155.

16 Car. 2, c. 7. The inconvenience of immoderate unlawful use of gaming.

The following are the legislative enactments relative to gaming in general.

The 16 Car. II. c. 7, recites that "all lawful games and exercises should not be otherwise used, than as innocent and moderate recreations, and not as constant trades or callings to gain a living, or make unlawful advantage thereby; and whereas by the immoderate use of them, many mischiefs and inconveniences do arise, and are daily found, to the maintaining and encour-

(a) See Disney on Gaming; 1 *Chit. Civ. Statutes*, tit. *Gaming*. See tit. *Gaming*, *post*, Vol. III. As to the duties, &c. on cards, see *Cards*, Vol. I.

ging of sundry idle, loose and disorderly persons in their dishonest, lewd and dissolute course of life, and to the circumventing, deceiving, cousening, and debauching of many of the younger sort, both of the nobility and gentry, and others, to the loss of their precious time, and the utter ruin of their estates and fortunes, and withdrawing them from noble and laudable employments and exercises.

IN GENERAL.

16 Car. 2, c. 7.

Sect. 2 enacts, "that if any person or persons of any degree or quality whatsoever, at any time or times after the 29th day of September, which shall in the year of our Lord God 1664, do or shall by any *fraud, shift, cousenage, circumvention, deceit, or unlawful device, or ill practice whatsoever*, in playing at or with cards, dice, tables, tennis, bowles, skittles, shovel-board; or any cock-fightings, horse-races, dog-matches, foot-races, or other pastimes, or games whatsoever, or in or by bearing a share or part in the stakes, wagers or adventures, or in or by betting on the sides or hands of such do or shall play, act, ride or run as aforesaid, win, obtain, or acquire, to him or themselves, or to any other or others, any sum or sums of money, or other valuable thing or things whatsoever; that then every person and persons, so offending as aforesaid, shall *ipso facto* forfeit and lose treble the sum or value of money, or other thing or things so won, gained, obtained, or received, the one moiety thereof to our Sovereign Lord the King, his heirs and successors; and the other moiety thereof unto the person or persons offended, or who shall lose the money, or other thing or things so gained, so every such loser and person grieved in that behalf, do or shall prosecute and sue for the same within six calendar months next after such play; and in default of such prosecution, the same other moiety to such person or persons as shall or will prosecute or sue for the same within one year next after said six months expired; and that the said forfeitures shall or may be recovered for or recovered by action of debt, bill, plaint, or information, in any his Majesty's courts at Westminster, wherein no essoin, protection, or delay of law shall be allowed; and that all and every such plaintiff or plaintiffs, informer or informers, shall in every such suit and prosecution have recover his and their treble costs against the person offending and forgoing as aforesaid; any law, statute, custom or usage to the contrary in any thing notwithstanding."

Deceits and counsenges in gaming.

Penalty for.

How to be sued for and recovered.

This statute also takes notice of *excessive gaming*, without fraud, and subjoins the offenders to pecuniary penalties: see s. 3 of this statute; and 9 Geo. II. c. 14, s. 2; 2 Geo. II. c. 28; 12 Geo. II. c. 28, *post*, 985; 25 Geo. II. c. 36, s. 5, *post*, 981; and 18 Geo. II. c. 34, *post*, 977.

Excessive gaming.

By the 9 Ann. c. 14, s. 5, it is enacted, "that if any person or persons whatsoever, at any time or times, after the said first day of May, 1711, do or shall by any *fraud or shift, counsenge, circumvention, deceit, or unlawful practice, or ill practice whatsoever*, in playing at or with cards, dice, or any the games aforesaid, (*i. e. cards, dice, table, or other games whatsoever*), or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play as aforesaid, win, obtain, or acquire to him or themselves, or to any other or others, any sum or sums of money, or other valuable thing or things whatsoever, or shall at any one time or sitting, win of any one or more person or persons whatsoever above the sum or value of ten pounds; that then every person or persons so winning by such ill practice as aforesaid, or winning at any one time above the said sum or value of ten pounds, and being convicted of any of the said offences, upon an indictment or information to be exhibited against him or them for that purpose, shall forfeit five times the value of the sum or sums of money, or other thing so won as aforesaid; and in case of ill practice as aforesaid, shall be deemed infamous, and suffer such punishment as in cases of wilful perjury; and such penalty to be recovered by such person or persons as shall sue for the same by such action as is said."

9 Ann. c. 14.  
Winning by fraud,  
&c. above 10*l.* at  
one sitting.

Indictable.

Penalty and  
punishment for.

## IN GENERAL.

9 Ann. c. 14.

Two justices may cause persons who have no visible estate, &c. to be brought before them, and they shall find sureties for their good behaviour or be committed.

As to winning 10*l*. without fraud, &c. see the 18 Geo. II. c. 34, s. 6, *post*, 978.

Sect. 6. "And whereas divers lewd and dissolute persons live at great expenses, having no visible estate, profession or calling to maintain themselves, but support those expenses by gaming only," it is enacted, "that it shall and may be lawful for any two or more of her Majesty's justices of the peace in any county, city or liberty whatsoever, to cause to come or to be brought before them every such person or persons within their respective limits, whom they shall have just cause to suspect to have no visible estate, profession or calling to maintain themselves by, but do for the most part support themselves by gaming; and if such person or persons shall not make it appear to such justices that the principal part of his or their expenses is not maintained by gaming, that then such justices shall require of him or them sufficient securities for his or their good behaviour for the space of twelve months; and in default of his or their finding such securities, to commit him or them to the common gaol, there to remain until he or they shall find such securities as aforesaid."

Persons so finding sureties and playing for 20*s.*, forfeit recognizance.

Sect. 7. "That if such person or persons so finding sureties as aforesaid shall during the time for which he or they shall be so bound to the good behaviour, at any one time or sitting, play or bet for any sum or sums of money or other thing, exceeding in the whole the sum or value of 20*s.*, that then such playing shall be deemed or taken to be a breach of his or their behaviour, and a forfeiture of the recognizance given for the same."

Assaults.

Sect. 8 enacts that a person assaulting, &c. another, on account of money won at play, shall forfeit all his goods, and be imprisoned two years. But this enactment is repealed by the 9 Geo. IV. c. 31.

Act not to extend to prevent gaming in any of the Queen's palaces during her residence there, &c.

Sect. 9. "That nothing in this act contained shall extend to prevent or hinder any person or persons from gaming or playing at any of the games aforesaid within any of her Majesty's palaces of St. James or Whitehall during such time as her Majesty, her heirs or successors, shall be actually resident at either of the said two palaces, or in any other royal palaces where her Majesty, her heirs or successors, shall be actually resident during the time of such actual residence, so as such playing be not in any house, lodging or other part of any of the said palaces, the freehold or inheritance whereof is or shall be out of the crown, or is or shall be in lease to any person or persons during such time as such freehold and inheritance shall be out of the crown, or such lease shall continue, and so as such playing be for ready money only."

What games within the act.

With respect to what game is within the act, it has been holden that laying above 10*l*. on a horse-race is an illegal bet within the statute of Anne, on the ground that the statute ought to be extended to all sports as well as games, in order to prevent excessive betting. *Goodburn v. Marley*, 2 Str. 1159; *Blaxton v. Pye*, 2 Wils. 309. And it has been determined that a wager of 10*l*. to 5*l*. upon a horse-race, is within this statute, although the race was for a legal plate. *Clayton v. Jennings*, 2 Blac. Rep. 706.

In *Lynall v. Longbotham*, 2 Wils. 36, the Court of Common Pleas were of opinion that a foot-race, whether the race be upon a given distance or against a certain time, is a game prohibited by 9 Anne, c. 14. And a wager that a person did not find, within such a time, a man who should carry on foot 24 stone weight, ten miles in fifteen hours, has been holden to be within the same principle. *Brown v. Beckley*, 1 Cowp. 282.

In *Jeffreys v. Walter*, 1 Wils. 220, the court inclined to think that cricket was a game within the meaning of stat. 9 Anne, c. 14.

Indeed the statute applies to all games, whether of skill or of chance, and it is the playing for money which makes them unlawful; and in a late case a game at bowls was held within the act. *Sigel v. Jebb*, 3 Stark. 1.

What a losing at one time or sitting.

With respect to what is a losing at one time and what a losing at one sitting, in the case of *Bines v. Booth*, 2 Blac. Rep. 1226, two persons played at cards from Monday evening to Tuesday evening without any interruption,

cept for an hour or two at dinner, and one of them won a balance of 17 lineas, this was held to be won at one sitting within the statute. *Et per lackstone, J.*—"To lose 10*l.* at one time is to lose it by a single stake or t; to lose at one sitting is to lose it in a course of play where the company ver parts, though the person may not be actually gaming the whole time." *mes, J.*—"The statute is remedial where the action is brought by the party ured, but penal where brought by a common informer."

Upon an indictment on this statute for winning more than 10*l.* at one ting, the defendant may be convicted of winning a less sum than that ted in the indictment. *R. v. Hill, 1 Stark. N. P. 359. See post, 978.*

The loser is a good witness to prove the loss. *R. v. Luckup, M. 9 Geo. II. R. cited Will. 425. n. (c.)*

*R. v. Luckup, 2 Str. 1048.* The defendant was convicted on an informa- 1 upon this act: and it was moved, that a fine should be set upon the endant if he refused to speak with the prosecutor. But by the court— [l the judgment that we can give is, *that he is convicted*; and a new ion must be brought upon that judgment for the forfeiture." And the endant was discharged without any fine or costs.

It seems that if a loser prefer an indictment against a winner, and the nd jury find the bill, the court will not permit an information to be filed inst the defendant, although the indictment was quashed, and of course defendant never tried upon it, for the grand jury may find another bill the same offence. *1 Hawk. c. 32, s. 56; 8 Mod. 187.*

IN GENERAL.

Indictment.

Witness.

Fine.

Second Indictment or information.

by the 18 Geo. II. c. 34, s. 2, it is enacted, "that if any person or per- ; whatsoever shall, after the said 24th day of June, 1745, play at the said e of roulette, otherwise roly-poly, or at any game or games with cards or , already prohibited by law, every such person or persons so offending l also incur the pains and penalties, and be liable to such prosecution as irected in and by an act made in the twelfth year of the reign of his ent Majesty, intituled, 'An Act for the more effectual preventing exces- and deceitful gaming.'" (See that act, *post, 985.*)

y sect. 4, "for the more easy conviction of persons offending against this ny other former act for preventing excessive and deceitful gaming," it is ted, "that it shall and may be lawful to and for such person or persons have jurisdiction to hear and determine informations upon the statutes nst excessive and deceitful gaming upon any information exhibited before 1 for any offence committed against this act or against the statute made e twelfth year of his present Majesty, intituled, 'An Act for the more tual preventing of excessive and deceitful gaming,' or against one other nade in the thirteenth year of the reign of his present Majesty, intituled,

Act to restrain and prevent the excessive increase of horse races, and mending an act made in the last session of parliament, intituled, "An for the more effectual preventing excessive and deceitful gaming," to non any person or persons other than the party accused to appear before at a certain day, time and place to be inserted in such summons, and to evidence for the discovery of the truth of the matter in the said informa- ontained; and in case of neglect or refusal to appear, or if upon ap- nce such person or persons shall refuse to give evidence or shall give alse evidence, every such person or persons so offending shall forfeit and he sum of 50*l.*; to be levied by distress and sale of the offender's goods hannels by warrant under the hands and seals of such persons issuing summons as aforesaid; and in case such person or persons not appear- or neglecting or refusing to give such evidence, or giving any false nce, shall not have sufficient goods and chattels whereon to levy the sum of 50*l.*, every such person or persons shall be by such person or

18 Geo. 2, c. 34.  
Persons playing shall incur the penalties of 12 Geo. 2, c. 28.

On information for any offence against this act,

or 12 Geo. 2, c. 28, (a),

or 13 Geo. 2, c. 19, (a)

Persons may be summoned to give evidence, who, on neglect or refusal to appear, or giving false evidence, shall forfeit 50*l.* or be committed for six months.

(a) See this act, *post, 986.*

## IN GENERAL.

18 Geo. 2, c. 34.

No person incapable of being a witness except the parties for having played, betted, &c.

Proviso for royal palaces.

Winning 10*l.* at one sitting, or 20*l.* in 24 hours,

Indictable.

Penalty for, &c.

Offenders discovering others shall be discharged.

What an offence within the act.

What a losing at one sitting.

Indictment.

Action for penalty.

5 Geo. 4, c. 83, s. 4.  
Vagrants.

In prisons.

persons having jurisdiction as aforesaid committed to the common gaol for the county, city or place where such offence shall be committed, there to remain for the space of six months without bail or mainprize."

Sect. 5. "That from and after the 24th day of June, 1745, no person or persons other than the parties, plaintiff and defendant in the case, shall be incapacitated from being a witness touching any offence committed against the laws for preventing excessive and deceitful gaming by reason of having played, betted or staked at any game prohibited by this or any of the said statutes."

Sect. 6. "That nothing in this act contained shall extend to prevent or hinder any person or persons from playing at any game whatsoever, within any of his Majesty's royal palaces wherein his Majesty, his heirs and successors, shall then actually reside."

Sect. 8. "That if any person, after the commencement of this act, shall win or lose at play, or by betting, at any one time, the sum or value of 10*l.* or within the space of twenty-four hours the sum or value of 20*l.*, such person shall be liable to be indicted for such offence within six months after it is committed, either before his Majesty's justices of the King's Bench, as in gaol delivery or grand sessions; and being thereof legally convicted, shall be fined five times the value of the sum so won or lost; which fine (after such charges as the court shall judge reasonable allowed to the prosecutors and evidence out of the same) shall go to the poor of the parish or place where such offence shall be committed."

As to losing by fraud, see the 9 Anne, c. 14, s. 5, *ante*, 975.

Sect. 9. "That if any person so offending shall discover any other person so offending, so that such person be thereupon convicted, the person so discovering shall be discharged and indemnified from all penalties, by reason of any such offence, if such person so discovering hath not been before convicted thereof, and shall be admitted as an evidence to prove the same."

Sect. 10. "That nothing in this act contained shall extend, or be construed to extend, to repeal or invalidate an act made in the ninth year of the reign of her late Majesty Queen Anne, intituled, 'An Act for the better preventing excessive and deceitful gaming.'"

In construction of the 8th section of this act, it has been held, that a wager on some matter arising from the game and collateral to it, but not on the event itself, is not an offence within it; 1 *Salk.* 344; 1 *Hack.* c. 92, s. 47, so that a bet on some dispute as to the mode of playing a game is not an offence. 2 *H. Bla.* 43. Nor is a wager between two persons, that a third will run a certain distance in a specific time, within the statute.

With respect to what is a losing "at one sitting," see 2 *Bla. Rep.* 1226; *ante*, 976, 977.

With respect to the indictment, it is said that as the penalty is given to the poor of a parish, the offence should be stated to have been committed within that parish. *Stark.* 502; 2 *Stra.* 1048. It is not necessary to prove the precise sum as laid in the indictment, if laid under a *videlicet*: *contra*, if the indictment averred that the defendant had won any bills of exchange of a specified amount. *R. v. Hill*, 1 *Stark.* 359; and see *R. v. Gilham*, 6 *T. R.* 265.

Under this act no action need be brought for the penalty, like under the 9 Anne, c. 14, s. 5, *ante*, 975.

By the 5 Geo. IV. c. 83, s. 4, (*the Vagrant Act*), every person playing or betting in any open or public place, at or with any table or instrument of gaming, at any game or pretended game of chance, may be treated as a vagrant within the act. Playing at bowls is not within the act. 1 *Cow. Rep.* 25; *post*, *Vagrant*, Vol. V., p. 973.

As to gaming in prisons. see 4 Geo. IV. c. 64, s. 10, *post*, 1020.

## II. Keeping or Haunting Gaming Houses.

It is clearly agreed, that all common *gaming houses* are nuisances in the eye of the law, being detrimental to the public, as they promote cheating and other corrupt practices; and incite to idleness, and avaricious ways of gaining property, great numbers whose time might otherwise be employed for the good of the community. 1 *Hawk. c. 25, s. 6*; and see *R. v. Dixon*, 10 *od.* 336; *R. v. Mason, Leach, C. C.* 548.

Offence at common law.

And in a late case, *R. v. Rogier and another*, 1 *B. & Cres.* 272; 2 *D. & R.* 1, S. C., the "keeping a common gaming house, and for lucre and gain unlawfully causing and procuring divers idle and evil disposed persons to frequent and come to play together at a game called *rouge et noir*, and permitting the said idle and evil disposed persons to remain playing at the said game for divers large and excessive sums of money," was held an offence intable at common law. *Et per Abbott, C. J.*, S. C.—"I have no doubt that the facts stated in this indictment constitute an offence at common law." *Hawkins*, in the passage which has been cited, (*viz.* 1 *Hawk. c. 25, s. 6*), observes, "It has been said that common gaming houses are nuisances in the eye of the law;" and then he assigns the reason, *viz.* that they tend to produce certain evil consequences, which is not very different from saying that they are nuisances if those consequences are produced. Since his time many persons have been convicted upon indictments, in which the keeping of such houses has been charged to be an offence at common law. If any confirmation of the authority of *Hawkins* were wanting, it is to be found in the enactments of the legislature. The 25 *Geo. II. c. 36, s. 5, (a)* after reciting, in order to encourage prosecutions against persons keeping bawdy-houses, gaming houses, or other disorderly houses, enacts, "that if any inhabitants of any parish give notice in writing to a constable, of any person keeping a bawdy house, gaming house, or any other disorderly house, the constable shall go with such inhabitants to a justice of the peace, and lay, upon such inhabitants making oath that they believe the contents of the notice to be true, enter into a recognizance to prosecute such offence, and the constable is to be allowed the expenses of the prosecution, and each of the inhabitants is to receive 10*l.*" And section 8 recites, "that by reason of the subtle and crafty contrivances of persons keeping bawdy houses, gaming houses, or other disorderly houses, it is difficult to prove who is the real keeper thereof, by which means many notorious offenders have escaped punishment;" and then enacts, "that any person who shall appear, or behave himself as master, or as the person having the care or management of any such house, shall be deemed to be the keeper thereof, and shall be able to be prosecuted as such, although he be not the real owner." These provisions are a legislative declaration that the keeping of a gaming house is an indictable offence. Besides, the 9 *Ann. c. 14, s. 2*, makes playing at any game unlawful, if more than 10*l.* shall be lost. Now in this case the indictment states, not only that the defendants kept a common gaming house, but that they permitted persons to play there for divers large and excessive sums of money. The playing for large and excessive sums of money would of itself make any game unlawful; and if so, there can be no doubt that this is an offence at common law. *Holroyd, J.* in the same case, added, that in his opinion the indictment would have been sufficient merely to have alleged, that the defendants kept a common gaming house.

stat. 33 *Hen. VIII. c. 9, s. 11*, no person shall for his gain, lucre, or reward, keep any common house, alley, or place of bowling, coytynge, colyssh, half-bowll, tennis, dicing-table, carding, or any unlawful game then or after to be invented, on pain of forfeiting 40*s.* a-day. And it was resolved upon this clause, in the third year of *Jac. I.*, that if the

Gaming houses prohibited by the 33 *Hen. 8, (6)*

See *ante*, *Disorderly House*, Vol. I., *post*, 981.

This act may be said to be now obsolete.



GAMING  
HOUSES.

- guests in an inn or tavern call for a pair of dice or tables, if the house be not kept for gaming, lucre, or gain, but they play only for recreation, and for no gain to the owner of the house, this is not within the statute, nor is such person that plays in such house that is not kept for lucre or gain within the penalty of that law. *Dalt.* c. 46.
- Cock-pit.** Keeping a cock-pit is within the act, and is also indictable at common law. 1 *Russ.* 300.
- Haunting gaming houses.** And moreover, by the same statute, s. 12, it is further enacted, that every person using and haunting any of the said houses and plays, and there playing, shall forfeit 6s. 8d.
- Power of the justices as to the keepers of such houses, and those found there.** Sect. 14. And all justices of the peace in every shire, mayors, sheriffs, bailiffs, and other head officers in every city, town and borough, may enter all such houses, places, and alleys, where such games shall be suspected to be holden, exercised, used, or occupied, and as well the keepers of the same, as also the persons there haunting, resorting, and playing, may take, arrest, and imprison, and keep in prison until the keepers and maintainers of the said plays and games have found sureties to the king's use, to be bound by recognizance or otherwise, no longer to use, keep or occupy any such house, play, game, alley, or place; and also that the persons there so found be in like case bound by themselves, or with sureties, no more to play, haunt, or exercise from thenceforth, in, at, or to any of the said places, or at any of the said games.
- And of officers in cities and towns.** Sect. 15. And the mayors, sheriffs, bailiffs, constables, and other head officers, within every city, borough, or town, shall make due search weekly, or at the furthest once a month, in all places where any such houses, alleys, plays, or places shall be suspected to be had, kept, and maintained; and if they shall not make such search at the furthest once a month, if the case so require, every such person offending shall forfeit 40s. for each month.
- Artificers and servants.** Sect. 16. By the same act, no manner of artificer, or craftsman of any handicraft or occupation, husbandman, apprentice, labourer, servant at husbandry, journeyman, or servant of artificer, mariners, fishermen, watermen, or any serving man, shall play at the tables, tennis, dice, cards, bowls, clash, coytig, logating, or any other unlawful game, out of Christmas, on pain of 20s. for every time; and in Christmas to play at the said games in their masters' houses, or in their masters' presence; and also no person shall at any time play at bowl or bowls in open places out of his garden or orchard, on pain of 6s. 8d. for every time of offending. See *R. v. Clark.* 1 *Cowp.* 35.
- Masters may license such.** Sect. 22. But any master may license his servant to play at cards, dice, or tables, with himself, or with any other gentleman repairing to his said master openly in his house, or in his presence.
- Also certain persons may.** Sect. 23. And any nobleman or other person having manors, lands, tenements, or other yearly profits for life, in his own or his wife's right, of 100l. a year, may command or license his servants, or family of his house, to play within the precinct of his house, garden, or orchard, at cards, dice, tables, bowls, or tennis, as well among themselves as others repairing to the same house.
- Punishing offenders using unlawful games.** Sect. 16. And all justices of the peace, mayors, bailiffs, sheriffs, and other head officers, and every of them, finding or knowing any person using unlawful games, contrary to this act, may commit every such offender to ward, there to remain without bail or mainprize till he be bound by obligation to the king's use, in such sum as by the discretion of the said justices, mayors, bailiffs, or other head officers, shall be thought reasonable, that they shall not from thenceforth use such unlawful games.
- 2 Geo. 2, c. 28. Power of justices to commit.** By stat. 2 Geo. II. c. 28, s. 9, where it shall be proved on the oath of two witnesses before any justice of the peace, as well as where he shall find upon his own view, that any person hath used any unlawful game contrary to the said statute of Hen. VIII., the said justice shall have power to commit him to prison without bail, unless and until he shall enter into one or more recognizance or recognizances with sureties or without, at the discretion of the justice, that he shall not from thenceforth play at or use such unlawful game.

# I.] **Gaming—(Keeping, &c. Houses for.)**

981

And by stat. 33 Hen. VIII. c. 9, s. 18, where any of the forfeitures above mentioned shall be found within the precinct of any franchise or leet, the lord shall have one half, and the other half shall be to him that sue in any of the king's courts; and elsewhere, they shall be half to the king, and half to him that sue in like manner.

But by stat. 31 Eliz. c. 5, s. 7, all suits to be pursued upon any statute that is, any statute then in force) for using any unlawful game shall be sued and prosecuted, or otherwise heard and determined, in the general quarter sessions or assizes of the county where the offence shall be committed, or in the leet within which it shall happen, and not in anywise out of the county.

And by stat. 18 Geo. II. c. 34, s. 7, no privilege of parliament shall be allowed to any person, against whom a prosecution shall be commenced, for keeping any public or common gaming house, or any house, room, or place for playing at any before or now prohibited game.

By stat. 25 Geo. II. c. 36, s. 2 (a), (which we have already had occasion to notice under title **Disorderly Houses**, Vol. I.) any house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind in London and Westminster, or within twenty miles thereof, without license from the last preceding Michaelmas quarter sessions, under the hands and seals of four or more justices there assembled (except the theatres of Drury Lane, Covent Garden, and Haymarket, and other entertainments exercised by letters-patent or license of the crown, or of the lord chamberlain, s. 4.) shall be deemed a disorderly house or place; and the owner thereof shall forfeit 100*l.* with full costs to him who shall sue (in six months) in any of the courts at Westminster, and be otherwise punishable as in cases of disorderly houses. And the person who shall appear to act as master, or as having the management of such gaming house or other disorderly house, shall be deemed a keeper thereof, and liable as such. And it shall be lawful for any constable, or other person being authorised by warrant under the hand and seal of one justice, to enter such house or place, and to seize every person found therein, that they may be dealt with according to law. See the provision in full, *ante*, Vol. I. 958.

Sect. 3. Which said license shall be granted at the last preceding Michaelmas sessions, and shall be signed and sealed by four justices in open court, and afterwards be publicly read by the clerk of the peace, with the names of the justices subscribing the same; and no such license shall be granted at adjourned sessions; nor shall any fee be taken for the same. And there shall be affixed and kept up in some notorious place, in large capital letters, at the door or entrance of every such licensed house or place, *Licensed pursuant to act of parliament of the twenty-fifth of King George the Second*; and it shall not be opened for such purposes before five in the afternoon. And the affixing and keeping up such inscription, and the said limitation in point of time, shall be inserted in and made conditions of such license; and in case of a breach of either of the said conditions, the license shall be forfeited, and revoked by the justices at the next sessions, and shall not be renewed; nor shall any new license be granted. See the provision in full, Vol. I. 958.

Sect. 5. "And in order to encourage prosecutions against persons keeping disorderly houses, gaming houses, or other disorderly houses," it is enacted, that if any two inhabitants of any parish or place paying scot and bearing hearth-taxes herein, do give notice in writing to any constable (or other peace officer of like nature, where there is no constable) of such parish or place, of any person keeping a bawdy house, gaming house, or any other disorderly house, in such parish or place, the constable or such officer as aforesaid, so receiving such notice, shall forthwith go with such inhabitants to one of his Majesty's justices of the peace of the county, city, riding, division or liberty in which such parish or place does lie; and shall, upon such inhabitants making oath to such justice, that they do believe the contents of such notice to be true, enter into a recognizance in the penal sum of 20*l.* each, to give or

## **GAMING HOUSES.**

Application of the penalties.

31 Eliz. c. 5.  
How to be recovered.

18 Geo. 2, c. 34.  
No privilege of parliament.

25 Geo. 2, c. 36.  
Houses of public amusement within London and twenty miles thereof to be licensed.

The person acting as master to be deemed the keeper.

License

Constable's power and duty relative to gaming-houses, &c.

Recognizance.

(a) Made perpetual by 28 Geo. II. c. 19, s. 1.

GAMING  
HOUSES.

25 Geo. II. c. 36.

Charges of prosecution.

Reward.

Penalty.

Person keeping  
bawdy houses, &c.  
to be bound over.

Penalty.

Who shall be  
deemed master.

Witnesses.

Certiorari.

53 G. 3, c. 70.

Notices directed  
by 25 G. 2, c. 36,  
to be given to  
constables in cer-  
tain cases, to be  
given also to the  
overseers of the  
poor, who are to  
prosecute.

Gaming houses.

produce material evidence against such person for such offence, enter into a recognizance in the penal sum of 30*l.* to prosecute with effect such person for such offence at the next general or quarter session of the peace, or at the next assizes to be holden for the county in which such parish or place does lie, as to the said justice shall seem meet; and such constable or other officer shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace of the county, city, riding, division, or liberty where the offence shall have been committed, and shall be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of 10*l.* to each of such inhabitants; and in case such overseers shall neglect or refuse to pay to such constable or other officer such expenses of the prosecution as aforesaid, or shall neglect or refuse to pay upon demand the said sums of 10*l.* and 10*l.* such overseers, and each of them, shall forfeit to the person entitled to the same double the sum so refused or neglected to be paid." (a)

Sect. 6. Provided "that upon such constable or other officer entering into such recognizance to prosecute as aforesaid, the said justice of the peace shall forthwith make out his warrant, to bring the person so accused of keeping a bawdy house, gaming house, or other disorderly house, before him, and shall bind him or her over to appear at such general or quarter session or assizes there to answer to such bill of indictment as shall be found against him or her for such offence; and such justice shall and may, if in his discretion he thinks fit, likewise demand and take security for such person's good behaviour in the mean time, and until such indictment shall be found, heard, and determined, or be returned by the grand jury not to be a true bill." (a)

Sect. 7. If the constable shall neglect or refuse, upon such notice, to go before a justice, or to enter into recognizance, or shall be wilfully negligent in carrying on the prosecution, he shall forfeit 20*l.* to each of the said inhabitants. (a)

Sect. 8. The person appearing or acting as master, or as having the care and management of any gaming house, shall be taken to be the keeper thereof, and liable as such. (a)

Sect. 9. And on trial any person may give evidence against the defendant notwithstanding his being a parishioner or having entered into such recognizance. (a)

Sect. 10. And no indictment for such offence shall be removed by certiorari. (a)

By stat. 58 Geo. III. c. 70, s. 7, after reciting the above provision of 25 Geo. II. c. 36, s. 5, and that it is expedient that when any two inhabitants of any parish or place, paying scot and bearing lot therein, shall give notice in writing to any constable of such parish or place of any person keeping a bawdy house, gaming house, or any other disorderly house, in such parish or place, that the overseers of the poor of such parish or place shall have notice thereof; it is enacted, "That a copy of the notice which shall be given to such constable shall also be served on or left at the places of abode of the overseers of the poor of such parish or place, or one of them, and such overseers or overseer of the poor shall be summoned or have reasonable notice to attend before such justice of the peace before whom such constable shall have notice to attend; and if such overseers or overseer of the poor shall then and there enter into such recognizance to prosecute such offender as the constable is in and by the said act required to enter into, then it shall not be necessary for, nor shall such constable be required to enter into such recognizance; but if such overseers or overseer of the poor shall neglect to attend such justice on having such notice, or shall attend, and shall decline or refuse to enter into such recognizance to prosecute, then such constable shall enter into the same, and shall prosecute, and shall be entitled to his expenses, to be allowed as in and by the said act is directed."

By 18 Geo. II. c. 34, s. 1, no person shall keep any house, room, or place for playing, or permit any person within any such house, &c. to play at the

(a) See these provisions in full, *ante*, Vol. I., p. 959, 960.

game of roulet (or roly-poly), or at any other game with cards or dice, already prohibited by law; and if any person shall keep such house, &c. for playing, or permit any person to play as aforesaid, he shall incur the penalties of stat. 12 Geo. II. c. 28.

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The stat. 3 Geo. IV. c. 114, allows the punishment of hard labour to be inflicted on persons convicted of keeping a common gaming house. See *Punishment*  
*of, Hard Labour*, Vol. II.

As to gaming in public houses, see *ante*, 981; and *ante*, *Alcoholhouses*, Public houses.  
Vol. I. 98.

### III. Lotteries and Little Goes.

By the 10 & 11 Will. III. c. 17, s. 1, after reciting that all lotteries are common and public nuisances, it is declared that all grants, patents and licenses for them are void and against law. 10 & 11 W. 3, c. 17.  
Lottery a nuisance.

Sect. 2. "That from and after the 29th day of December, which shall be the year of our Lord God, 1699, no person or persons whatsoever shall publicly or privately exercise, keep open, show, or expose to be played at, drawn at, or thrown at, or shall draw, play or throw at any such lottery, or any other lottery, either by dice, lots, cards, balls, or any other numbers or figures, or any other way whatsoever; and that every person or persons that shall, after the said 29th day of December, exercise, expose, open or show to be played, thrown or drawn at, any such lottery, play or device, or other lottery, shall forfeit for every such offence the sum of 500*l.* to be recovered by information, bill, plaint or action at law in any of his Majesty's courts at Westminster, wherein no essoin, wager of law, nor any more than one imparlance shall be allowed; one third part thereof to the use of his Majesty, his heirs and successors, one other third part thereof to the use of the poor of the parish where such offence shall be committed, and the other third part thereof, together with double costs, to the party that shall inform and sue for the same; and the said parties so offending shall likewise be prosecuted as common rogues, according to the statutes in that case made and provided."

Keeping or  
playing at a  
lottery.

Sect. 3. "That every person or persons, that after the said 29th day of December shall play, throw, or draw at any such lottery, play, or device, or her lotteries, shall forfeit for every such offence the sum of 20*l.* to be recovered by information, bill, plaint, or action at law, in any of his Majesty's courts at Westminster, wherein no essoin, wager of law, nor any more than one imparlance shall be allowed, one third part thereof to the use of his Majesty, his heirs and successors, one other third part thereof to the use of the poor of the parish where such offence shall be committed, and the other third part thereof, together with double costs, to the party that shall inform and sue for the same."

By 9 Anne, c. 6, s. 56, "all justices of the peace, and all mayors, bailiffs, and officers, constables, and other her Majesty's civil officers, within their respective jurisdictions, are hereby impowered and required to use their utmost endeavours to prevent the drawing of any such unlawful lottery, heretofore hereafter to be set up, by all lawful ways and means; and that every person who after the 8th day of March, 1710, shall set up, or shall, by writing or printing, publish the setting up any such unlawful lottery, with intent to have such lottery drawn, shall forfeit for every such offence 100*l.*, to be recovered by information, bill, plaint, or action at law, in any of her Majesty's courts at Westminster, wherein no essoin, wager of law, nor any more than one imparlance shall be allowed; one third part thereof to the use of her Majesty, her heirs, and successors; one other third part thereof to the use of the poor of the parish where such offence shall be committed; and the other third part thereof, together with full costs, to the party who shall inform and sue for the same."

9 Anne, c. 6.  
Power of the  
Justices.

By 10 Anne, c. 26, s. 109, "every person or persons who, after the 24th day of June, in the year of our Lord 1712, shall erect, set up, or keep any lottery, shall forfeit the sum of 100*l.* to be recovered by information, bill, plaint, or action at law, in any of her Majesty's courts at Westminster, wherein no essoin, wager of law, nor any more than one imparlance shall be allowed, one third part thereof to the use of her Majesty, her heirs, and successors, one other third part thereof to the use of the poor of the parish where such offence shall be committed, and the other third part thereof, together with full costs, to the party who shall inform and sue for the same."

10 Anne, c. 26.  
Lotteries.

## LOTTERIES.

12 Geo. 2, c. 28.

Penalty on the  
adventurers.

13 Geo. 2, c. 19.

said games or lotteries in this present act mentioned; and shall be prosecuted and convicted, and the penalties and forfeitures shall be sued for and recovered in like manner as the said penalties and forfeitures are by this act directed to be sued for and recovered."

By s. 3, "all and every person and persons who shall be adventurers in any of the said games, lottery or lotteries, sale or sales; or shall play, set at, stake, or punt at either of the said games of the ace of hearts, pharaoh, basset and hazard, and shall be thereof convicted in such manner and form as in and by this act is prescribed; every such person or persons shall forfeit and lose the sum of 50*l.*, to be sued for and recovered as aforesaid."

And by 13 Geo. II. c. 19, s. 9, it is enacted, "that the said game of passage, and all and every other game and games invented or to be invented with one or more die or dice, or with any other instrument, engine, or device in the nature of dice, having one or more figures or numbers thereon (backgammon and the other games now played with the backgammon tables only excepted), are and shall be deemed to be games or lotteries by dice, within the intent and meaning of the said in part recited act; and all and every person and persons who shall set up, maintain, or keep any office, table, or place (save and except as in the said in part recited act is provided and declared) for the said game of passage, or for any other such game or games as aforesaid (backgammon and the other games now played with the backgammon tables only excepted), shall severally forfeit, be subject, and liable to all and every the penalties and forfeitures in and by the said in part recited act inflicted upon any person or persons who shall erect, set up, continue, or keep any of the games or lotteries in the said in part recited act mentioned; and all and every person or persons who shall play, set at, stake, or adventure at the said game of passage, or at any other such game as aforesaid (backgammon and the other games now played with the backgammon tables only excepted), save and except as in the said in part recited act is provided and declared, he and they respectively shall severally forfeit, be subject, and liable to all and every the penalties and forfeitures in and by the said in part recited act inflicted upon any person or persons who shall play, set at, stake, or adventure at any of the said games in the said in part recited act mentioned; and all and every such offenders respectively shall be prosecuted and convicted, and the several penalties and forfeitures shall be sued for, and recovered and disposed of in like manner, and to such uses, as the several penalties and forfeitures in either of such cases are by the said in part recited act directed to be sued for, and recovered and disposed of."

And every person who shall set up, maintain, or keep any office, table, or place for the game of passage, or any other such game as aforesaid (except as excepted), shall severally forfeit as in stat. 12 Geo. II. c. 28.

Moreover, by 12 Geo. II. c. 28, s. 4, "every such sale or sales of houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods or other things, by any game, lottery or lotteries, machine, engine, or other device whatsoever, depending upon, or to be determined by chance or lot, shall and are hereby declared to be void to all intents and purposes whatsoever: and all such houses, lands, advowsons, presentations to livings, plate, jewels, ships, goods or other things, set up and exposed to sale in manner and form aforesaid, shall be forfeited to such person or persons who shall sue for the same, by action, bill, plaint, or information, in any of his Majesty's courts of record, or at the assizes for any county where the offence shall be committed; in which action, bill, plaint, or information, no essoin, protection, wager of law, or more than one imparlance shall be allowed."

18 Geo. 2, c. 34.  
Keeping a gaming  
house.12 G. 2, c. 28.  
Power of the  
Justices.

And by 18 Geo. II. c. 34, no person shall keep any house or place for playing, or permit any person within such house to play, at any prohibited game, with cards or dice, under the penalties of 12 Geo. II. c. 28, s. 1. (See 18 Geo. II. c. 34, *ante*, p. 977.)

By 12 Geo. II. c. 28, s. 1, 8, in case such offender have not sufficient goods and chattels whereon to levy the said penalties, or do not immediately pay or secure the same, he may be committed to the common goal for any time not exceeding six months.

By s. 5, "that if any person or persons shall think him, her, or themselves aggrieved by the judgment or determination of any justice or justices of the peace or mayor as aforesaid, upon any conviction of or for any of the offences in this act, such person or persons may appeal from the said judgment of the said justice or justices or mayor to the next general quarter sessions of the peace for the said county, riding, division, city or place where such person or persons was or were convicted; but the person and persons so appealing shall, and he, she and they are hereby directed to give reasonable notice to the prosecutor or prosecutors of such person or persons as shall so appeal, of such his, her, or their intention of bringing and prosecuting such appeal, and shall enter into a recognizance before some justices (a) of the peace for the county, riding, division, city or place wherein the conviction or judgment was made or given, with two sufficient sureties, on condition to try such appeal at the next quarter sessions, which shall be held in and for the county, riding, division, city or place wherein such conviction or judgment was made or given, next and immediately after the bringing such appeal; and every such appeal and appeals shall, by the court at the said next general quarter sessions, to which such appeal and appeals is or are made, be then examined, and the matter then finally heard and determined; and not afterwards; and in case such judgment, determination or conviction as aforesaid, shall be then and here affirmed, the party appealing shall pay unto the prosecutor or prosecutors his, her or their treble costs; and such prosecutor and prosecutors shall have such remedy for the same, as any defendant or defendants hath or have or costs of suit in any other cases by law."

A verbal notice of appeal has been held sufficient under this act. *R. v. Is. of Surrey*, 5 B. & A. 539; and as to appeals in general, *ante*, Appeal, vol. I.

By s. 6, "no such conviction made, or judgment given as aforesaid, by his act, shall be set aside by the said court of quarter sessions for want of oren, in case the facts alleged in the said conviction shall be proved to the satisfaction of the said court; nor shall such conviction or judgment be removed or removable by *certiorari*, or any other writ or process whatsoever, unto any of his Majesty's courts of record at Westminster, until such order or other proceedings shall have been first removed to, and judgment and determination given and made thereupon by such court of quarter sessions as aforesaid."

And by stat. 18 Geo. II. c. 34, s. 4, 5, any person may be summoned as a witness (other than the party accused) notwithstanding his having layed, betted, or staked at any prohibited game; and in case he neglect to appear, or refuse to give evidence, he shall forfeit 50*l.*, to be levied by distress warrant of the justice issuing such summons; and for want of sufficient distress, he shall be committed to gaol for six months. *Vide ante*, p. 977.

By stat. 46 Geo. III. c. 148, s. 59, "all pecuniary penalties for any offence against any law touching or concerning lotteries, or against this act (except here it is herein otherwise directed), shall, when recovered, go and be applied to the use of his Majesty, his heirs or successors; and from and after the commencement of this act, it shall not be lawful for any person or persons whatever (except where it is herein otherwise directed) to commence or enter to, or cause or procure to be commenced or entered, or filed, or prosecuted, by action, suit, bill, plaint, or information, for the recovery of any pecuniary penalty or penalties inflicted by any of the laws touching or concerning lotteries, or by this act, unless the same be commenced, entered, filed, and prosecuted in the name of his Majesty's attorney general in the Court of Exchequer at Westminster, if such offence shall be committed in England, or in the name of his Majesty's attorney general in the Court of Exchequer at Dublin, if such offence shall be committed in Ireland, or in the name of his Majesty's advocate general in the Court of Exchequer in Scotland, if such offence shall be committed in Scotland; and if any action, suit, bill, plaint or information

## LOTTERIES.

13 Geo. 2, c. 28.  
Appeal.

18 Geo. 2, c. 34.  
Witnesses.

46 Geo. 3, c. 148.  
Recovery and  
application of  
penalties.

(a) The act says justices, but probably it means justice.

**LOTTERIES AND  
LITTLE GOES.**

46 Geo. 3, c. 148.

State lotteries.

Insuring in lottery.  
Bankrupt's certificate.  
42 Geo. 3, c. 119.  
Little goes.

Persons keeping  
any office or place  
for any game or  
lottery not author-  
ised by law, &c.  
shall forfeit 500*l.*  
and be deemed  
rogues and vaga-  
bonds within the  
meaning of stat.  
17 Geo. 2, c. 5.

Persons so offend-  
ing, against whom  
no such informa-  
tion shall have  
been made, shall  
be punished as  
rogues and vaga-  
bonds.

Justices on infor-  
mation may au-  
thorise persons to  
break open the  
doors of places  
where such of-  
fences shall have  
been committed,  
and apprehend of-  
fenders and others  
assisting them,  
and carry them  
before a justice.

shall be commenced or entered in any other person's name or names than as is before mentioned, the same, and all proceedings thereupon had, are hereby declared to be null and void, and the said court or courts where such proceedings shall be so commenced, shall cause the same to be staid; any law, custom, or usage to the contrary notwithstanding."

Sect. 64 repeals stat. 27 Geo. III. c. 1.

In *R. v. Liston*, 6 T. R. 388, it was decided, that stat. 27 Geo. III. c. 1, which contained an enactment nearly alike to the above stat. 46 Geo. III. c. 148, s. 59, only extended to state lotteries, and did not repeal the summary jurisdiction of magistrates over games of chance or lotteries prohibited by stat. 12 Geo. II. c. 28. It may be questionable whether the above stat. 46 Geo. III. extends to other than state lotteries.

Insuring in the lottery is not gaming within stat. 5 Geo. II. c. 30, s. 12, which will prevent a bankrupt's certificate being allowed. 1 H. Bla. 29.

By stat. 42 Geo. III. c. 119, s. 1, "that all such games or lotteries called Little Goes, shall from and after the passing of this act be deemed and are hereby declared common and public nuisances, and against law."

Sect. 2. "That from and after the first day of July, one thousand eight hundred and two, no person or persons whatsoever shall publicly or privately keep any office or place to exercise, keep open, show, or expose to be played, drawn, or thrown at or in, either by dice, lots, cards, balls, or by numbers or figures, or by any other way, contrivance, or device whatsoever, any game or lottery called a Little Goe, or any other lottery whatsoever not authorised by parliament, or shall knowingly suffer to be exercised, kept open, shown, or exposed to be played, drawn, or thrown at or in, either by dice, lots, cards, balls, or by numbers or figures, or by any other way, contrivance, or device whatsoever, any such game or lottery in his or her house, room, or place, upon pain of forfeiting for every such offence the sum of 500*l.*, to be recovered in the Court of Exchequer, at the suit of his Majesty's attorney-general, and to be to the use of his Majesty, his heirs and successors; and every person so offending shall be deemed a rogue and vagabond within the true intent and meaning of an act passed in the 17 Geo. II. c. 5, (a) intituled, 'An Act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons and to houses of correction,' and shall be punishable as such rogue and vagabond accordingly."

Sect. 3. "That every person so offending against this act in manner hereinbefore mentioned, against whom no information shall have been made as aforesaid, shall be deemed a rogue and vagabond within the true intent and meaning of an act passed in the 17 Geo. II. intituled, 'An Act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to houses of correction,' and also of another act, passed in the 27 Geo. III. c. 1, (a) intituled, 'An Act to render more effectual the laws now in being for suppressing unlawful lotteries,' and shall be punishable as such rogue and vagabond according to the said acts and this act."

Sect. 4. "That upon complaint or information made upon oath before any justice or justices of the peace, of any offence committed against this act in any house or place within the jurisdiction of any such justice or justices, whereby any of the offenders may be liable to punishment as rogues and vagabonds, it shall and may be lawful to and for the said justice or justices before whom such oath shall be taken, if he or they shall judge it reasonable, by special warrant under his or their respective hands and seals, to authorise and empower any person or persons, by day or by night, (but if in the night time, then in the presence of a constable or other lawful officer of the peace, who are hereby required to be aiding or assisting therein,) to break open the doors or any part of such house or place where such offence shall have been committed, and to enter into such house or

(a) The 5 Geo. IV. c. 83, repeals 17 Geo. II. c. 5, and stat. 46 Geo. III. c. 148, s. 64, repeals the 27 Geo. III. c. 1. See tit. Vagrant, Vol. V.

place, and to seize and apprehend all such offenders and all other persons who shall be discovered in such house or place, and who shall have knowingly aided or assisted, or been in any way concerned with any such offender or offenders in committing such offence, and to convey them before any justice or justices of the peace of the county, riding, division, city, liberty, or place wherein such person shall be so apprehended, to be dealt with according to what is aforesaid; and all persons who shall be discovered in such house or place knowingly aiding, assisting, or in any way concerned with such offender or offenders in the carrying on any transactions respecting the said little goes or lotteries, or either of them, shall be deemed rogues and vagabonds, and punishable in like manner as is directed by the said recited act of the 17 Geo. II. c. 5; (a) and it shall and may be lawful for the officer or officers having the execution of such warrant, and all other persons acting in his or their aid or assistance, to stop, arrest, and detain all and every the person and persons so discovered in such house or place, and to convey the said person and persons before such justice or justices of the peace as aforesaid; and if any person or persons shall forcibly obstruct, oppose, molest, or hinder any such officer or officers, or others acting in his or their aid or assistance in the due execution of their duty, or in the due entering into such house or place, or in the seizing, detaining, or conveying before such justice or justices any such offenders or other persons as aforesaid, every such person so obstructing, opposing, molesting, or hindering as aforesaid, shall be deemed an offender against law and the public peace, and the court before whom any such offender shall be tried and convicted shall and may order such offender to be fined, imprisoned, and publicly whipped, as in their discretion shall be thought fit; and all persons, although not discovered in such house or place as aforesaid, who shall employ or cause to be employed any person or persons in carrying on any of the transactions aforesaid, or in aiding or assisting any such person or persons, shall be deemed rogues and vagabonds, and shall be punishable in the same manner as is directed by the 27 Geo. III. c. 1. (b)

Sect. 5. "That from and after the passing of this act no person or persons whatever shall on or under any pretence, device, form, denomination, or description whatsoever, promise or agree to pay any sum or sums, or to deliver any goods, or to do or forbear doing any thing for the benefit of any person or persons, whether with or without consideration, on any event or contingency relative or applicable to the drawing of any ticket or tickets, lot or lots, numbers or figures, in any such game or lottery, or to publish any proposal for any of the purposes aforesaid; and if any person or persons shall offend in any of the matters aforesaid, he, she, or they shall for every offence committed and pay the sum of 100*l*."

Sect. 6. "That it shall and may be lawful for any person whatever to apprehend on the spot any person or persons so offending, and to convey or cause to be conveyed before any magistrate or justice of the peace residing in the place where such offence shall be committed the person or persons so apprehended, to be proceeded against under this act; and when any person or persons shall be apprehended or brought before any magistrate or justice of the peace aforesaid for any such offence, it shall be lawful for such magistrate or justice to proceed to examine into the circumstances of the case, and upon due proof upon oath or solemn affirmation of any such offence committed against this act, to give judgment or sentence accordingly, and where the party accused shall be convicted of such offence, and such penalty shall not be immediately paid, to commit such offender to prison for any space of time not exceeding six calendar months, nor less than one calendar month, without bail or mainprize, and without appeal, or until such penalty shall be satisfied; and every such penalty, when paid upon conviction, shall go and be applied one-third thereof to his Majesty, one-third thereof to the use of the informer or informers, and the other third thereof to the person or persons apprehending or securing such offender or offenders."

LOTTERIES AND  
LITTLE GOES.

42 Geo. 3, c. 118.

Penalty for obstructing persons in the execution of their duty.

Persons employing others, though not discovered in the premises, to be deemed rogues and vagabonds.

Persons agreeing to pay any sum, or to deliver any goods, &c. on any event relative to such game or lottery, or publishing any proposal, shall forfeit 100*l*.

Offenders may be apprehended on the spot by any person, and carried before a justice, who shall on the penalty not being paid, commit the offender.

Application of the penalty.

a) This act is now repealed by stat. 5 Geo. IV. c. 83. See tit. *Vagrant*.

b) The 46 Geo. III. c. 148, s. 64, repeals this act.



**LOTTERIES AND  
LITTLE GOES.**

42 Geo. 3, c. 110.

Treble costs.

Foreign lotteries.  
9 Geo. I. c. 10.

Appeal.  
6 Geo. 2, c. 35.  
Selling or procur-  
ing chances in  
foreign lotteries.

Appeal.

Sect. 7. All provisions, powers, authorities, &c. &c. contained in stat. 27 Geo. III. c. 1, shall extend to all the provisions of this act.

Sect. 8. "That if any sheriff's officer or other person or persons shall be sued, molested, or prosecuted, for any thing done by virtue or in pursuance of this act, such sheriff's officer or other person or persons shall and may plead the general issue, and give this act and the special matter in evidence in his defence, or their defence or defences; and if afterwards a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall discontinue his action, or their action or prosecution, or be nonsuited, or judgment shall be given against him, her, or them, upon demurrer or otherwise, then such defendant or defendants shall have treble costs awarded to him, her, or them, against any such plaintiff or plaintiffs."

By the stat. 9 Geo. I. c. 19, s. 4, 5, if any person shall by virtue or colour of any grant or authority from any foreign prince or state, set up, continue, or keep, or cause or procure to be set up, continued, or kept, any lottery or undertaking in the nature of a lottery under any denomination whatsoever, or shall make, print, or publish, or cause, &c. any proposal for any such lottery or undertaking; or shall sell or dispose of any ticket in any foreign lottery, and shall be convicted thereof on oath of one witness before two justices where the offence shall be committed or the offender shall be found, he shall forfeit (over and above any penalties by former acts against unlawful lotteries) *forfeit* 200*l.*, one-third to the King, one-third to the informer, and one-third to the poor, to be levied by distress and sale by warrant of such justices; and shall also by them be committed to the county gaol for one year, and from thence till the said sum of 200*l.* be fully paid: provided, that persons aggrieved may appeal to the next quarter sessions, whose judgment shall be final.

And by stat. 6 Geo. II. c. 35, s. 29, 30, if any person shall sell, procure, or deliver any ticket, receipt, chance, or number, or division in any foreign or pretended foreign lottery, or in any class, part, or division thereof, or in any undertaking in the nature of a lottery, or shall sell, procure, or deliver any ticket, receipt, chance, or number in any duplicate or pretended duplicate of any foreign or pretended foreign lottery; or shall receive or cause to be received any money for any such ticket, receipt, chance, or number, or in consideration of any money to be paid in case any ticket or number in any foreign or pretended foreign lottery, or any class, part, or division thereof, shall prove fortunate, and shall be convicted thereof in the courts at Westminster, or on the oath or affirmation of one witness before two justices where the offence shall be committed or the offender shall be found, he shall forfeit 200*l.*, one third to the King, one third to the informer, and one third to the poor where the offence shall be committed; the same (in case of conviction before two justices) to be levied by distress and sale by warrant of such justices; and shall also be committed to the county gaol for one year, and from thence till the 200*l.* be paid: provided, that persons aggrieved may appeal to the next quarter sessions, and the judgment there to be final.

#### IV. *Forms, List of.*

The forms relative to keeping disorderly houses, which were placed under this title in prior editions of this work, will be found, *ante*, *Disorderly House*, Vol. I.

COMMITMENT on 9 Anne, c. 14, s. 5, for Winning above 10*l.* by Fraud, (No. 1.)  
INDICTMENT for a like Offence by playing with dice, (No. 2.)

The like in another form by playing at cards, (No. 3.)

COMMITMENT on 18 Geo. II. c. 34, s. 8, for Winning above 10*l.* at One Sitting, (No. 4.)

INDICTMENT for a like Offence by playing with dice, (No. 5.)

The like in another form by playing at cards, (No. 6.)

INDICTMENT on 18 Geo. II. c. 54, s. 8, for Losing more than 20*l.* in twenty-four hours, (No. 7.)

COMMITMENT for Keeping a Gaming House, (No. 8.)

INDICTMENT for a like Offence, (No. 9.)

## FORMS.

## (No. 1.)

[Commencement as usual, ante, p. 11, (No. 2.,)] on, &c. at, &c. by fraud, shift, cozenage, circumvention, deceit, unlawful device, and ill practice, in playing with dice or at a certain game of cards called [ ] unlawfully did win, obtain and acquire to himself a large sum of money, to wit, the sum of [twenty] pounds of the monies of one A. B., [or, certain valuable things of the value of [ ] of the goods and chattels of the said A. B., or being the property of the said A. B.]: against the form of the statute in that case made and provided. And you the said keeper, &c. [as usual, ante, 11, to the end.]

Commitment on 9 Anne, c. 14, s. 5, for winning above 10*l.* by fraud. (a)

## (No. 2.)

— THE jurors for our Lord the King upon their oath present, that C. D., late of [ ] &c. on, &c. with force and arms, at, &c. aforesaid, by fraud, shift, cozenage, circumvention, deceit, unlawful device, and ill practice in playing with dice, did in, obtain, and acquire to himself a large sum, to wit, the sum of [twenty] pounds, of lawful money of Great Britain, of the monies of one A. B., of and from him the said A. B., in and by playing with him the said A. B. at dice, to the great damage of the said A. B.; against the form of the statute in that case made and provided, and against the peace of our Lord the King, his crown and dignity.

Indictment for like offence by playing with dice. (a)

## (No. 3.)

— THE jurors for our Lord the King upon their oath present, that C. D., late of [ ] on, &c. with force and arms, at, &c. by fraud, shift, cozenage, circumvention, deceit, unlawful device, and ill practice in playing at and with cards, to wit, at a certain game of cards, called [rouge et noir], with one A. B. unlawfully did win, obtain and acquire to himself a large sum of money, to wit, the sum of [twenty] pounds, of the monies of the said A. B. [or certain valuable things, to wit, &c. [set sum out] of the value of £ [ ] of the goods and chattels of the said A. B., or, being the property of the said A. B.], to the evil example of all others; against the form of the statute in that case made and provided, and against the peace of our Lord the King, his crown and dignity.

The like in another form by playing at cards.

## (No. 4.)

[Commencement as usual, as ante, p. 11,] on, &c. at, &c. by playing at dice [or at certain game of cards called [ ]] unlawfully did win of and from one C. D., at [ ] time and sitting, above the sum of ten pounds, that is to say, the sum of twenty pounds, of the monies of the said C. D.; against the form of the statute in that case made and provided. And you the said keeper, &c. [as usual, as ante, 11, to the end.]

Commitment on 18 Geo. 2, c. 24, s. 8, for winning above 10*l.* at a sitting. (a)

## (No. 5.)

— THE jurors for our Lord the King upon their oath present, that C. D. late of [ ] on, &c. with force and arms, at, &c. did play with dice, and that the said C. D. and there, with force and arms, by playing with the said dice with the said A. B. aforesaid, did, at one time and sitting, unlawfully win of the said A. B. above the sum of ten pounds with the said dice, to wit, the sum of £ [ ] of lawful money of Great Britain; against the form of the statute in that case made and provided, and against the peace of our said Lord the King, his crown and dignity.

Indictment for like offence by playing with dice. (b)

## (No. 6.)

— THE jurors for our Lord the King upon their oath present, that C. D. late of [ ] &c. on, &c. at the parish aforesaid, in the county aforesaid, by playing at and with cards, to wit, at a certain game of cards called [rouge et noir], with one A. B. unlawfully did win of the said A. B., at one time and sitting, above the sum and value of ten

The like in another form by playing with cards.

(a) See the act, ante, 975.

(b) See various forms, 3 Chit. Crim. Law, 677.

## FORMS.

pounds, that is to say, the sum of [twenty] pounds, of the monies of the said A. B. to the great damage of the said A. B. ; against the form of the statute in such case made and provided, and against the peace of our said Lord the King, his crown and dignity.

## (No. 7.)

Indictment on  
16 Geo. 2, c. 34,  
s. 8, for losing  
more than 20*l.*  
within twenty-  
four hours. (a)

— THE jurors for our Lord the King upon their oath present, that C. D. late of &c. on, &c. with force and arms, at, &c. by then and there playing at and with cards, to wit, at a game called , with one A. B. within the space of twenty-four hours, to wit, within the space of eight hours, at, &c. in, &c. unlawfully did lose at the said play, to the said A. B. above the sum of twenty pounds, to wit, the sum of £ , to the evil example of all others, and against the peace of our said Lord the King, his crown and dignity, and also against the form of the statute in such case made and provided.

## (No. 8.)

Commitment for  
keeping a gaming  
house.

[Commencement as usual, as ante, p. 11, (No. 2.)] on, &c. at, &c. unlawfully did keep and maintain a certain common gaming house; and in the said common gaming house, for lucre and gain, unlawfully and wilfully did cause and procure divers idle and evil-disposed persons to frequent and come to play together at a certain unlawful game of cards called [rouge et noir], and then and there, in the said common gaming house, unlawfully and wilfully did permit and suffer the said idle and evil-disposed persons to be and remain, playing and gaming at the said unlawful game for divers large and excessive sums of money. And you the said keeper, [&c. as usual,] is the end.]

## (No. 9.)

Indictment for  
keeping a com-  
mon gaming  
house.

— THE jurors for our Lord the King upon their oath present, that C. D. late of &c. on, &c. with force and arms, at, &c. aforesaid, a certain common gaming house, situate in the parish of, &c. for his lucre and gain, unlawfully and injuriously did keep and maintain, and in the said common gaming house there situate, on the said, &c. and on the said other days and times, there unlawfully and injuriously did cause and procure divers idle and ill-disposed persons to frequent and come together to game, and the said idle and ill-disposed persons to be and remain in the said common gaming house, and to game together on the said, &c. and on the said other days and times there did unlawfully and injuriously procure, permit, and suffer, and the said persons, in the said common gaming house there, on the said, &c. and on the said days and times, by such procurement, permission, and sufferance of the said C. D. did game together, to the great encouragement of idleness and dissipation, to the great damage and common nuisance of all the liege subjects of our said Lord the King, and against the peace of our said Lord the King, his crown and dignity. The jurors aforesaid, on their oath aforesaid, do further present, that the said C. D. on the said, &c. and on divers other days and times between that day and the said day of in the same year, with force and arms, at the parish aforesaid, in the county aforesaid, a certain other common gaming room and place, in a certain house there situate, for his lucre and gain, unlawfully and injuriously did keep and maintain, and in the said common gaming room and place, on the said, &c. and on the said last mentioned other days and times there unlawfully and injuriously did cause and procure divers idle and ill-disposed persons to frequent and come together to game and play, and the said last mentioned idle and ill-disposed persons to be and remain in the said common gaming room and place, to game and play together, on the said day of in the year aforesaid, and on the said last mentioned other days and times there did unlawfully and injuriously procure, permit, and suffer, and the said last mentioned persons, in the said common gaming room and place, on the said day of in the year aforesaid, and on the said last mentioned other days and times, by such last procurement, permission, and sufferance of the said C. D. did game and play together, to the great encouragement of idleness and dissipation, to the great damage and common nuisance of all the liege subjects of our said Lord the King, and against the peace of our said Lord the King, his crown and dignity.

Second count for  
keeping a com-  
mon gaming room  
and place.

(a) See the enactment, ante, 977.

## Gaols and Houses of Correction.

[Edw. III. st. 1, c. 10; 19 Hen. VII. c. 10; 31 Car. II. c. 2; 3 Geo. I. c. 15; 32 Geo. II. c. 28; 24 Geo. III. sess. 2, c. 56; 52 Geo. III. c. 160; 53 Geo. III. c. 113; 55 Geo. III. c. 50; 56 Geo. III. c. 116; 4 Geo. IV. c. 63; 4 Geo. IV. c. 64; 5 Geo. IV. c. 12; 5 Geo. IV. c. 84; 5 Geo. IV. c. 85; 6 Geo. IV. c. 40; 6 Geo. IV. c. 80; 7 Geo. IV. c. 18.]

- I. *General Clauses of 4 Geo. IV. c. 64, and 5 Geo. IV, c. 85, 993.*
- II. *What Gaols, &c., are to be kept, 996.*
- III. *Building, Repairing, &c., of Gaols, 997.*
- IV. *Expenses of, how to be defrayed, 1001.*
- V. *Contracts by Justices having Charge of Gaols in Cities, &c., with Justices having Charge of Gaols in Counties, 1010.*
- VI. *Gaols in Counties divided into Ridings, &c. 1013.*
- II. *The Treatment of Prisoners for Offences; and herein—*
  - (1) *Of the General Rules and Regulations to be observed, 1017.*
  - (2) *The Commitment of Offenders, 1021.*
  - (3) *The Classification of Prisoners, 1022.*
  - (4) *Their Food, 1026.*
  - (5) *Their Employment and Labour, 1026.*
  - (6) *Escapes, 1030.*
  - (7) *Refractory Prisoners, 1030.*
  - (8) *Their Removal, 1031.*
  - (9) *Their Discharge and Allowance, 1032.*
- III. *Gifts, &c., to Prisoners, 1034.*
- IX. *Sale, &c., of Spirituous Liquors in Gaols, 1035.*
- X. *Gaolers and inferior Officers, 1036.*
- XI. *Fees to Gaolers, 1039.*
- II. *Chaplains, 1042.*
- II. *Surgeons, &c. 1044.*
- IV. *Visiting Justices, &c. 1044.*
- V. *Sheriff, County Treasurer, and Clerk of Peace, 1046.*
- VI. *Annual Report to Secretary of State, 1046.*
- II. *Penalties, &c., under 4 Geo. IV. c. 64, how recoverable &c., Appeal, &c., Actions, &c. 1047.*
- II. *Debtors, Treatment, &c. of, 1048.*
- X. *King's Bench and Marshalsea Prisons, 1051.*
- X. *Schedules of Acts and Forms, 1053.*

**General Clauses of 4 Geo. IV. c. 64, & 5 Geo. IV. c. 85.**

3 principal acts now in force concerning gaols, are the 4 Geo. IV. c. and 5 Geo. IV. c. 85.

GENERAL  
CLAUSES.

4 Geo. 4, c. 64.

1 Ed. 3, st. 1, c. 7.

4 Ed. 3, c. 10.

14 Ed. 3, st. 1, c.  
10.

7 Jac. 1, c. 4.

19 Car. 2, c. 4, ss. 1,  
2, 3, 5.22 & 23 Car. 2, c.  
20, s. 10—12.11 & 12 Wm. 3, c.  
19, (made perpet-  
ual by 6 Geo. 1, c.  
19).

2 Geo. 2, c. 22.

14 Geo. 2, c. 23.

By the 4 Geo. IV. c. 64, intituled "An Act for consolidating and amending the laws relating to the building, repairing, and regulating of certain gaols and houses of correction in England and Wales," passed 10th July 1823, sect. 1, after reciting, that 'Whereas the laws now existing relating to the building, repairing, and regulating of gaols and houses of correction in England and Wales, are complicated, and have in many cases been found ineffective: and whereas it is expedient that such measures should be adopted, and such arrangements made in prisons, as shall not only provide for the safe custody, but shall also tend more effectually to preserve the health and to improve the morals of the prisoners confined therein, and shall insure the proper measure of punishment to convicted offenders; and whereas due classification, inspection, regular labour and employment, and religious and moral instruction, are essential to the discipline of a prison and to the reformation of offenders; and whereas the present laws directing the separation, superintendence, employment, and instruction of prisoners require to be amended and enlarged, and to be more uniformly and strictly carried into effect; and it is therefore expedient that the most useful provisions contained in the several statutes and acts, and parts of statutes and acts hereinafter mentioned, should be consolidated, and that some new provisions should be added thereto;' it is enacted, "That, from and after the commencement of this act [1st September, 1823, s. 78], the several statutes and acts, and parts of statutes and acts, following, shall be repealed, so far as relates to such gaols or prisons, or houses of correction, as this act shall extend to; (that is to say), so much of a statute passed in the first year of the reign of King Edward the Third, as relates to inquiry to be made of gaolers, which, by duress, compel prisoners to appeal; and also, so much of a statute passed in the fourth year of the reign of the said King Edward the Third, as relates to sheriffs and gaolers receiving offenders without taking any thing; and also, so much of a statute passed in the fourteenth year of the reign of the said King Edward the Third, as relates to the punishment of a gaoler compelling a prisoner by duress to become an approver; and also, so much of an act passed in the seventh year of the reign of King James the First, intituled 'An Act for the due execution of divers laws and statutes heretofore made against rogues, vagabonds, and sturdy beggars and other lewd and idle persons,' as relates to the providing houses of correction, to the appointment, authority, and allowance of the governor, and to his accounting to justices for persons committed to his custody; and also, so much of an act passed in the nineteenth year of the reign of King Charles the Second, intituled 'An Act for the relief of poor prisoners, and setting them to work,' as relates to the providing stocks for setting such prisoners to work, and to the removal of prisoners on occasion of sickness; and also, so much of an act passed in the twenty-second and twenty-third years of the reign of the said King Charles the Second, intituled 'An Act for the relief and release of poor distressed prisoners for debt,' as relates to prisoners being allowed to send for victuals and other necessaries, and to fees and charities, and to the separation of felons and debtors; and also, an act passed in the eleventh and twelfth years of the reign of King William the Third, intituled 'An Act to enable justices of peace to build and repair gaols in their respective counties; any thing in an act made in the sixth year of the reign of King George the First, for making perpetual any act or acts relating to the building and repairing of county gaols to the contrary in anywise notwithstanding; and also, so much of an act passed in the second year of the reign of King George the Second, intituled 'An Act for the relief of debtors, with respect to the imprisonment of their persons,' as relates to prisoners being allowed, by keepers of prisons and gaols, to send for victuals and other necessaries, and to the taking of fees, and the making and hanging up tables thereof, and to inquiries concerning the same, and to the hearing of complaints of extortion against gaolers, and examining into gifts and legacies for the benefit of poor prisoners, and hanging up tables thereof; and also, so much of an act passed in the fourteenth year of the reign of the said King George the Second, intituled 'An Act to supply some defects in the laws for repairing and rebuilding county bridges

or repairing, enlarging, erecting, and providing houses of correction, and passing rogues and vagabonds,' as relates to repairing, enlarging, and building houses of correction, and to buying houses and lands for that purpose; and also, so much of an act passed in the sixteenth year of the reign of the said King George the Second, intituled 'An Act for the further punishment of persons who shall aid or assist prisoners to attempt to escape out of lawful custody,' as relates to the escape of prisoners from any gaol prison to which this act shall extend; and also, so much of an act passed

GENERAL  
CLAUSES.

16 Geo. 2, c. 31.

17 Geo. 2, c. 5.

the seventeenth year of the reign of the said King George the Second, intituled 'An Act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to houses of correction, as relates to the erecting, enlarging, and managing of houses of correction, and the finding or turning out of masters of them for misbehaviour; and also, so much of an act passed in the twenty-fourth year of the reign of the said King George the Second (made, among other things, granting an additional duty upon spirituous liquors, and upon licences retailing the same, and for repealing an act of the twentieth year of King George the First, made, among other things, for more effectually restraining retailing of distilled spirituous liquors), as relates to the retailing of spirituous liquors in gaols, prisons, or houses of correction, to the carrying of liquors into the same, to the search for such liquors, and to the hanging up a copy of certain clauses of the said act in such gaols, prisons, or houses;

24 Geo. 2, c. 40.

32 Geo. 2, c. 28.

and also, so much of an act passed in the thirty-second year of the reign of the said King George the Second, for relief of debtors, with respect to imprisonment of their persons, as relates to prisoners being allowed to bid for victuals and other necessities, and to the settling, signing, reviewing, enrolling, and hanging up of tables of fees, rates, and benefactions, and rules for the government of gaols and prisons; and also, an act passed the thirteenth year of the reign of his late Majesty King George the Third, intituled 'An Act for providing clergymen to officiate in gaols within that part of Great Britain called England; and also, an act passed in the nineteenth year of the reign of his said late Majesty, intituled 'An Act for serving the health of prisoners in gaol, and preventing the gaol distemper; and also, an act passed in the twenty-second year of his said late Majesty's reign, intituled 'An Act for the amending and rendering more effectual the laws in being relative to houses of correction; and also, two acts passed in the twenty-fourth year of his said late Majesty's reign, the

13 Geo. 3, c. 58.

14 Geo. 3, c. 59.

22 Geo. 3, c. 64.

24 Geo. 3, sess. 2,  
cc. 54, 55.

made to explain and amend the hereinbefore recited act, made in the ninth and twelfth years of the reign of King William the Third, and the other made to explain and amend the hereinbefore recited act of the twenty-second year of the reign of his said late Majesty King George the Third; and also, an act passed in the twenty-ninth year of his said late Majesty's reign, intituled 'An Act for the more effectual execution of the laws respecting gaols; and also, an act passed in the thirty-first year of his

29 Geo. 3, c. 67.

31 Geo. 3, c. 46.

late Majesty's reign, intituled 'An Act for the better regulating of gaols, and other places of confinement,' except only so much of the said act as relates to the imprisonment and employment in hard labour in the common gaol of the county, of prisoners sentenced to transportation, or to whom the royal mercy shall be extended on condition of transportation; and also, an act passed in the fifty-fifth year of his said late Majesty's reign, enlarging the powers of the hereinbefore recited acts of the thirteenth

55 Geo. 3, c. 48.

twenty-second years of his said late Majesty's reign, for providing clergymen to officiate in gaols and houses of correction within England and Wales; and also, an act passed in the fifty-eighth year of his said late Majesty's reign, to amend so much of the said act of the fifty-fifth year of his said late Majesty's reign, as relates to the salaries of the clergymen officiating as chaplains in houses of correction; and the said several statutes and parts of statutes and acts, are hereby repealed accordingly, and from and after the commencement of this act shall cease and determine, so far as relates to gaols and houses of correction to which this act shall extend; save and except so far as the said acts, or any of them, repeal any other act or acts, or any clause, matter, or thing therein; and also, save

59 Geo. 3, c. 32.

repealed as to the  
several matters  
herein mentioned.

Exception.

GENERAL  
CLAUSES.

4 Geo. 4, c. 64.

Proviso for certain  
prisons, ships for  
convicts, &c.Proviso for rights  
of mayors, &c.,  
having separate  
jurisdictions.Proviso where pris-  
ons built on crown  
land, &c.Commencement of  
act.

and except as to any proceeding for the punishment of any person for any offence which shall, before the commencement of this act, have been committed; and as to any presentment before that time made by any justice of the peace or grand jury; and as to any appointment before that time made by any officer or other person, to perform any duties under the said recited acts, or any of them; and as to any rules and regulations, acts, and deeds, before that time lawfully established, made, or done, under or by virtue of any one or more of the said acts; and as to the fulfilment of any contract or agreements before that time lawfully made, under or by virtue of the said recited acts, or any of them."

By sect. 76, and by 5 Geo. IV. c. 85, s. 27, "Nothing in this act contained shall extend to the royal hospital of Bethlehem and prison of Bridewell, nor to the King's Bench or Fleet prison, nor to the prison of the Marshalsea or Palace Courts, the general penitentiary at Millbank, nor to the penitentiary at Gloucester; nor [by stat. 4 Geo. IV. c. 64, s. 76,] only to any ships or vessels provided in any port or navigable river for the reception and employment of convicts sentenced to transportation; nor to exempt any such convicts from any punishment or discipline to which they were liable by law before the passing of this act."

By 4 Geo. IV. c. 64, s. 9, "Nothing in this act contained shall extend to take away, lessen, vary, alter, or affect any right, privilege, or franchise which, before the passing of this act, any mayor, bailiff, or justice of the peace, for the time being, of any city, town, or liberty, having a separate jurisdiction, had, by means of any grant, charter, or special or local act of Parliament, to commit prisoners to the gaol or house of correction of any county, riding, or division."

Sect. 77. "Where any prison is situate on lands of the King's Majesty in right of his royal crown, or of his duchy of Lancaster, or of the duchy of Cornwall, such lands, with their appurtenances, shall remain for ever unalienable, so long as they shall be used for the purpose of such prison."

Sect. 78. The act is to take effect on 1st September, 1823.

## II. What Gaols are to be kept, &amp;c.

In each county,  
&c., mentioned in  
schedule (A) there  
shall be one gaol  
and one house of  
correction.How far act to ex-  
tend.Houses of correc-  
tion already estab-  
lished may be re-  
tained to be used  
for particular  
classes of prison-  
ers.

THE 4 Geo. IV. c. 64, s. 2, enacts, "That, from and after the commencement of this act, there shall be maintained, at the expense of every county in England and Wales, one common gaol; and at the expense of every county not divided into ridings or divisions (a), and of every riding or division of a county (having several and distinct commissions of the peace, or several or distinct rates in the nature of county rates, applicable by law to the maintenance of a prison for such division), in England and Wales, at least one house of correction; and one gaol and one house of correction shall be maintained in the several cities (b), towns, and places, mentioned in the schedule marked (A), annexed to this act; and the regulations and provisions contained in this act shall extend, in manner hereafter mentioned, to every such gaol and house of correction, maintained at the expense of such county, riding, division, city, town, or place, and to the several gaols and houses of correction in the cities of London and Westminster."

Sect. 3. "That where there shall have been already established, and shall be existing at the time of passing of this act, in any county, riding, division, city, town, or place, one or more house or houses of correction, not sufficient, or capable of being made sufficient, for the extended classification required by this act, it shall be lawful for the justices assembled at their general or quarter sessions, or the major part of them, if they shall so think fit, to order and direct that, in addition to the house of correction hereinbefore directed to be maintained for the purposes of this act, one or

(a) As to gaols in counties divided into ridings, see 5 Geo. IV. c. 12, *post*, 1013, and 5 Geo. IV. c. 85, *post*, 1015.

(b) As to contracts, &c., by justices

having charge of gaols, &c. in cities, with justices having charge of gaols, &c. in adjacent counties, see 5 Geo. IV. c. 85, *post*, 1010.

more of such houses of correction as shall be so existing as aforesaid, at the time of the passing of this act, shall be continued and maintained for the exception of one or more particular class or classes, or description or descriptions of prisoners, as may be prescribed by the justices assembled at their general or quarter sessions, as directed by this act."

Sect. 8 enacts, "That in all cases where any person liable by law to be committed to the house of correction, shall be apprehended within any district, city, town, or place, mentioned in the schedule to this act annexed, and the inhabitants of any such district, city, town, or place, are or shall be contributory to the support and maintenance of the house or houses of correction of the county, riding, or division, in which such district, city, town, or place, is situate, it shall and may be lawful for the justices of the peace of such district, city, town, or place, to commit such person to the house of correction of the county, riding, or division, in which such district, city, town, or place, is situate; and every person so committed shall and may be received, detained, dealt with, and ordered to be set and kept to hard labour or other work, or conveyed and sent away or discharged, and be subject and liable to the same correction and punishment, to all intents and purposes, as if committed by any justice or justices of the peace of such county, riding, or division; and in such case it shall not be necessary or required, that any other house of correction shall be built, or maintained in or for such district, city, town, or place, and the inhabitants of such district, city, town, or place, shall not be compelled or compellable to the payment of any rate or sum of money whatever for the building or maintaining of any other house of correction, in or for such district, city, town, or place; anything in this act contained to the contrary in anywise notwithstanding."

WHAT GAOLS  
ARE TO BE  
KEPT.

4 Geo. 4, c. 64.

Power to justices to commit to house of correction of the county, where person apprehended in district, &c.

Not necessary to build a house of correction for any such district, &c.

### III. Repairing, &c., Gaols, &c.

THE 4 Geo. IV. c. 64, s. 45, enacts, "That in case it shall appear at any time to the justices at any general or quarter sessions of the peace, holden in any county or riding, or in any such division of a county as aforesaid, or in any district, city, town, or place, to which this act shall extend, by any report made under the provisions of this act, of the state of any prison, to which justices at such sessions, or by any presentment at any time made by grand jury at the assizes, great session, session of gaol delivery, or session of the peace, to be holden for any such county, riding, division, district, city, town, or place, or by any presentment at any time made by any one or more justices of the peace in and for the same, and laid before the justices at such general or quarter sessions of the peace, that any gaol or house of correction, to which this act shall extend, within such county, riding, division, district, city, town, or place, is insufficient, inconvenient, or in need of repair, or otherwise inadequate to give effect to the rules and regulations prescribed by this act, or that there is a necessity for the erection of any new gaol or house of correction; the justices assembled at such general or quarter sessions, or at the general or quarter sessions, or adjournment thereof, next after any such report or presentment made, shall, and are hereby required, to cause notice to be given, three times, at least, in some public newspaper circulating within such county, riding, division, district, city, town, or place, of such report or presentment having been laid before such sessions, and of their intention to take the same into consideration at the next ensuing or some subsequent general or quarter sessions or adjournment thereof; and in case the justices at such last-mentioned sessions, or the major part of them, shall resolve that such report or presentment is well founded, then it shall and may be lawful for such justices, if they are hereby required, at the sessions mentioned in such notice, or at subsequent sessions, or adjournment thereof, with the like notice, to take such measures, either by contract or otherwise, as shall appear to them to be requisite and proper, for the altering, enlarging, or repairing, or for rebuilding any such gaol or house of correction, regard being

On report or presentment of insufficiency of prisons, quarter sessions may contract for enlarging, building, or repairing the same.

Notice thereof in some newspaper of the county, &c.



**REPAIRING, &c.**

4 Geo. 4, c. 64.

Contractor to give security.

Quarter sessions may purchase houses, &c. for building or enlarging prisons.

When prisons become unsafe or inconvenient, two justices (one a visitor) may order repairs, and shall report to sessions.

How far gaols, though locally situate out of county, &c., deemed part of the county, &c., and subject to jurisdiction of justices of county, &c.

had, in the case of contracts, to the reasonableness of the price and responsibility of the contractors; and every contractor shall give sufficient security for the due performance of his contract to the clerk of the peace, or town clerk, for the county, riding, division, district, city, town, or place, to be inspected at all reasonable times by any justices, or by any other person contributing to the rate of such county, riding, division, district, city, town, or place, without fee or reward.

Sect. 46 enacts, "That after such presentment and notice as aforesaid it shall and may be lawful for the justices in general or quarter sessions assembled, or the major part of them, and they shall have full power and authority, to purchase any houses, buildings, lands, tenements, hereditaments, ways, watercourses, and other easements, for the purpose of enlarging or rendering commodious, or for the building or rebuilding any prison, and to direct the property so purchased to be conveyed to such person or persons as the said justices shall think fit, in trust for the purpose aforesaid, under the regulations and directions in this act contained; and such houses, buildings, lands, tenements, hereditaments, ways, watercourses, or other easements, shall, when inclosed and added to such prison, be deemed to be taken to be parts of such prison, and to be within the county, riding, division, city, district, town, or place, to the use of which such prison may be applied, to all intents and purposes whatever, so long as the same shall be used by such county, riding, division, city, district, town, or place, for the purpose of this act, and no longer."

Sect. 47 enacts, "That if it shall at any time happen, that any such gaol or house of correction shall become unsafe or unfit for the custody of the prisoners confined therein, between the several times of holding the general or quarter sessions, it shall and may be lawful for any two or more justices (one of whom shall be a visiting justice for the prison) for the county, riding, division, district, city, town, or place, to order such repairs and alterations to be immediately done and made, as may be necessary and sufficient for the safe and proper custody of such prisoners, and the upholding of such prison; and such justices shall report the same to the next court of general or quarter sessions, to be holden for such county, riding, division, district, city, town, or place; and such court is hereby authorized to order the payment of such sum or sums of money, as shall have been properly expended in such repairs or alterations as aforesaid."

Sect. 48 enacts, "That every gaol, house of correction, or other prison for any county, riding, or division, county of a city, or county of a town, or for any town, liberty, soke, or place, not being a county, but having an exclusive jurisdiction for the trial of felonies or misdemeanors committed therein, which is now built, or shall hereafter be built, together with the ground whereon the same shall stand, and every court, yard, building, and appurtenance thereunto belonging, with every addition that shall hereafter be made thereto, which said gaol, house of correction, or other prison, court, yard, building, appurtenance, or addition, is or shall be situate within the limits of any other county, riding, or division, county of a city, county of a town, or of any other town, liberty, soke, or place, not being a county, but having an exclusive jurisdiction for the trial of felonies or misdemeanors committed therein, shall be deemed, and taken to be, part of the county, riding, or division, county of a city, county of a town, or of the town, liberty, soke, or place, for which the same shall be used as a gaol, house of correction, or other prison, so long as the same shall be so used, and no longer. And the justices of the peace, mayors, jurats, coroners, constables, and other officers of such county, riding, or division, county of a city, county of a town, or of such town, liberty, soke, or place, for which the same shall be used as a gaol, house of correction, or other prison, shall, during the time that the same shall be so used, have as full power and authority therein, as they would have if the same was not situate within the limits of such other county, riding, or division, county of a city, county of a town, or of such town, liberty, soke, or place; any charter, law, or usage, to the contrary thereof in anywise notwithstanding."

Sect. 49 enacts, "That in the altering, enlarging, repairing, building, or re-building, of any gaol or house of correction under this act, the justices shall adopt such plans as shall afford the most effectual means for the security, classification, health, inspection, employment, and religious and moral instruction of the prisoners; the building shall be so constructed or applied, and the keepers' and officers' apartments so situated, as may best ensure the safety of the prison, and facilitate the control and superintendence of those committed thereto; distinct wards, and dry and airy cells shall be provided, in which prisoners of the several descriptions and classes hereinafter enumerated may be respectively confined; and it shall be considered as a primary and invariable rule, that the male prisoners shall in all cases be separated from the female, so as to prevent any communication between them: provision shall be made for the separation of prisoners into the following classes; if a gaol—first, debtors and persons confined for contempt of court on civil process; secondly, prisoners convicted of felony; thirdly, those convicted upon trial of misdemeanors; fourthly, those committed on charge or suspicion of felony; fifthly, those committed on charge of misdemeanors, or for want of sureties. If a house of correction—first, prisoners convicted of felony; secondly, prisoners convicted upon trial of misdemeanors; thirdly, those committed on charge or suspicion of felony; fourthly, those committed on charge of misdemeanors; fifthly, vagrants. Places of confinement shall also be set apart in every gaol and house of correction for such prisoners as are intended to be examined as witnesses in behalf of the crown in any prosecutions, and such further means of classification shall be adopted as the justices shall deem conducive to good order and discipline; separate rooms shall be provided as infirmaries or sick wards, for the two sexes, and, as far as is practicable, for the different description of prisoners; and warm and cold baths, or bathing tubs, shall be introduced into such parts of the prison as may be best adapted for the use of the several classes; proper yards shall be allotted to the different classes or air and exercise, and each class shall have the use of a privy, and be furnished with a supply of good water; a separate sleeping cell shall, if possible, be provided for every prisoner; but as the numbers may sometimes be greater than the prison is calculated to contain, under the arrangement required by this act, and as it is expedient that two male prisoners only should never be lodged together, a small proportion of cells or rooms shall be provided for the reception of three or more persons; every prison shall contain rooms and places properly fitted up for the exercise of labour and industry, and also a competent number of cells adapted to solitary confinement, or the punishment of refractory prisoners, and for the reception of such persons as may by law be confined therein; a chapel shall be provided in every prison, in such a convenient situation as to be easy of access to all the prisoners; it shall be fitted up with separate divisions for males and females, and also for the different classes; it shall be strictly set apart for religious worship, or for the occasional religious and moral instructions of the prisoners, and shall never be appropriated to or employed for any other purpose whatsoever; in cases where the justices shall deem it necessary that the chaplain should reside, either occasionally or permanently, within the prison, or near to it, proper apartments shall be provided therein, or in the neighbourhood thereof, for his accommodation."

Sect. 50 enacts, "That in case it shall be expressly presented that the place wherein any old prison is situated is improper, and that the prison ought to be removed to some other part of the county, riding, division, strict, city, town, or place, or that a new gaol or house of correction is necessary, the justices in their general or quarter sessions assembled shall take such presentment into their consideration, and if it shall be resolved by the justices assembled at two successive general or quarter sessions, or a major part of them, that such old prison ought to be removed, or that a new prison is necessary, it shall be lawful for the justices so assembled to contract for the building of a new gaol or house of correction in any part of the county, riding, division, district, city, town, or place which they may

**REPAIRING, &c.  
GAOLS, &c.**

4 Geo. 4, c. 64.

Plans for prisons to provide separate places of confinement, classification, &amp;c. of prisoners.

Sick wards.

Baths.

Places for exercise.

Sleeping cells.

Places for work.

Solitary cells.

A chapel.

Apartments for chaplain.

Justices may remove site of prisons, upon presentment of state of the old site.

REPAIRING, &c.  
GAOLS, &c.

4 Geo. 4, c. 64.

Sale may be made  
of old sites.

(Exception).

## Conveyance.

Where any courts  
of justice are at-  
tached to prisons,  
they may be al-  
tered, &c.Proceedings by  
justices who shall  
consider any gaol,  
&c. unnecessary.Contracts for sale  
of gaols, &c. en-  
tered into before  
this act may be  
confirmed by jus-  
tices, after notice  
given in like man-  
ner.

deem most eligible; and whenever the site of any prison shall be changed, and the old site shall be no longer necessary for the purpose of a prison, it shall be lawful for the justices so assembled to make sale thereof, (unless it be the property of the King's Majesty, his heirs and successors, or of some private individual), for the best price that can be gotten for the same, and to direct the purchase-money to be paid to the treasurer of such county, riding, division, district, city, town, or place, and to direct the trustee of such lands and hereditaments, his heirs, executors, or administrators (according to the tenure thereof), and the clerk of the peace, or town clerk, to convey the inheritance of such site to the purchaser; and every such conveyance, together with the treasurer's receipt for the purchase-money, shall give a good and valid title to the purchaser; and the purchase-money shall be applied by the treasurer in aid of the rate of such county, riding, division, district, city, town, or place; and whenever the building of any court of justice is or shall be so attached to any prison, as to render it impracticable or inconvenient to repair, enlarge, improve, or rebuild the said prison, without also altering or pulling down the building of the said court, then and in such cases it shall be lawful for the justices in general or quarter sessions assembled to cause such courts to be altered or pulled down, or to be rebuilt, either on the same or on any other site, subject to the same provisions as are by this act appointed with respect to gaols."

By stat. 7 Geo. IV. c. 18, s. 1, after reciting that by 4 Geo. IV. c. 64, provision is made for the sale, in certain cases, of the sites of old prisons which are no longer necessary; and it is expedient to extend the same power to cases not therein provided for; it is enacted, "That in case it shall appear to the justices of the peace, who shall be assembled at any general or quarter session of the peace to be henceforth holden for any county, riding, or division in England, that, by reason of any gaol or house of correction for such county, riding, or division, having been lately built or considerably enlarged, any other gaol or gaols, house or houses of correction therein hath or have or shall have become unnecessary, the said justices, or the justices who shall be assembled at the then next general or quarter session to be holden for the same county, riding, or division, shall order notice to be given three times at least in some public newspaper circulating in such county, riding, or division, that the propriety of selling such unnecessary gaol or gaols, house or houses of correction, will be taken into consideration at the next ensuing general or quarter sessions; and in case the justices at such last-mentioned session, or the majority of them, shall resolve that such last-mentioned gaol or gaols, house or houses of correction, ought to be sold, then it shall be lawful for such justices, and they are hereby required to take such measures for selling the same, together with all outhouses, land, and appurtenances to the same belonging, (unless they, or any part thereof, shall be the property of his Majesty, his heirs, or successors, or of any private individual), for the best price or prices that can be obtained for the same, either by public auction or private contract, and subject to such conditions and in such manner as they shall think proper."

Sect. 2 enacts, "That in case any contract shall, before the passing of this act, have been entered into by or on behalf of the justices of the peace of any county, riding, or division, in England, in which any gaol or house of correction has been lately built or considerably enlarged, for the sale of any other gaol or house of correction therein, and of the outhouses, land, and appurtenances thereto belonging, (not being the property of his Majesty or of any private individual), it shall be lawful for the justices who shall be assembled at any general or quarter session of the peace to be henceforth holden for such county, riding, or division, to order notice to be given, in the manner hereinbefore directed, that the propriety of confirming and completing such contract will be taken into consideration at the next ensuing general or quarter session; and in case the justices at such last-mentioned session, or the majority of them, shall resolve that the contract so entered into ought to be confirmed and completed, either with or without any modification of the conditions thereof, then it shall be lawful for such justices,

and they are hereby required, to order that such contract be confirmed and completed accordingly."

Sect. 3 enacts, "That whenever a sale of any gaol or house of correction shall be made, or the contract heretofore entered into for any such sale shall be ordered to be confirmed and completed, pursuant to the directions in this act contained, and the purchase-money for the same paid to the treasurer of the county, riding, or division, hereby authorized to dispose thereof, it shall be lawful for the trustees or trustee of every such gaol or house of correction, if any, and the clerk of the peace of such county, riding, or division, to convey or surrender such gaol or house of correction, with the out-houses, land, and appurtenances thereto belonging, unto and to the use of the purchaser thereof, and his or her heirs, or to such uses as he or she shall direct or appoint; and every such conveyance or surrender, together with the treasurer's receipt for the purchase-money, shall give a good and valid title to the purchaser; and the purchase-money shall be applied by the treasurer towards discharging the expense which shall have been incurred in building or enlarging any gaol or house of correction for the same county, riding, or division, or in aid of the rate of the same, as the justices of the peace for such county, riding, or division, in general or quarter session assembled, shall direct."

Sect. 4 provides, "That if, in the event of any sale being effected or confirmed in pursuance of this act, it shall appear to the justices by whom the resolution for making or confirming such sale shall be entered into, that the property so sold has never been vested in any trustees, or that the trustees thereof are dead, then it shall be lawful for the said justices to order that such property shall be conveyed by the clerk of the peace to the purchaser thereof; and in such case a conveyance thereof by the clerk of the peace, by indenture of bargain and sale, (of which no enrolment shall be necessary) shall be valid and effectual to all intents and purposes."

**REPAIRING, &c.  
GAOLS, &c.**

7 Geo. 4, c. 18.

Prison, when sold, to be conveyed by trustees, &c. to purchaser; which shall give a valid title.

Application of purchase-money.

When property is not vested in trustees, justices may order clerk of the peace to convey such property to purchaser.

#### IV. Expenses of Building, &c. how defrayed.

By the 4 Geo. IV. c. 63, after reciting the stat. 3 Geo. IV. c. 86, it is enacted, "That upon the application of the major part of the justices of any county, riding, division, city, town, or place in England, in quarter sessions assembled, such major part to consist of five at the least, it shall be lawful for the commissioners, who are authorized and empowered to advance money for public works under the provisions of the said recited act of the third year of the reign of his present Majesty, and of the several acts there-recited, and they are hereby empowered to make advances under the powers, authorities, provisions, and regulations of the said acts, for the building, rebuilding, enlarging, improving, repairing, or fitting up of any gaols or houses of correction in England, in like manner in every respect as gaols and houses of correction had been included in the provisions of the said recited acts; and it shall be lawful for the justices of the peace of any county or of any city, town, or place, in England, authorized to make rates for the repairing of any gaol or house of correction, to receive any sums of money so advanced, and to apply the same to the purposes for which such advances shall be made, and to make rates for the repayment of any sums of money so advanced, in such manner, and in such proportions, and at such times as shall be required by the said commissioners in that behalf, and also to assign the rates so to be made as aforesaid, as a security for the said advances, in such manner and form as the said commissioners shall direct and appoint, so as that all sums so advanced, with interest thereon, at and after the rate specified in the said recited act of the third year aforesaid, shall be fully repaid and satisfied within the period of twenty years from the advancing thereof; and all such rates shall be made, assessed, levied, and recovered in like manner as any county rates may be made, assessed, levied, and recovered, and shall continue in force until all such ad-

4 Geo. 4, c. 63.

On application of quarter sessions of any county commissioners may make advances of money for building or repairing gaols, &c.

Justices to make rates for repayment, and assign the rates as a security.

Money advanced to be repaid in twenty years.

EXPENSES OF  
BUILDING, &c.

4 Geo. 4, c. 64.

When amount of estimate for building, &c., exceeds one half of the annual county rate, such county rate may be mortgaged.

Such security transferable.

Quarter sessions may charge county rates, so as the money borrowed be repaid in fourteen years, with interest.

Books to be kept of receipts and payments.

vances, with interest after the rate aforesaid, shall severally and respectively be fully paid and discharged; any law, statute, usage, or custom to the contrary notwithstanding."

Stat. 4 Geo. IV. c. 64, s. 54, enacts, "That when it shall appear that the amount of any estimate, approved by the justices, for the building or rebuilding, repairing or enlarging any gaol or house of correction, under the powers of this act, shall exceed one half of the amount of the ordinary annual assessment for the rate of any county or riding, or of any such division of a county as aforesaid, or of any district, city, town, or place, (such ordinary assessment to be taken on an average of such rate for the last seven years preceding), it shall and may be lawful for the justices, in quarter sessions assembled, from time to time to borrow and take up on mortgage of such rate, by instrument in the form contained in the schedule to this act annexed marked (C) (a), or to the like effect, any sum of money not exceeding the amount of such estimate, in sums not less than 50*l.*, nor exceeding 100*l.* each, at interest, as to the said justices shall appear necessary and expedient for the purposes aforesaid, and to secure every such sum of money so borrowed upon the credit of the said rate; and it shall and may be lawful for the justices so assembled, and they are hereby authorized to treat and agree with any person for the loan of any such sums of money, and by their order to confirm every such agreement; and every such agreement, signed by the chairman and two or more other justices present at the time of making such order, shall be, and the same is hereby declared to be effectual for securing to the person so advancing any such sum of money, every such sum, with the interest for the same, on such terms as in and by such agreement shall be stipulated; and copies or extracts of all such agreements shall be kept with the clerk of the peace; and it shall and may be lawful for every person who shall be entitled to the money thereby secured, and such person is hereby empowered (by indorsing his name on the back of such security), to transfer the same, and his right to the principal money and interest thereby secured, unto any other person; and every such assignee may in like manner transfer the same again, and so *toties quoties*; and the person to whom such security or any such assignment thereof shall be made, and his executor, administrators, and assigns, shall be creditors upon the said rate in an equal degree one with another, and shall not have any preference with respect to the priority of any monies so advanced."

Sect. 55 enacts, "That the said justices shall, and they are hereby authorized and required to charge the rate to be raised upon such county, riding, division, district, city, town, or place, not only with the interest of the money so borrowed, but also with the payment of such further sum as shall ensure the payment of the whole of the sum borrowed within fourteen years from the time of borrowing the same: and such sums shall be assessed on the county, riding, division, district, city, town, or place, in such manner as county rates are directed to be assessed by the laws now in being, and paid and applied under the direction of the justices, in discharge of the interest and of so many of the principal sums on the said securities, as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged; and the justices are required to fix one or more day or days in each year on which such payment shall be made, and shall make orders for assessments in due time, so as to provide for the regular payment thereof; and they are hereby required to appoint a proper person to keep an exact and regular account of all the receipts and payments, under the authority of this act, in a book or books, separate and apart from other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing due, and what principal money has been discharged, and what remains due; and the book or books so adjusted and settled to deliver into court at every general or quarter sessions to be held for such

(a) See form, *post*, 1055.

county, riding, division, district, city, town, or place; and the justices shall, and they are required, at every such sessions, carefully to inspect all such accounts, and to make orders for carrying the several purposes of this act into execution, in such manner as to them shall seem meet; and if at any time it shall appear to the justices, that the person so appointed has neglected such order, and has not duly and without delay applied the money in his hands to the purposes hereby directed, such person shall forfeit half the amount of the money which shall not have been applied to the purposes of this act; and the justices so assembled in sessions as aforesaid, shall direct in what order such securities shall be discharged, by drawing lots or otherwise, as they shall think fit, taking care to discharge, in the first place, all such securities as shall bear the highest rate of interest."

Sect. 56 enacts, "That it shall and may be lawful for the King's most excellent Majesty, his heirs and successors, and for all bodies politic and corporate, and also for all guardians, committees, husbands, trustees, and attorneys of all persons being infants, lunatics, idiots, under coverture or any other disability, and also for all other persons who are or shall be seised, possessed of, or interested in any houses, buildings, lands, tenements, hereditaments, easements, or privileges, which shall be deemed necessary or the purposes of this act, to contract or agree for, and to sell, convey, and assure such houses, buildings, lands, tenements, hereditaments, easements, and privileges, unto such person as shall be named by the justices at general or quarter sessions, in trust and for the purpose of erecting new prisons or of enlarging old ones, and the yards, courts, and outlets thereunto belonging; and all such contracts, agreements, sales, conveyances, and assurances shall be valid and effectual in law, to all intents and purposes whatsoever; any law, statute, usage, or custom to the contrary notwithstanding."

Sect. 57 enacts, "That whenever any lands or hereditaments of the King's Majesty shall be requisite, and shall be contracted for, to be used for the purposes aforesaid, the same, if held by the King's Majesty, his heirs or successors, in the right of his or their royal crown, shall and may be legally conveyed by an instrument, under the hands and seals of the lord high treasurer, or of the commissioners of his Majesty's treasury, or of any one of them, and if parcel of the Duchy of Lancaster, by an instrument under the hand and seal of the chancellor of the same duchy, and if parcel of the Duchy of Cornwall, by an instrument under the hands and seals of the officers of the same duchy, authorized to grant leases under" stat. 3 Geo. 4. c. 78, s. 19, 20.

Sect. 58 enacts, "That whenever any such corporation, guardian, committee, trustee, or attorney, or other person interested in any houses, buildings, lands, tenements, hereditaments, easements, or privileges, contiguous to any gaol or house of correction, which shall be deemed necessary for the purposes of enlarging or rendering more commodious any such gaol or house of correction, upon notice in writing to him, her, or them given, or to the principal officer or officers of such corporation, shall, for the space of twenty-one days after such notice so given or left, neglect or refuse to accept, or shall refuse to accept such price as shall be offered by the justices their agent, or shall otherwise not agree for the sale of such houses, buildings, lands, tenements, hereditaments, easements, or privileges; and whenever, by reason of absence or incapacity, any person shall be prevented from treating for such sale, then and in every such case the justices at the general or quarter sessions next after the termination of such twenty-one days, or at an adjournment thereof, shall, and they are hereby required to cause notice to be given three times at least in some public newspaper circulating within such county, riding, division, district, city, town, or place, their intention to take into consideration, at the next ensuing or some subsequent or general quarter sessions, or adjournment thereof, the matter of such neglect, refusal, or omission, or prevention to treat, or to accept of the price offered, or to agree for such sale as aforesaid, and the causes and reasons thereof respectively; and the person or persons, or some officer of

**EXPENSES OF BUILDING, &c.**

4 Geo. 4. c. 64.

Persons appointed in respect thereof neglecting duty.

Penalty.

Bodies politic, &c., empowered to sell and convey lands.

Where crown lands are necessary, treasury may convey the same.

The like as to duchy of Lancaster and Cornwall.

If parties refuse to treat, &c., value of premises to be settled by a jury.

Notice to be given by quarter sessions of taking into consideration the refusal of parties to treat.

EXPENSES OF  
BUILDING, &c.

4 Geo. 4, c. 64.

Jury, and proceed-  
ings thereon.

Verdict final.

How jury to be  
summoned and  
chosen.Fines may be im-  
posed upon sheriff,  
jury, and others,  
for neglect.

any corporation so interested as aforesaid, in any such houses, buildings, lands, tenements, hereditaments, easements, and privileges, or some person on their behalf respectively, shall have liberty to attend such meeting, if they shall think fit, and to state to the justices there assembled their reasons for such neglect, refusal, or omission as aforesaid; and in case the justices at such last-mentioned sessions, or the major part of them, shall, after hearing what the parties interested as aforesaid, or their agents, have to allege in behalf of their respective interests, and upon due consideration had of such matter as aforesaid, resolve to proceed to the valuation and purchase of such lands, tenements, hereditaments, easements, or privileges, notwithstanding such neglect, refusal, or omission, or prevention as aforesaid, then and in every such case the justices at such sessions, or any two or more of them appointed for that purpose, shall cause the value of such houses, buildings, lands, tenements, hereditaments, easements, and privileges, to be inquired into and ascertained by a jury of indifferent men of the county, riding, division, district, city, town, or place, wherein the same shall be situate, and to that end shall summon before such jury, and examine upon oath (which oath any one of the justices is hereby empowered to administer) any person or persons whomsoever; and such justices, or any two of them, shall, by ordering a view or otherwise, use all ways and means for the information of themselves and of such jury in the premises; and when such jury shall have inquired of and ascertained by their verdict the value of such houses, buildings, lands, tenements, hereditaments, easements, and privileges, the said justices shall thereupon order that the sum which shall so appear to be the value of such houses, buildings, lands, tenements, hereditaments, easements, and privileges, shall be paid in such manner as is hereinbefore directed, touching the money to be paid for such houses, buildings, lands, tenements, hereditaments, easements, or privileges, for sale whereof the persons interested shall contract and agree in manner aforesaid; which verdict and order shall be filed of record by the clerk of the peace, or other officer having the custody of the records of the county, riding, division, district, city, town, or place, and shall be final and conclusive, to all intents and purposes whatsoever, against all parties and persons whomsoever, claiming or to claim in possession, reversion, remainder, or otherwise, their heirs and successors, as well absent as present, infants, lunatics, idiots, and persons under coverture, or any other disability whatsoever, corporations, guardians, committees, husbands, trustees, and attornies, or any other person or persons whomsoever.

Sect. 59 enacts, "That for the summoning and returning such juries, such justices or any two of them may issue their warrant to the sheriff or officer having the returning of writs within the county, riding, division, district, city, town, or place within the limits of which the houses, buildings, lands, tenements, hereditaments, easements, or privileges shall be situate, requiring him to impanel, summon, and return an indifferent jury of twenty-four persons, qualified to serve on juries, to appear before the said justices, or any two of them, at such time and place as in such warrant shall be appointed; and such sheriff or officer is hereby required to impanel, summon, and return such number of persons accordingly, and out of the persons so impaneled, summoned, and returned, or out of such of them as shall appear upon such summons, the justices, or any two of them, shall and they are hereby empowered and required to draw by ballot and to swear or cause to be sworn twelve men, who shall be the jury for the purposes aforesaid; and, in default of a sufficient number of jurymen so returned, the said sheriff or officer shall take such other honest and indifferent men of the bystanders, or that can speedily be procured to attend that service, as shall make up the number twelve; and all persons concerned shall have their lawful challenges against any of the persons impaneled when they come to be sworn; and the said justices, or any two of them, shall have power to impose a fine or fines on such sheriff or officer, or his deputy or deputies, making such default in the premises, and on any of the persons who shall be summoned and returned on such jury, and who shall not appear, or appearing shall refuse to be sworn on the said jury, or, being sworn, shall refuse to give or shall not give a verdict, or shall, in any other manner, wilfully neglect his

their duty therein; and also on any person who, being summoned and required to give evidence before the said jury, shall refuse or neglect to appear, or appearing shall refuse to be sworn or to give evidence, so that no such fine be more than 10*l.* nor less than 20*s.* on any one person for one offence."

Sect. 60 enacts, "That in case any jury shall deliver a verdict for more money as the value of the houses, buildings, lands, tenements, hereditaments, easements, or privileges, so to be purchased, than shall have been offered for the purchase thereof by the justices or their agent, to any person capable of contracting for the same, the costs and expenses of summoning and maintaining the jury and witnesses, shall be borne and paid out of the same fund as the expenses of the buildings to be erected; but if such jury shall deliver a verdict for no more, or for less money than the money which shall have been so offered by such justices or their agent, then the costs and expenses of summoning and maintaining the jury and witnesses, shall be borne and paid by the person or persons with whom such controversy or dispute, touching the value of such houses, buildings, lands, tenements, hereditaments, easements, or privileges, shall arise: provided always, that in all cases where any person or persons shall, by reason of absence, have been prevented from treating, such costs and expenses shall be borne and paid out of the same fund as the expenses of the buildings to be erected."

Sect. 61 enacts, "That upon payment of such sum and sums of money to be ascertained and judged, (that is to say) first, in or towards the payment and discharge of any sums due on charges, incumbrances, and liens, any, affecting the several estates respectively, and then to the owners of the said estates respectively, if any shall remain for that purpose, the person or persons who shall be so found and adjudged to be the owners of the said several estates, of and in the said houses, buildings, lands, tenements, hereditaments, easements, or privileges, respectively, and also the owners of any such incumbrances, charges, and liens, respectively, shall make and execute, or procure to be made and executed, to the person or persons named by such justices, and his or their heirs, a good and sufficient conveyance or conveyances, thereby granting, releasing, or assigning to them, the said houses, buildings, lands, tenements, or hereditaments, easements, privileges, and all such estate, right, title, term or interest, therein, or charge, incumbrance, or lien thereon; and immediately upon such payment and entry of such verdicts of the said juries and judgments, sentences and decrees, orders, and other proceedings as aforesaid, the said lands, houses, buildings, and premises, shall vest in the person or persons to be so named by the said justices, and his and their heirs, and he and they shall be deemed in law to be in the actual seisin and possession thereof, to all intents and purposes whatsoever, as fully and effectually as if every person having any estate in the premises, in possession, remainder, reversion, or expectancy, or any charge, incumbrance, or lien thereon, was of full age and of sound mind and memory, and had actually and duly conveyed the same to such trustee by lease and release, bargain and sale enrolled, feoffment with livery and seisin, fine and recovery, or by any other legal conveyance whatsoever."

Sect. 62 enacts, "That if any money shall be agreed or awarded to be paid for any houses, buildings, lands, tenements, hereditaments, easements, privileges, purchased, taken, or used by virtue of the powers of this act, which shall belong to any corporation, *feme covert*, infant, lunatic, person or persons under any other disability or incapacity, such money shall, in case the same shall amount to the sum of 200*l.*, with all convenient speed, be paid into the Bank of England, in the name and with the privity of the accountant-general of the high Court of Chancery, to be placed to his account, *ex parte* the justices of the peace for the county of \_\_\_\_\_, to the intent that such money shall be applied under the direction and with the approbation of the said Court, to be signified by an order made upon a petition to be preferred in summary way by the person or persons who would have been entitled to the rents and profits of the said houses, buildings, lands, tenements, he-

**EXPENSES OF  
BUILDING, &c.**

4 Geo. 4, c. 64.

Expenses of summoning and maintaining jury and witnesses how defrayed.

Conveyance to be made on payment of purchase money.

Effect of such conveyance.

Application of compensation when exceeding 200*l.*



EXPENSES OF  
BUILDING, &c.  
4 Geo. 4, c. 64.

reditaments, easements, or privileges, in the purchase of the land tax, or discharge of any debt or debts, or such other incumbrances or part thereof as the said Court shall authorize to be paid, affecting the same lands, tenements, or hereditaments, or affecting other houses, buildings, lands, tenements, hereditaments, easements, or privileges, standing settled therewith to the same or the like uses, intents, and purposes; or where such money shall not be so employed, then the same shall be laid out and invested under the like direction and approbation of the said Court, in the purchase of other houses, buildings, lands, tenements, hereditaments, easements, or privileges, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner as the houses, buildings, lands, tenements, hereditaments, easements, or privileges which shall be so purchased, taken, or used, as aforesaid, stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing undetermined, and capable of taking effect; and in the meantime, and until such purchase shall be made, the said money shall, by order of the Court of Chancery, upon application thereto, be invested by the said accountant-general in his name, in the purchase of three pounds *per centum* consolidated, or three pounds *per centum* reduced Bank annuities; and in the meantime, and until the said Bank annuities shall be ordered by the said Court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced Bank annuities, shall from time to time be paid by order of the said Court, to the person or persons who would for the time being have been entitled to the rents and profits of the houses, buildings, lands, tenements, hereditaments, easements, or privileges, so hereby directed to be purchased, in case such purchase or settlement were made."

Application when  
compensation is  
less than 200*l.* but  
not less than 20*l.*

Sect. 63 provides, "That if any money so agreed or awarded to be paid for any houses, buildings, lands, tenements, hereditaments, easements, or privileges, purchased, taken, or used for the purposes aforesaid, and belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of 200*l.*, and shall amount to or exceed the sum of 20*l.*, then and in all such cases, the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the houses, buildings, lands, tenements, hereditaments, easements, or privileges, so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the Bank of England, in the name and with the privity of the said accountant-general of the high Court of Chancery, and be placed to his account as aforesaid, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making such option, and approved of by the said justices (such nomination and approbation to be signified in writing under the hands of the nominating and approving parties), in order that such principal money, and the dividends arising thereon, may be applied in manner hereinbefore directed, so far as the case be applicable, without obtaining, or being required to obtain, the direction or approbation of the said Court of Chancery."

Application where  
money less than  
20*l.*

Sect. 64 enacts, "That where such money so agreed or awarded to be paid as next before mentioned, shall be less than 20*l.*, then and in all such cases, the same shall be applied to the use of the person or persons who would for the time being have been entitled to the rents and profits of the houses, buildings, lands, tenements, hereditaments, easements, or privileges, so purchased, taken, or used for the purposes of this act, in such manner as the trustees shall think fit; or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, to and for the use and benefit of such person or persons so entitled respectively."

In case of not  
making out titles,  
purchase-money  
to be paid into the

Sect. 65 enacts, "That in case the person or persons to whom any sum or sums of money shall be awarded for the purchase of any houses, buildings, lands, tenements, hereditaments, easements, or privileges, to be pur-

hased by this act, shall refuse to accept the same, or shall not be able to make out a good title to the premises, to the satisfaction of the said justices; or in case such person or persons to whom such sum or sums shall be so awarded as aforesaid cannot be found, or if the person or persons entitled to such houses, buildings, lands, tenements, hereditaments, easements, or privileges, be not known or discovered; then, and in every such case, it shall and may be lawful to and for the said justices to order the said sum or sums of money so awarded as aforesaid, to be paid into the Bank of England, in the name and with the privity of the accountant-general of the Court of Chancery, to be placed to his account, to the credit of the persons interested in the said houses, buildings, lands, tenements, hereditaments, easements, or privileges, (describing them), subject to the order, control, and disposition of the said Court of Chancery; which said Court of Chancery, on the application of any person or persons making claim to such sum and sums of money, or any part thereof, by motion or petition, shall be, and is hereby empowered, in a summary way of proceeding, or otherwise, as to the said Court shall seem meet, to order the same to be laid out and invested in the public funds, and to order the distribution thereof, or payment of the dividends thereof, according to the respective estate or estates, title or interest, of the person or persons making claim thereunto, and to make such other order in the premises as to the said Court shall seem just and reasonable; and the cashier or cashiers of the Bank of England, who shall receive such sum or sums of money, is and are hereby required, to give a receipt for such sum or sums of money, mentioning and specifying for what and for whose use the same is or are received, to such person or persons who shall pay any such sum or sums of money into the Bank as aforesaid."

Sect. 66 provides and enacts, "That where any question shall arise touching the title of any person to any money to be paid into the Bank of England in the name and with the privity of the accountant-general of the Court of Chancery, in pursuance of this act, for the purchase of any houses, buildings, lands, tenements, hereditaments, easements, or privileges, or of any estate, right or interest, in any houses, buildings, lands, tenements, hereditaments, easements, or privileges, to be purchased in pursuance of this act, or to any Bank annuities to be purchased with any such money, or the dividends or interest of any Bank annuities, the person or persons who all have been in possession of such houses, buildings, lands, tenements, hereditaments, easements, or privileges, at the time of such purchase, and all persons claiming under such person or persons, shall be deemed and taken to have been lawfully entitled to such houses, buildings, lands, tenements, hereditaments, easements, or privileges, according to such possession, until the contrary shall be shewn to the satisfaction of the said Court of Chancery; and the dividends or interest of the said Bank annuities to be purchased with such money, and also the capital of such Bank annuities shall be paid, applied, and disposed of accordingly, unless it shall be made appear to the said Court, that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such uses, buildings, lands, tenements, hereditaments, easements, or privileges, to some estate or interest therein."

Sect. 67 provides and enacts, "That where by reason of any disability or incapacity of the person or persons, or corporations, entitled to any uses, buildings, lands, tenements, hereditaments, easements, or privileges, be purchased under the authority of this act, the purchase money for the same shall be required to be paid into the Court of Chancery, and to be applied in the purchase of other houses, buildings, lands, tenements, hereditaments, easements, or privileges, to be settled to the like uses in pursuance of this act, it shall and may be lawful to and for the said Court of Chancery, to order the expenses of such last-mentioned purchases from time to time to be made in pursuance of this act, or so much thereof as the said Court shall deem reasonable, to be paid by the said justices, out of any monies received for the purposes of this act, who shall from time to time pay such sums of money for such purposes as the said Court shall direct."

#### EXPENSES OF BUILDING, &c.

4 Geo. 4, c. 64.

bank in the name of the accountant-general in Chancery.

Court may make order in respect thereof on motion or petition.

Upon question touching title to money paid into bank, person having been in possession of premises deemed entitled to the money until the contrary shewn to the Court of Chancery.

Court of Chancery may order reasonable expenses of purchases to be paid.

EXPENSES OF  
BUILDING, &c.  
4 Geo. 4, c. 64.

Expenses of execution of act charged upon county rates.

5 Geo. 4, c. 85.

Regulating notices when commonable lands are required for a prison.

Notices to be delivered to occupier, who is to be deemed the person interested.

Justices enabled to borrow money on mortgage of rate to pay off securities.  
4 Geo. 4, c. 64, s. 54;  
5 Geo. 4, c. 12.

Sect. 68. 'And, in order to defray the expenses of the several matters and things hereinbefore directed to be done, respecting gaols, houses of correction, and other prisons, and for the support and maintenance of prisoners confined therein, who are entitled by law to such support, and for all other expenses necessary to the execution of this act, and not hereinbefore particularly provided for;' it is further enacted, "That it shall and may be lawful for the justices, at their general or quarter sessions assembled and they are hereby authorized and empowered, to cause such sums of money as shall be necessary for all or any of those purposes, to be raised on the counties, ridings, divisions, districts, cities, towns, or places, to which this act shall extend, in the same manner as rates applicable to the building, repairing, or maintenance, of such prisons respectively, are now directed to be raised by law."

By stat. 5 Geo. IV. c. 85, s. 18, reciting, 'Whereas it may be found expedient in some places, for the purpose of building, enlarging, or rendering more commodious the gaol or house of correction, to fix upon lands or tenements over which rights of common exist; and in such case great difficulties may arise in purchasing and obtaining a conveyance of such commonable lands or tenements under the general powers of' stat. 4 Geo. IV. c. 64; it is enacted, "That, for the purpose of the said recited act, and of this act, and of any local act relative to any such gaol or house of correction, the churchwardens for the time being of the parish wherein any such commonable lands or tenements shall be situate, shall be considered as the persons solely and absolutely entitled to the rights of common of pasture, or other commonable rights to which any such lands or tenements shall be subject; and that the monies for which any such commonable rights shall be purchased, shall be paid to such churchwardens, whose receipts shall be an effectual discharge for the same; and the same monies shall be applied by such churchwardens to such general and public purposes within the parish where the lands or tenements so purchased shall be situate, as a vestry of such parish, to be convened by such churchwardens, shall direct."

Sect. 19 enacts, "That, for the purpose of receiving the notice required by the said recited act to be given to persons interested in houses, buildings, lands, tenements, hereditaments, easements, or privileges contiguous to any gaol or house of correction, and deemed necessary for the purposes of enlarging the same, or rendering it more commodious, the occupier of such houses, buildings, lands, tenements, hereditaments, easements, or privileges, shall be deemed the person interested therein; and that every such occupier, upon receiving any such notice, shall forthwith transmit or deliver the same to any other person interested, under whom he may hold the houses, buildings, lands, tenements, hereditaments, easements, or privileges so deemed necessary."

Sect. 20 reciting, 'Whereas,' by stat. 4 Geo. IV. c. 64, and by stat. 5 Geo. IV. c. 12, (see *post*, 1013), 'the justices of the peace in quarter sessions assembled have, in certain cases, authority to borrow on mortgage of the rate of the county, riding, division, district, city, town, or place, money for the purpose of building, rebuilding, repairing, or enlarging the gaol or house of correction, and to charge the said rate with such sum as shall ensure the payment of the whole sum borrowed, with interest, within fourteen years: and whereas, for the purpose of facilitating the reduction of the rate of interest, it may be expedient that the county, riding, division, district, city, town, or place should have power to borrow in like manner, on mortgage of its rate, a further sum for the purpose of paying off the principal sum so borrowed and secured as aforesaid:' it is enacted, "That whenever it shall appear to the justices assembled at any general or quarter sessions to be holden for any county, riding, division, district, city, town, or place, having contracted a debt under the said recited acts, that advantage may arise from paying off the same and borrowing at a lower rate of interest, it shall be lawful for the justices so assembled to borrow on mortgage of such rate by instrument in the form directed by the said first recited act, any

monies or sums of money not exceeding in the whole the principal sum of money that may then be outstanding on the securities so theretofore granted, and therewith to discharge the whole or any part of the money for which such securities shall have been given: provided always, that it shall not be lawful to use or apply any portion of the money to be borrowed under this provision, for any purpose other than the payment and discharge of the whole or part of the principal sum then due on the securities granted under the said recited acts; provided also, that the money to be borrowed under this provision shall be borrowed on such terms and under such conditions as shall in no way interfere with or prevent the full payment and discharge of the money borrowed under the provisions of the said recited acts, and so that the rate to be raised in such county, riding, division, district, city, town, or place shall, within fourteen years from the time when the money was originally borrowed under the provisions of the said recited acts, be discharged and released from all securities so made as aforesaid."

Bystat. 6 Geo. IV. c. 40, s. 1, reciting the 4 Geo. IV. c. 64, s. 54, 55; 5 Geo. IV. c. 85, s. 20, and 48 Geo. III. c. 96, s. 8; and reciting, 'Whereas, it may be expedient for the purpose of facilitating the reduction of the rate of interest on money borrowed in like manner, but under the provisions of any act or statute other than the said recited acts, or either of them, that the justices of the peace should have power to borrow on mortgage of the said rate any sum or sums of money, not exceeding in the whole the principal sum of money that may then be outstanding, on any securities so granted under any such act or statute other than the said recited acts, or either of them, and therewith to discharge the whole or any part of the money for which such last-mentioned securities shall have been given; and whereas it may enable justices of the peace, when, at any time hereafter, they shall treat with any person or persons for the loan of any sum or sums of money to be secured as directed by the said recited acts, or either of them, or by any other such act or acts as aforesaid, to contract for such loan or loans upon terms more advantageous to the county, riding, division, district, city, town, or place, for which such facilities shall be then acting, than at present are likely to be obtained, if the justices have power so as aforesaid to borrow any such sum or sums of money, and therewith to discharge the security or securities held by any person or persons who shall be desirous that such security or securities should be paid by him, her, or them, shall be in whole or in part paid off and discharged;' it is enacted, "That whenever it shall appear to the justices of the peace, assembled at any general or quarter sessions to be holden for any county, riding, division, district, city, town, or place, for which any debt or debts shall have been contracted under the provisions of the said recited acts of the fourth and fifth years of the reign of his present Majesty, or of either of them, or under the provisions of the said recited act of the forty-ninth year of the reign of his late Majesty, or under the provisions of any other act or acts, and which debt or debts shall be then remaining due in whole or in part, that advantage or convenience may arise to such county, riding, division, or place from paying off the same or any part thereof, and that whenever any person or persons holding any such security or securities shall wish and desire that the security or securities so held by him, her, or them shall be paid off and discharged, it shall be lawful for the justices so assembled, if they shall think fit, to borrow on mortgage of the rate of the county, riding, division, district, city, town, or place, for which such general or quarter sessions shall be holden, by instrument in the form directed by the said first recited act, any sum or sums of money not exceeding in the whole the principal sum of money that may then be outstanding on the securities theretofore granted, and therewith to pay off and discharge the whole or any part of the money for which such securities shall have been given: provided always, that it shall not be lawful to use or apply any portion of the money to be borrowed under the provisions of this act, for any purpose other than the payment and discharge of the whole or part of the principal sum then due on the securities granted as aforesaid: provided also, that the money to be borrowed under the provisions of this act shall be borrow-

## EXPENSES OF BUILDING, &amp;c.

5 Geo. 4, c. 85.

6 Geo. 4, c. 40,  
reciting 4 Geo. 4,  
c. 64, s. 54, 55;  
5 Geo. 4, c. 85, s. 20;  
48 Geo. 3, c. 96, s. 8.

Justices empowered to borrow money on mortgage of county rates, to pay off any mortgage under recited act.

Money not to be applied for any other purpose.

EXPENSES OF  
BUILDING, &c.

6 Geo. 4, c. 40.

Rates to be dis-  
charged within  
fourteen years.Justices to give no-  
tice of their inten-  
tion to pay off se-  
curities.

Proviso.

Delivery of notice  
deemed sufficient  
service.Interest to cease on  
days specified in  
notice.

Proviso.

4 Geo. 4, c. 64, s. 34.  
\* Sic.4 Geo. 4, c. 64; 5  
Geo. 4, c. 85, as  
herein mentioned.

ed on such terms and under such conditions as shall in no way interfere with or prevent the full payment and discharge of the money borrowed under the provisions of this act, or of any other act or acts, within fourteen years from the time or times that the security or securities so to be paid off and discharged with the money borrowed under the provisions of this act shall have been so granted as aforesaid; and so that the rate to be raised in such county, riding, division, district, city, town, or place, shall, within fourteen years of the time when the money was originally borrowed, be discharged and released from all securities which shall have been given for the due discharge of such debt."

Sect. 2 enacts, "That whenever the justices assembled as aforesaid shall have determined that the whole or any part of the principal sum so outstanding as aforesaid shall be paid off and discharged, they are hereby required to direct that the clerk of the peace shall give notice of such determination to the person or persons holding such security or securities as the said justices shall have so determined to be paid off and discharged: and whenever any person or persons shall wish and desire that the security or securities so held by him, her, or them, shall be paid off and discharged, such person or persons shall give to the justices so assembled as aforesaid notice in writing of such his, her, or their wish and desire: provided always, that no such security or securities shall be so paid off and discharged until after the expiration of six months from the day on which such notice or notices shall have been so given."

Sect. 3 enacts, "That the delivery of such notice of the clerk of the peace at the house or houses, or at the usual place or places of residence of the person or persons holding such security or securities as shall have been determined as aforesaid to be paid off and discharged, shall be taken and deemed to be a good and sufficient service of such notice."

Sect. 4 enacts, "That all interest payable on any security or securities ordered to be paid off and discharged, shall cease and determine on the day specified in such notice or notices, as being the day on which such security or securities is or are to be paid off and discharged: provided always, that every person upon whom such notice of the clerk of the peace shall have been so served as aforesaid, and that every person whose security or securities shall, in conformity to his or her wish and desire, notified as aforesaid, have been ordered to be paid off and discharged, shall be entitled, upon application made at any time after the expiration of the said six months to the treasurer of the county, by himself or herself, or by his or her attorney, to receive the principal sum or sums for which such security or securities shall have been granted, together with all interest due thereon."

Sect. 5. "And whereas inconvenience and unnecessary expense is occasioned by justices of the peace not being authorized to borrow and take up, on the mortgage of the rate of the county or riding, or of any division of the county, or of the district, city, town, or place, such sum or sums of money as may be required for carrying into effect the provisions of the said recited acts of the fourth and fifth years of the reign of his present Majesty, in sums exceeding 100*l* each; it is enacted, "That so much of the said recited acts as directs that such sum or sums of money so to be borrowed and taken up shall be borrowed and taken up in sums not exceeding 100*l* each, be and the same is hereby repealed."

## V. Contracts by Justices having Charge of Gaols in Cities, &c. with Justices having Charge of Gaols of Counties, &c.

5 Geo. 4, c. 85.

By stat. 5 Geo. IV. c. 85, passed 21st June, 1824, intituled *An Act for amending an act of the last session of Parliament, relating to the building, repairing, and enlarging of certain gaols and houses of correction; and for procuring information as to the state of all other gaols and houses of cor-*

*tion in England and Wales,* reciting the passing of stat. 4 Geo. IV. c. 64, is enacted, "That it shall be lawful for the justices of the peace, or any two of them, or for other persons having the government or ordering of any gaol house of correction, in any city, town, borough, port, or liberty, to contract with the justices of the peace having authority or jurisdiction in and over any such city, town, borough, port, or liberty, is situate or adjacent, or with any one of them, for the support and maintenance, in such last-mentioned gaol house of correction, of any prisoners committed thereto, from such city, town, borough, port, or liberty; provided that no such contract be entered into by any justices of the peace of any county, riding, or division, without an order for that purpose being made at some general or quarter sessions, gaol sessions, having jurisdiction in that behalf, nor by the justices or other persons having the government of the prison of any such city, town, borough, port, or liberty, without an order for that purpose being made at any such sessions thereof; and every such contract may either be perpetual, or for a certain term of years, as the parties shall mutually agree; and notwithstanding the existence of such contract, every prisoner who would otherwise be confined in the gaol or house of correction of the city, town, borough, port, or liberty, so contracting, may be lawfully committed or removed to and confined in the gaol or house of correction so receiving him or her under such contract; and all prisoners so confined by contract, whether before or after trial, shall be subject in all matters and things to the same rules and regulations, as if they were committed thereto by any of the justices of the county, riding, or division; and, if committed before trial, shall be triable in the same manner as if their offences had been committed in a city, town, borough, port, or liberty, from whence such prisoners shall come; save only, that if committed to the gaol or house of correction so receiving under contract a prisoner committed for trial, shall be situate within two miles of the usual place of trial of the city, town, borough, port, or liberty, wherein the offence charged against such prisoner shall be alleged to have been committed, it shall be lawful to try such prisoner in the manner heretofore accustomed, and for magistrates or other proper officer of such city, town, borough, port, or liberty, to direct the removal of such prisoner for trial, and to do all other things necessary for such trial, or consequent thereon."

Act. 2 enacts, "That the monies to be paid under any such contract as aforesaid, shall be raised in the same manner as monies for defraying the expenses of the gaol or house of correction, for which a substitute shall be provided under such contract; and where such expenses are not wholly defrayed from the same fund, and there shall arise a difference of opinion between the parties interested in the several funds applicable to the several uses of the prison, as to the proportion in which those funds respectively shall contribute to the sum to be paid to the county, riding, or division for the use of its prison, and such difference shall not be adjusted by agreement between themselves, it shall be lawful for either of such parties to apply to the justices of assize of the last preceding circuit, or of the next ensuing circuit, or to one of such justices, who shall by writing under his hand or hands, nominate a barrister at law, not having any interest in the question, to arbitrate between the parties; and such arbitrator, if he shall see fit, adjourn the hearing from time to time, and require such further information to be afforded by either of the parties, as shall appear to him meet and necessary; and shall, by his award in writing, define the proportions in which such parties shall contribute towards the expenses; and his award shall be final and conclusive between the parties, and such arbitrator shall also assess the costs of the arbitration, and direct by whom, and out of what fund, the same shall be paid."

Act. 3 enacts, "That during the existence of any such contract, if it extend to the whole of the prisoners who would otherwise be confined in a gaol or house of correction of the city, town, borough, port, or liberty, so contracting, such city, town, borough, port, or liberty, shall not be liable

**CONTRACTS BY JUSTICES, &c.**

5 Geo. 4, c. 85.  
Justices having charge of gaols for cities, &c. may contract with justices having charge of county gaols for care of prisoners.

No contract entered into without an order of the quarter sessions.

Prisoners to be committed to the prison contracted for.

Expenses under contract how raised.

In case of dispute, to be settled by arbitration.

Powers of arbitrator.

Award final. Costs.

How far, during contract, city &c. contracting not liable to provide a prison.

CONTRACTS BY  
JUSTICES, &c.

5 Geo. 4, c. 85.

Magistrates, &c.  
empowered to bor-  
row money for re-  
building gaols, &c.  
in case it should  
appear more ad-  
visable than alter-  
ing old ones.

How monies raised  
for building gaols,  
&c.

Money borrowed  
for rebuilding  
gaols &c. to be re-  
paid to such city,  
&c. advancing the  
same.

Magistrates to re-  
port to secretary  
of state as to con-  
tracts with coun-  
ties for use of pri-  
sons.

Copy of regula-  
tions of prisons,  
and a return to be  
made, as in sche-  
dule annexed, to  
secretary of state.

to indictment or impeachment for the non-repair of its gaol or house of correction, respectively; and if such contract shall extend to only a certain class or classes of its prisoners, such city, town, borough, port, or liberty shall not be liable to provide the accommodation required to be otherwise provided for the same class or classes of prisoners by the said recited act or by any other act now in force."

Sect. 4 enacts, "That if it shall seem fit to the magistrates or superintending officers of any city, town, borough, port, or liberty, that, instead of altering or building any gaol or house of correction for their separate use, or contracting under the provisions aforesaid, it would be more advisable to raise a sum or sums of money in aid of building a new, or of enlarging any county prison, it shall be lawful for them to agree with the justices of the peace, having authority or jurisdiction in and over any gaol or house of correction of the county, riding, or division, wherein or whereto such city, town, borough, port, or liberty, is situate or adjacent, or with any two or more of them, for the payment to such justices, having such authority as aforesaid, of any sum or sums of money to be by them applied in or towards the altering, enlarging, building, re-building, repairing, or improving, such gaol or house of correction of the county, riding, or division, aforesaid: provided that no such agreement be entered into by any justices of the peace for the county, riding, or division, without an order for that purpose being made at some general or quarter sessions, or gaol sessions, having jurisdiction in the behalf."

Sect. 5 enacts, "That all monies to be paid under any such agreement as last mentioned, shall be raised in the same manner, and subject to the same conditions, as is directed in respect of monies to be raised for the building or re-building, repairing or enlarging, any gaol or house of correction under the provisions of this act."

Sect. 6 enacts, "That it shall be lawful for such justices of the peace of any such county, riding, or division, entering into any such agreement as last aforesaid, to stipulate in the same (if they shall see fit so to do) that it shall be lawful for such county, riding, or division, at such time or times as shall be in that behalf provided in such agreement, to repay to the said city, town, borough, port, or liberty, the sum or sums of money which shall have been so paid or advanced in or towards the altering, enlarging, building, re-building, repairing, or improving such gaol or house of correction of the county, riding, or division, aforesaid."

Sect. 7 enacts, "That the chief magistrate of every city, town, borough, port, or liberty, now having a gaol or house of correction, in England and Wales, shall, in the month of October, [1824], report to one of his Majesty's principal secretaries of state, whether any contract has been made with the county, riding, or division, for the use of its prisons, or any of them, in such city, town, borough, port, or liberty, and to what classes of prisoners such contract, if any, shall extend; and if there be no such contract, whether any steps have been taken towards such contract; and if so, in what state the treaty is, and what obstacles there are to its completion; and the chief magistrate of every such city, town, borough, port, or liberty, when no such contract shall be in existence, shall, in the same month of October, transmit to one of his Majesty's principal secretaries of state, a copy of all such rules and regulations as shall be then in force, for the government of every such prison, and a return in the form of the schedule to this act annexed, marked (A), and a statement of the establishment of officers and servants employed therein, specifying the number and description of such officers and servants, the salaries and emoluments of each, and by what such officers and servants are respectively appointed, and a plan of every such prison, drawn upon a scale of one-sixteenth of an inch to a foot: and the said copies and plans shall be carefully preserved in the office of such secretary of state; and such magistrate shall, in every subsequent month of October, until such a contract shall be entered into, transmit to such secretary of state a return in the form of the said schedule, and a copy of all additions to such rules and regulations, or alterations, made therein, and a

statement of any increase or diminution in such establishment of officers and servants, or in their respective salaries and emoluments, together with plans, on the scale above mentioned, of any additions to the buildings of such prison, or alterations made in the construction thereof, during the preceding year."

GAOLS IN  
RIDINGS, &c.  
5 Geo. 4, c. 85.

## VI. Gaols in Counties divided into Ridings, &c.

By stat. 5 Geo. IV. c. 12, passed 23rd March, 1824, and intituled *An act to facilitate in those counties which are divided into ridings or divisions, the execution of an act of the last session of Parliament, [viz. stat. 4 Geo. IV. c. 64], for consolidating and amending the laws relating to the building, repairing, and regulating, of certain gaols and houses of correction in England and Wales,* after reciting, that by stat. 4 Geo. IV. c. 64, s. 2, 'it was amongst other things) enacted, that there should be maintained at the expense of every county in England and Wales, one common gaol, and that the regulations and provisions contained in the said act should extend, in and under therein mentioned, to every such gaol; and whereas, in certain counties in England, there are distinct commissions of the peace for the several ridings and divisions into which such counties are divided, and distinct courts of sessions of the peace are holden for each of such ridings and divisions respectively, and in such counties there are no courts of general or quarter sessions holden for the whole county at large, in consequence whereof the provisions and regulations of the said act cannot in such counties be carried into execution; for remedy thereof, and in order to extend to such counties all the benefits of the said act, it is enacted, "That in every county divided into ridings or divisions, having distinct commissions of the peace, there shall be held from time to time a court of sessions for the gaol of such county, of which court all the justices of the peace of every riding or division of such county shall be members; and any two of such justices shall be able to hold such court; and such court shall possess and exercise the powers and authorities respecting the common gaol of such county, in all matters relating thereto, which are in and by the said recited act contained in the court of general or quarter sessions of the peace for any other county of England; and the justices of the peace for each of such ridings or divisions, are hereby authorized as fully and effectually to perform and execute all the provisions and regulations of the said recited act, with respect to such county gaol, as justices of the peace for the county are in any other county of England authorized to do, with respect to the gaol of their respective counties; and the said court of gaol sessions is hereby empowered to transact and do, within the counties so divided, all such matters and things appertaining to the authority of justices of the peace in sessions assembled, with respect to the county gaol, as are in other counties capable of being done by justices of the peace in their general or quarter sessions assembled; and where by the said act any thing is ordered to be done at any general or quarter sessions, or at any adjournment thereof, or at any subsequent general or quarter sessions, or adjournment thereof, respecting the county gaol, then such things may be done at such gaol sessions, or at any adjournment thereof, or at one or more subsequent gaol sessions, in such manner and with such public notices as in the said recited act they are ordered and directed to be done by the general or quarter sessions, or adjournment thereof."

5 Geo. 4, c. 12,  
reciting 4 Geo. 4,  
c. 64.

In counties divided into ridings or divisions, a court of sessions for the gaol shall be held; and such court shall possess all the powers given by the former act respecting the common gaol of such county.

Act. 2 enacts, "That the sheriff of every county so divided into ridings or divisions, shall, within fourteen days next after the passing of this act, by public notice be published in the London Gazette, and in some of the public papers most usually circulated within his county, summon the justices of the peace of the ridings or divisions into which the same is divided, to meet at some place in or near the county gaol, to be by him specified in such notice, and at a time not exceeding one month after the first publication of notice, and there to form a court of sessions for the county gaol, for the

Sheriff to give notice in the London Gazette, &c. of the holding such court.



GAOLS IN  
RIDINGS, &c.

5 Geo. 4, c. 12.

Chairman and  
clerk to be appointed.  
Power and duty of  
such court.Continuance in  
office by clerk of  
gaol sessions.Notice of holding  
gaol sessions in the  
public newspapers.Place for holding  
sessions for the  
county gaol.Treasurer to be ap-  
pointed,to account upon  
oath.Court to appoint  
salaries.Proportions of  
county rates to be  
paid by each riding  
or division.

purpose of carrying into execution the regulations and provisions of the said recited act and of this act; and the said court being so constituted, shall proceed to elect a chairman and a clerk; and the said court, and the chairman thereof, shall proceed to execute all those matters and things which were by the said recited act directed to be done by the court of quarter sessions of the peace held at Michaelmas next after the passing thereof, and by the chairman of that court, and to do all such other matters and things as may be necessary or proper in regard to the county gaol."

Sect 3 enacts, "That the clerk of the gaol sessions shall continue in his office until another shall be elected in his stead by the court of gaol sessions, and shall, with respect to the said recited act and this act, have and enjoy all the powers vested by the said recited act in the clerk of the peace of any county."

Sect. 4 enacts, "That the clerk of the gaol sessions shall, on receiving a precept commanding him so to do, signed by any two justices of the peace acting for any of the ridings or divisions of the county, summon the justices to meet in a court of gaol sessions, by a notice to be published at least twice in some of the public newspapers most usually circulated in the county, which notice shall declare the day, hour, and place, at which such court is to be held; and also that the said clerk, if the court of gaol sessions shall be dissolved without adjournment, or shall adjourn for a longer time than three calendar months, shall, by a like notice to be issued of his proper authority, without any precept in that behalf, summon a court of gaol sessions to be held within three calendar months next after such dissolution or last adjournment."

Sect. 5 enacts, "That the sessions for the county gaol shall be held in some place in the gaol, or within one mile thereof, unless there shall be special reasons for the contrary, which shall be expressed in the precept to be directed to the said clerk as aforesaid; and if it shall be held in the gaol, or within such distance thereof as aforesaid, all matters done thereat touching the county gaol, shall be legal, though the sessions be held in some place not within the county."

Sect. 6 enacts, "That the court of gaol sessions shall also elect a treasurer of the monies applicable to the repair of the county gaol, who shall not be the clerk of the said court; and the said treasurer shall receive and pay all monies to be raised for the repair of the county gaol, or to be disbursed by order of the court, and shall give discharges for the monies received, and apply the same as by such court shall be ordered, and shall keep a distinct account of such monies received and paid, and shall, from time to time, when called on by the said court, account upon oath, if required, for all monies so by him received, and deliver in all vouchers respecting the same; and the said court shall from time to time appoint such salaries to such clerk and treasurer respectively as they shall think fit, to be paid out of the monies aforesaid; and such treasurer shall give such security for the faithful performance of his duty, as the court of gaol sessions shall direct."

Sect. 7, after reciting that, 'Whereas it is expedient that all the expenses incurred respecting any county gaol, where the county is so divided as aforesaid, whether arising out of the provisions of the said recited act or of this act, or otherwise, should be discharged out of the county rates; and it is necessary to fix the proportions in which the several ridings or divisions shall contribute to such expenses; and it may also be necessary from time to time to vary the said proportions,' enacts, "That where in any such county there are, at the time of passing this act, any fixed proportions in which such expenses are or have been paid and borne, such proportions shall continue to be acted on, and the contributions shall be paid accordingly, till some alteration shall be made therein by the court of gaol sessions; and that where there are now no such fixed proportions, the said court shall forthwith fix the proportions in which the contribution is to be made; and the said court shall also have power and authority to alter the said proportions from time to time; provided that no such alteration shall be made,

unless the intention of making such alteration shall be expressed in the notice whereby the court is summoned, and shall be published for one month at the least before the court shall be held."

Sect. 8 enacts, "That when the court of gaol sessions shall order an alteration to be made in the proportions in which the ridings or divisions of the county are to contribute towards the expenses of the county gaol, or shall negative a proposition for making such alteration, and any riding or division shall be dissatisfied therewith, it shall be lawful for the clerk of the peace of such riding or division, being thereunto authorized by an order of the court of quarter or gaol sessions of such riding or division, to apply to the justices of assize of the last preceding circuit, or of the next succeeding circuit, or to one of such justices, who shall, by writing under their or his hands or hand, nominate a barrister at law, not having any interest in the question, to arbitrate between the ridings or divisions; and such arbitrators shall summon the several clerks of the peace of the ridings or divisions interested in the matter in dispute to appear before him, at a time to be by him appointed, and there to produce all information touching the matter in dispute; and such arbitrator may, if he shall see fit, adjourn the hearing from time to time, and require all such further information to be afforded by either of the parties as shall appear to him meet and necessary; and shall, by his award in writing, determine the proportions in which such ridings or divisions shall contribute towards the said expenses; and his award shall be final and conclusive between the parties for ten years, and until further order shall be made thereon by the court of gaol sessions; and such arbitrators shall also assess the costs<sup>a</sup> (a) of the arbitration, and shall direct by whom and out of what fund the same shall be paid."

By stat. 5 Geo. IV. c. 85, s. 21, after reciting, "That whereas, by [stat. Geo. IV. c. 12, s. 8], provision is made for settling by arbitration disputes between ridings and divisions as to the proportions in which they shall contribute to the expense of the county gaol, but by reason of some verbal inaccuracies in the said provision there may be some difficulty in acting thereon; it is enacted and declared, "That the clerk of the peace may be authorized to apply to the justices of assize for the nomination of an arbitrator under [stat. 5 Geo. IV. c. 12], by an order of the court, or quarter or general sessions of the riding or division; and that one arbitrator shall be competent to exercise all the powers and authorities given to the arbitrator or arbitrators by the same act; and that such arbitrator shall assess the costs of the arbitration, and direct by whom and out of what fund the same shall be paid."

Stat. 5 Geo. IV. c. 12, s. 9, enacts, "That when and so often as the court of gaol sessions shall find it requisite to raise money for the purposes of the said recited act, [4 Geo. IV. c. 64], or of this act, they shall make an order accordingly, and their clerk shall forthwith transmit a copy of such order, signed by the chairman, together with the amount of the sum of money to be paid by virtue of it, according to the then existing proportions, by each riding or division, to the treasurers of the several ridings or divisions of the county; which treasurers shall forthwith, out of the monies in their hands, if those monies shall be insufficient, then so soon as sufficient monies shall come to their hands, pay the sum required to the treasurer of the county gaol, and take his receipt for the same" (b).

Sect. 10 enacts, "That when the monies necessary to be raised for the purposes of the said recited act, or of this act, shall exceed one half of the binary aggregate amount of all the annual assessments for the rates of the several ridings or divisions of any such county, taken on an average of all the rates for the last seven years preceding, the court of gaol sessions may, and is hereby authorized, to mortgage all the rates of such county, by such instrument, and in such ways and means, and under such provisions of redemption, and with the same power of assignment, as in the said recited act

GAOLS IN  
RIDINGS, &c.

5 Geo. 4, c. 12.

In case of dispute as to such proportions, the same to be settled by arbitrators appointed by the justices or one justice of assize on circuit.

Award final for ten years, and until further order.

\* Sic.

5 Geo. 4, c. 85, s. 21, reciting 5 Geo. 4, c. 12, s. 8.

One arbitrator competent.

5 Geo. 4, c. 12.

Order for money to be transmitted to treasurers of the several ridings or divisions.

Rates may be mortgaged for raising the money.

<sup>a</sup> This should be "costs," see 5 Geo. IV. c. 85, s. 21, *supra*. (b) See as to paying off such monies, c. 85, s. 20, *ante*, 1008.

GAOLS IN  
RIDINGS, &c.

5 Geo. 4, c. 12.

Rates on each riding or division to be charged in same manner as rates on counties by recited act.

Reports under 4 Geo. 4, c. 64, s. 23, laid before gaol sessions.

Reports, &c. transmitted by chairman of court of gaol sessions to secretary of state.

Returns from keeper of prisons to be delivered to clerk of gaol sessions.

By whom convictions for recovery of fines, &c. to be made.

Common gaol of county to be deemed within each riding or division.

are enacted respecting the mortgage of any county rates therein mentioned."

Sect. 11 enacts, "That the court of gaol sessions shall, and is hereby required, to charge all the rates upon the several ridings and divisions of the county in the same manner and for the same purposes as in and by the said recited act the justices in their general or quarter sessions are authorized and required to charge the rates of any county having one rate for the whole; and all the ways, means, and methods by the said recited act directed and allowed, as to the repayment of monies borrowed, and the interest thereof, and the accounts respecting the same, shall be kept and observed by the court of gaol sessions respecting the monies borrowed on account of the gaol of any county so divided as aforesaid; provided that all the monies to be raised on the several ridings or divisions of any such county, for repaying money borrowed, or the interest thereof, shall be raised in the same proportions as other monies for the purposes of the said recited act or of the act shall be raised at the time of such money being so raised." [See stat. 5 Geo. IV. c. 85, s. 20, as to power of justices to pay off sums borrowed by borrowing like sums at a lower rate of interest, *ante*, s. 7].

Sect. 12 enacts, "That all reports and statements directed by the said recited act to be made to the general or quarter sessions, shall be transmitted on or before the first days of January, April, July, and October, to the clerk of the gaol sessions, and be by him laid before the court at the sessions."

Sect. 13 enacts, "That the chairman of the first court of gaol sessions held after the first day of October in each year, shall, within fourteen days after the determination of such sessions, or any adjournment thereof, transmit to one of his Majesty's principal secretaries of state such account of proceedings, and such copies of rules and regulations, as in and by the said act are ordered to be transmitted by the chairman of the Michaelmas quarter sessions, and shall at the same time, or within three months afterwards, transmit such plans as in the said act are mentioned."

Sect. 14 enacts, "That the return directed to be made annually by the keeper of every prison, in the form contained in the schedule annexed to the said recited act, marked (B), shall be annually made by the keeper of every gaol of every county so divided as aforesaid, and delivered to the clerk of the gaol sessions of such county, two weeks at least before the first day of October in each year; and that such clerk shall, on the said first day of October, prepare a general report founded on the report of the visiting justice and that of the chaplain, and on the certificates and reports of the keeper of the said gaol, and on any other report or document respecting the said gaol, and shall lay the same before the next gaol sessions; and such report when approved by such sessions, shall be signed by the chairman thereof and shall be by him, together with a copy of the schedule (B), transmitted to one of his Majesty's principal secretaries of state, for the purposes in the said recited act mentioned."

Sect. 15 enacts, "That, if any matter or thing be done within any county so divided as aforesaid, for which any fine, penalty, or forfeiture is by the said recited act [4 Geo. IV. c. 64] imposed and directed to be paid to the county treasurer, every conviction made in pursuance of the said recited act for such matter or thing, shall be made by one or more justices of the peace of the riding or division in which the offence is committed; and all forfeitures, fines, and penalties thereon accruing, shall be paid to the treasurer of the county gaol, for the purposes of this act."

Sect. 16 enacts, "That, in the case of every county so divided as aforesaid, the common gaol of such county shall, for all purposes relative to the jurisdiction of justices of the peace, be deemed to be within and taken as part of each of the ridings and divisions of which such county is composed, and every justice of the peace for each of such ridings and divisions shall have like power and authority to execute all things appertaining to his office therein, as in any part of the riding or division to which his commission specially extends."

Sect. 17 enacts, "That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such, by all judges, justices, and others, without being specially pleaded."

**TREATMENT  
OF PRISONERS.**  
3 Geo. 4, c. 12.  
Public act.

## VII. The Treatment of Prisoners for Offences, &c.

AND herein, 1st. Of the general rules and regulations to be observed in gaols, as to offenders, &c.;—2nd. The commitment of offenders;—3rd. The classification of prisoners;—4th. Their food, &c.;—5th. Their employment and labour, &c.;—6th. Their attempt to escape;—7th. Their being refractory;—8th. Their removal, in certain cases;—and 9th. Their discharge, &c.

### (1) General Rules and Regulations as to.

Stat. 4 Geo. IV. c. 64, s. 10, after reciting, 'Whereas it is fit and proper to secure an uniformity of practice in the management of the several prisons in which this act shall extend;' enacts, "That the following rules and regulations shall be observed and carried into effect in every such prison in England and Wales, which shall be maintained by any county or riding, or division of a county as aforesaid, as a gaol or house of correction, and in the gaol and house of correction of every district, city, town, or place mentioned in the schedule marked (A), annexed to this act, and in every united and contiguous gaol and house of correction which shall be jointly used in manner aforesaid for the purposes of this act, and in every prison authorized to be continued under this act as aforesaid, in any county or riding, or division of a county, so far as such rules may be applicable or can be applied to the particular description or class of prisoners confined in such prison:—

4 Geo. 4, c. 64.  
Rules and regulations to be observed in all gaols.

"1st. The keeper of every such prison shall reside therein; he shall not be an under-sheriff or bailiff, nor shall be concerned in any occupation or trade whatsoever; no keeper or officer of a prison shall sell, nor shall any person in trust for him, or employed by him, sell, or have any benefit or advantage from the sale of any article to any prisoner; nor shall he, directly or indirectly, have any interest in any contract or agreement for the supply of the prison.

Keeper (a).

"2nd. A matron shall be appointed in every prison in which female prisoners shall be confined, who shall reside in the prison; and it shall be the duty of the matron constantly to superintend the female prisoners.

Matron.

"3rd. The keeper shall, as far as may be practicable, visit every ward, and see every prisoner, and inspect every cell, once at least in every twenty-four hours; and when the keeper, or any other officer, shall visit the female prisoners, he shall be accompanied by the matron, or, in case of her unavoidable absence, by some female officer of the prison.

Visiting the wards.

"4th. The keeper shall keep a journal, in which he shall record all punishments inflicted by his authority, or by that of the visiting justices, and the day when such punishments shall have taken place, and all other occurrences of importance within the prison, in such manner as shall be directed by the regulations to be made under this act; which journal shall be laid before the justices at every general or quarter sessions, to be signed by the chairman, in proof of the same having been there produced.

Keeper's journal.

"5th. Due provision shall be made in every prison for the enforcement of hard labour, in the cases of such prisoners as may be sentenced thereto, and for the employment of other prisoners. The means of hard labour shall be provided, and the materials requisite for the employment of prisoners shall be purchased, under such regulations as may be made for that purpose

Hard labour (b).

(a) See *post*, 1036.

(b) See *post*, tit. *Hard Labour*, Vol. II., and *post*, 1026, 1031.

**RULES AND  
REGULATIONS.**

4 Geo. 4, c. 64.  
Separation of  
males and females  
(a).

Justices may au-  
thorize the em-  
ployment of pri-  
soners in menial  
offices.

Power to the keep-  
er to confine  
a prisoner with  
another class till  
he receives the di-  
rections of a visit-  
ing justice.

Females.

Hours of hard  
labour.

Daily prayers (b).

Instruction.

Divine service (b).

Putting prisoners  
in irons.

by the justices in general or quarter sessions assembled. If the work to be performed by the prisoners be of such a nature as to require previous instruction, proper persons shall be appointed to afford the same.

" 6th. The male and female prisoners shall be confined in separate buildings or parts of the prison, so as to prevent them from seeing, conversing, or holding any intercourse with each other; and the prisoners of each sex shall be divided into distinct classes, care being taken that prisoners of the following classes do not intermix with each other:—

" *In Gaols.*—1st, Debtors and persons confined for contempt of court on civil process; 2nd, prisoners convicted of felony; 3rd, prisoners convicted of misdemeanors; 4th, prisoners committed on charge or suspicion of felony; 5th, prisoners committed on charge or suspicion of misdemeanors or for want of sureties.

" *In Houses of Correction.*—1st, Prisoners convicted of felony; 2nd, prisoners convicted of misdemeanors; 3rd, prisoners committed on charge or suspicion of felony; 4th, prisoners committed on charge or suspicion of misdemeanors; 5th, vagrants. Such prisoners as are intended to be examined as witnesses in behalf of the crown in any prosecution, shall also be kept separate in all gaols and houses of correction.

" Provided always, that nothing herein contained shall be construed to extend to prevent the justices from authorizing, at their discretion, the employment of any prisoner, in the performance of any menial office within the prison, or for the purpose of instructing others; and provided also, that if the keeper shall at any time deem it improper or inexpedient for a prisoner to associate with the other prisoners of the class to which he or she may belong, it shall be lawful for him to confine such prisoner with any other class or description of prisoners, or in any other part of the prison, until he can receive the directions of a visiting justice thereon, to whom he shall apply with as little delay as possible, and who in every such instance shall ascertain whether the reasons assigned by the keeper warrant such deviation from the established rules, and shall give such orders in writing as he shall think fit, under the circumstances of the particular case.

" 7th. Female prisoners shall in all cases be attended by female officers.

" 8th. Every prisoner sentenced to hard labour shall, unless prevented by sickness, be employed so many hours in every day, not exceeding ten, exclusive of the time allowed for meals, as shall be directed by the rules and regulations to be made under this act, except on Sundays, Christmas Day, and Good Friday, and on any days appointed by public authority for fasting or thanksgiving.

" 9th. Prayers, to be selected from the Liturgy of the Church of England by the chaplain, shall be read at least every morning by the chaplain, the keeper, or by some other person, as by the rules and regulations shall be directed; and portions of the Scriptures shall be read to the prisoners, when assembled for instruction, by the chaplain, or by such person as he may appoint or authorize.

" 10th. Provision shall be made in all prisons for the instruction of prisoners of both sexes in reading and writing, and that instruction shall be afforded under such rules and regulations, and to such extent, and to such prisoners, as to the visiting justices may seem expedient.

" 11th. Prisoners under charge or conviction of any crime shall attend divine service on Sundays, and on other days when such service is performed, unless prevented by illness or by other reasonable cause, to be allowed by the keeper, or unless their attendance shall be dispensed with by one of the visiting justices.

" 12th. No prisoner shall be put in irons by the keeper of any prison, except in case of urgent and absolute necessity; and the particulars of every such case shall be forthwith entered in the keeper's journal, and notice forthwith given thereof to one of the visiting justices; and the keeper shall

(a) See the provisions, *post*, 1022, as to the classification of prisoners; as to murderers, *post*, 1021.  
(b) See *post*, 1042.

not continue the use of irons on any prisoner longer than four days, without an order in writing from a visiting justice, specifying the cause thereof; the order shall be preserved by the keeper, as his warrant for the use (a).

RULES AND  
REGULATIONS.  
4 Geo. 4, c. 84.

" 13th. Every prisoner maintained at the expense of any county, riding, vision, city, town, or place, shall be allowed a sufficient quantity of plain and wholesome food, to be regulated by the justices in general or quarter sessions assembled, regard being had (so far as may relate to convicted prisoners) to the nature of the labour required from or performed by such prisoners, so that the allowance of food may be duly apportioned thereto. And it shall be lawful for the justices to order for such prisoners of every description, as are not able to work, or being able cannot procure employment sufficient to sustain themselves by their industry, or who may not be otherwise provided for, such allowance of food, as the said justices shall from time to time think necessary for the support of health. Prisoners under the care of the surgeon shall be allowed such diet as he may direct. There shall be taken that all provisions supplied to the prisoners be of proper quality and weight. Scales and legal weights and measures shall be provided, open to the use of any prisoners, under such restrictions as shall be made by the regulations of each prison (b).

Food.

" 14th. Prisoners who shall not receive any allowance from the county, whether confined for debt or before trial, for any supposed crime or offence, shall be allowed to procure for themselves, and to receive at proper hours, any food, bedding, clothing, or other necessities, subject to a strict examination, and under such limitations and restrictions, to be prescribed by the regulations to be made in manner directed by this act, as may be reasonable and expedient, to prevent extravagance and luxury within the walls of a prison; all articles of clothing and bedding shall be examined, in order that it may be ascertained that such articles are not likely to communicate infection or facilitate escape.

Gaol allowance.

" 15th. No prisoner who is confined under the sentence of any court, nor any prisoners confined in pursuance of any conviction before a justice, shall receive any food, clothing, or necessities, other than the gaol allowance, except under such regulations and restrictions as to the justices in general quarter sessions assembled may appear expedient, with reference to the several classes of prisoners, or under special circumstances, to be judged of by one or more of the visiting justices.

" 16th. Due provision shall be made for the admission, at proper times and under proper restrictions, of persons with whom prisoners committed for trial may desire to communicate; and such rules and regulations shall be made by the justices in general quarter sessions assembled, for the admission of the friends of convicted prisoners, as to such justices may seem expedient; and the justices shall also impose such restrictions upon the communication and correspondence of all such prisoners with their friends, whether within or without the walls of the prison, as they shall judge necessary for the maintenance of good order and discipline in such prison.

Admission of persons.

" 17th. The surgeon shall examine every prisoner who shall be brought

a) If a prisoner in custody for felony seek the gaol, this seems to be a neglect of escape, because there wanted either due strength in the gaol that should be secured him, or that due vigilance be the gaoler or his officers, to have prevented it, and therefore it is by law lawful for the gaoler to hamper them with such means as to prevent their escape. 1 *Hale*, 601. And it is said, that a gaoler is not punishable for keeping even a debtor in irons. 2 *Hawk. c. 22, s. 32*. But the learned editor of Lord Hale's History observes, that this liberty, even in the case of a felon, (much more in the case

of a prisoner for debt), can only be intended where the officer has just reason to fear an escape; as, where the prisoner is unruly, or makes any attempt to that purpose; but otherwise, notwithstanding the common practice of gaolers, it seems altogether unwarrantable, and contrary to the mildness and humanity of the laws of England, by which gaolers are forbidden to put their prisoners to any pain or torment. And Lord Coke, 2 *Inst.* 381, is express, that by the common law it might not be done. 1 *Hale*, 601.

Putting prisoners in irons.

(b) See *R. v. Justices of Yorkshire, N. R. 2 B. & C. 286, post, 1027*.

**RULES AND  
REGULATIONS.**

4 Geo. 4, c. 64.

**Illness.**

**Apparel.**

**Prison dress.**

**Bedding, &c.**

**Whitewashing,  
&c., walls.**

**Washing.**

**Exercise.**

**Spirituous liquors,  
&c. (a)**

**Gaming, (b).**

**Garnish money.**

**Death of prisoner.**

**No prisoner to sit  
on an inquest.**

**Court of mayor  
and aldermen, so  
far as respects city  
prisons, and five  
justices in sessions,  
may make further  
regulations for pri-  
sons.**

**In London and  
Middlesex rules to  
be submitted to  
the two chief jus-  
tices, and else-  
where to the jus-  
tices of gaol deli-  
very, &c.**

**Copies of rules to**

into the prison, before he or she shall be passed into the proper ward; and no prisoner shall be discharged from prison if labouring under any acute or dangerous distemper, nor until, in the opinion of the surgeon, such discharge is safe, unless such prisoner shall require to be discharged. The wearing apparel of every prisoner shall be fumigated and purified, if requisite, after which the same shall be returned to him or her, or in case of the insufficiency of such clothing, then other sufficient clothing shall be furnished, according to the rules and regulations of the prison; but no prisoner before trial shall be compelled to wear a prison dress, unless his or her own clothes be deemed insufficient or improper, or necessary to be preserved for the purposes of justice; and no prisoner who has not been convicted of felony shall be liable to be clothed in a party coloured dress; but if it be deemed expedient to have a prison dress for prisoners not convicted of felony, the same shall be plain.

" 18th. Every prisoner shall be provided with suitable bedding; and every male prisoner with a separate bed, hammock, or cot, either in a separate cell, or in a cell with not less than two other male prisoners.

" 19th. The walls and ceilings of the wards, cells, rooms, and passages used by the prisoners throughout every prison, shall be scraped and limewashed at least once in the year: the day rooms, work rooms, passages, and sleeping cells shall be washed or cleansed once a-week, or oftener if requisite. Convenient places for the prisoners to wash themselves shall be provided, with an adequate allowance of soap, towels, and combs.

" 20th. All prisoners shall be allowed as much air and exercise as may be deemed proper for the preservation of their health.

" 21st. No tap shall be kept in any prison; nor shall spirituous liquors of any kind be admitted for the use of any of the prisoners therein, under any pretence whatever, unless by a written order of the surgeon, specifying the quantity and for whose use. No wine, beer, cider, or other fermented liquors shall be admitted for the use of any prisoners, except in such quantities, in such manner, and at such times, as shall be allowed by the rules hereafter to be made in pursuance of this act.

" 22nd. No gaming shall be permitted in any prison; and the keeper shall seize and destroy all dice, cards, or other instruments of gaming.

" 23rd. No money under the name of garnish shall be taken from any prisoner on his or her entrance into the prison, under any pretence whatever.

" 24th. Upon the death of a prisoner, notice thereof shall be given by the keeper forthwith to one of the visiting justices, as well as to the coroner of the district, and to the nearest relative of the deceased, where practicable.

Sect. 11 enacts, " That in case the coroner shall hold an inquest on the body of any prisoner who shall have died within the prison, none of the prisoners confined in that prison shall be a juror on such inquest."

Sect. 12 enacts, " That it shall be lawful for the court of mayor and aldermen of the city of London, so far as respects the prisons within the said city and liberties thereof, and for five justices of the peace in general or quarter sessions assembled, of each county, riding, or division of a county, or of any district, city, town, or place, to which this act shall extend, so far as respects the prisons within their respective jurisdictions, to make such further and additional rules for the government of such prisons respectively, and for the duties to be performed by the officers of the same, as to them may seem expedient; provided, that no such further or additional rules shall be enforced, until the same shall have been submitted, in London and Middlesex, to the two chief justices, and elsewhere to the justices of gaol delivery, or of great sessions respectively, at some gaol delivery or great sessions to be held after the making such rules, and until such chief justice or justices of gaol delivery, or of great sessions respectively, shall have subscribed a certificate or declaration that they do not see any thing contrary to law therein; provided always, that all such rules and regulations shall be consistent with and conformable to the rules and regulations in this act contained: and the justices in general or quarter sessions assembled

(a) See *post*, 1035.

(b) See *ante*, tit. **Gaming**, Vol. II.

all, and they are hereby required, from time to time to cause copies of so much of the rules of each prison as relates to the treatment and conduct of prisoners confined therein, to be printed in legible characters, and to be fixed up in conspicuous parts of every prison, so that every prisoner may be enabled to have access thereto; and all rules and regulations made and approved pursuant to the directions of this act, shall be binding upon the sheriff and upon all other persons; provided, that no such rules shall be so construed as to interfere with the right or duty of the sheriff to appoint or move any keeper of a county gaol or other prison subject to the authority of such sheriff."

Sect. 13 provides, "That all the powers and authorities given by this act to justices of the peace in general or quarter sessions assembled, in the several counties, and all other acts to be done and performed by justices of the peace at any sessions in pursuance of this act, shall be exercised and performed, so far as regards the prisons in the city of London and liberties thereof, by the court of mayor and aldermen of the said city, as heretofore has been accustomed, and not by the said mayor and aldermen as magistrates, at the general or quarter sessions of the peace to be holden in and about the said city; any thing in this act contained to the contrary thereof in anywise notwithstanding."

Sect. 15 enacts, "That the chairman of the Michaelmas quarter sessions of the peace, which shall be held next after the commencement of this act, in every county, riding, division, district, city, town, or place, to which this act shall extend, shall transmit, within fourteen days after the termination of such session, to one of his Majesty's principal secretaries of state, a true and correct account of their proceedings at such sessions for carrying this act into effect, and also a copy of all such rules and regulations as shall be in force for the government of every prison within the jurisdiction of such justices assembled at such sessions, and shall also transmit at the same time, or within three months afterwards, to such secretary of state, plans of such prisons, drawn upon a scale of one sixteenth of an inch to a foot; and the said copies and plans shall be carefully preserved in the office of such secretary of state; and the chairman of every such succeeding Michaelmas quarter sessions shall transmit, within fourteen days after the termination of such Michaelmas quarter sessions, a true and correct copy of all such regulations to such rules and regulations, or alterations made therein, as shall have been duly sanctioned since the preceding Michaelmas quarter sessions, either with plans, on the scale above mentioned, of any additions to the buildings of such prison, or alterations made in the construction thereof, during the same period."

Stat. 9 Geo. IV. c. 31, s. 6, enacts, "That every person convicted of murder shall, after judgment, be confined in some safe place within the prison, apart from all other prisoners, and shall be fed with bread and water only, and shall have no other food or liquor, except in case of receiving the sacrament, or in case of any sickness or wound, in which case the surgeon of the prison may order other necessaries to be administered; and no person but the keeper and his servants, and the chaplain and surgeon of the prison, shall have access to any such convict, without the permission in writing of the court or judge before whom such convict shall have been tried, or of the sheriff or his deputy: provided always, that in case the court or judge shall think fit to respite the execution of such convict, such court or judge may, at a licence in writing, relax, during the period of the respite, all or any of the restraints or regulations hereinbefore directed to be observed."

**RULES AND REGULATIONS.**

4 Geo. 4, c. 64.  
be put up in prisons.

Rules shall bind sheriffs, except as to appointment of gaolers.

Powers of general or quarter sessions to be exercised in London by the court of mayor and aldermen, as heretofore, &c.

Copies of proceedings and regulations of justices, and plans of prisons to be transmitted to secretary of state.

9 Geo. 4, c. 31.  
Prison regulations as to murderers under sentence.

**(2) Commitment of Offenders.**

As to what gaol an offender should be committed to, and the commitment of offenders in general, see title **Commitment**, Vol. I.

By the 4 Geo. IV. c. 64, s. 7, after reciting 'Whereas the practice of committing vagrants to common gaols, has been attended with much inconvenience,



**COMMITMENT  
OF OFFENDERS.**

4 Geo. 4, c. 64.

Rogues and vagabonds committed to house of correction only.

Power to justices to commit to house of correction of the county, where person apprehended in district, &amp;c.

Not necessary to build a house of correction for any such district, &amp;c.

nience to the classification of prisoners, and has prevented a uniformity of practice in the management of prisons, it is enacted, "That, from and after the 1st day of September, 1824, in every county, riding, or division of a county, in England and Wales, and in the several districts, cities, towns, or places, to which this act shall extend, all idle and disorderly persons, rogues and vagabonds, incorrigible rogues and other vagrants, shall be committed to some house of correction belonging to such county, riding, or division, district, city, town, or place, respectively; and that such house of correction shall be deemed the only legal place of commitment of any such person in pursuance of any conviction by lawful authority; any thing in any act contained to the contrary in anywise notwithstanding."

Sect. 8 enacts, "That in all cases where any person liable by law to be committed to the house of correction, shall be apprehended within any district, city, town, or place, mentioned in the schedule to this act annexed, and the inhabitants of any such district, city, town, or place, are or shall be contributory to the support and maintenance of the house or houses of correction of the county, riding, or division, in which such district, city, town, or place, is situate, it shall and may be lawful for the justices of the peace of such district, city, town, or place, to commit such person to the house of correction of the county, riding, or division, in which such district, city, town, or place, is situate; and every person so committed, shall and may be received, detained, dealt with, and ordered to be set and kept to hard labour or other work, or conveyed and sent away or discharged, and be subject and liable to the same correction and punishment, to all intents and purposes, as if committed by any justice or justices of the peace of such county, riding, or division; and in such case it shall not be necessary or required, that any other house of correction shall be built or maintained in or for such district, city, town, or place, and the inhabitants of such district, city, town, or place, shall not be compelled or compellable to the payment of any rate or sum of money whatever, for the building or maintaining of any other house of correction, in or for such district, city, town, or place: any thing in this act contained to the contrary in anywise notwithstanding."

As to the sheriff's liability, see *post*, 1030, 1046.

**(3) The Classification of Prisoners.**

Quarter sessions to execute act;

and to ascertain the classes to be confined in prisons.

Notice of order of sessions to be given, and a copy served on keepers of gaols, &amp;c.

Proviso for removal of prisoners.

By the 4 Geo. IV. c. 64, s. 4, it is enacted, "That, at the Michaelmas general quarter sessions which shall be held in every county, riding, or division of a county, in England and Wales, and in the several districts, cities, towns, and places, to which this act shall extend, next after the commencement of this act, and at any subsequent general or quarter sessions to be held from time to time, the justices of the peace there assembled shall proceed in carrying this act into effect; and such justices shall, by orders to be made for that purpose, ascertain and declare to what class or classes of prisoners every such gaol, house or houses of correction, or any part or parts of any of them respectively, shall be applicable; and every such order shall be signed by the chairman of such sessions, and shall be notified by the clerks of the peace to the several justices of the peace, in every such county, riding, or division, district, city, town, or place, respectively; and notice thereof shall be inserted in three of the newspapers usually circulated in such county, riding, or division, or district, city, town, or place, respectively, within three weeks after any such order shall be made at any such sessions; and a copy thereof shall be served upon the keeper of every gaol or house of correction within every such county, riding, division, city, district, town, or place; and after the making of such order, and service of such copy thereof upon such keeper as aforesaid, such class or classes of prisoners as shall be specified in such order, and no other, shall be committed to or detained in any such gaol, house or houses of correction, or any part of any of them respectively, and all persons not coming within the class or description of prisoners who may lawfully be committed to or detained in such prison as shall be ap

jointed by the justices for the confinement of one or more class or classes of prisoners, may be removed to the gaol or house of correction of the county, riding, or division; and every such gaol or house of correction shall be deemed the legal gaol, prison, or place of confinement, of every person respectively committed to the same, in pursuance of such order as aforesaid; any thing in any act or acts, or any law, custom, or usage, to the contrary notwithstanding; provided always, that no classification of prisoners shall be made in any house of correction appropriated to the reception of any particular class or classes of prisoners, which shall be in any way inconsistent with or contrary to the classification directed by this act."

Sec. 5 enacts, "That where, in any county, riding, or division of a county, or in any of the cities, towns, and places, named in the said schedule (A), any house of correction shall be part of the same building, or inclosed in the same boundary wall, as or shall be contiguous to the common gaol, and shall be under the superintendence of the same keeper and the same visiting justices, it shall be lawful for the justices of the peace of the county, division, city, town, or place, assembled at any general or quarter sessions, from time to time, with the consent of the sheriff of the county for the time being, signified in writing under his hand, to proceed to carry into effect the classification and separation directed by this act in the whole of each united or contiguous building or buildings, instead of in each such house of correction and gaol, and to divide the whole of such building, or united or contiguous buildings, into such number of compartments for the purpose of each separation and classification, as would be required under the regulations of this act, if the same had been one distinct gaol or house of correction; and also at any general or quarter sessions from time to time, by their order or orders, and with such consent of the sheriff as aforesaid, to ascertain and declare what part or parts of the same building, or united or contiguous buildings, shall be considered as the gaol, and what part or parts thereof respectively shall be considered as the house of correction, and shall be appropriated to the confinement of particular classes and descriptions of prisoners, and to direct what classes and descriptions respectively shall be confined in each part or division of such building, or united or contiguous buildings; and all persons to be committed to or detained in the respective parts and divisions so to be ascertained and appropriated of any such building, or united or contiguous buildings, to them respectively applicable, shall be deemed and held to be in legal custody: provided that prisoners for debt may be removed to, and shall always be confined in the part or parts of each building, or united or contiguous buildings, which shall be so ascertained, or be appropriated, as and for the gaol of the county, division, city, town, or place; and such removal shall not be deemed or taken to be an escape." See sect. 6, *post*, 1046.

Sec. 8 enacts, "That in all cases where any person liable by law to be committed to the house of correction, shall be apprehended within any district, city, town, or place, mentioned in the schedule to this act annexed, and the inhabitants of any such district, city, town, or place, are or shall be contributory to the support and maintenance of the house or houses of correction of the county, riding, or division, in which such district, city, town, or place, is situate, it shall and may be lawful for the justices of the peace of such district, city, town, or place, to commit such person to the use of correction of the county, riding, or division, in which such district, city, town, or place, is situate; and every person so committed shall and may be received, detained, dealt with, and ordered to be set and kept to hard labour or other work, or conveyed and sent away or discharged, and be subject and liable to the same correction and punishment, to all intents and purposes, as if committed by any justice or justices of the peace of such county, riding, or division; and in such case it shall not be necessary or required that any other house of correction shall be built or maintained in or near such district, city, town, or place, and the inhabitants of such district, city, town, or place, shall not be compelled or compellable to the payment of any rate or sum of money whatever, for the building or maintaining of

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4 Geo. 4, c. 64.

Provides as to no classification of prisoners.

In what case the classification in the whole of such buildings, and not in each part separately, required by this act, shall be carried into effect.

Regulation as to confinement of prisoners for debt.

Power to justices to commit to house of correction of the county, where person apprehended in district, &c.

Not necessary to build a house of correction for any such district, &c.

CLASSIFICA-  
TION OF  
PRISONERS.

5 Geo. 4, c. 85.

Classification of  
prisoners in gaols,  
&c., where the  
whole number of  
wards, &c., is not  
required.

any other house of correction, in or for such district, city, town, or place; any thing in this act contained to the contrary in anywise notwithstanding."

By stat. 5 Geo. IV. c. 85, s. 10, reciting, 'Whereas, in some other counties and places to which the said recited act extends, by reason of the small number of prisoners usually confined therein, it may not be necessary to provide the whole number of wards and airing grounds thereby required; but it is necessary to provide that in all prisons some certain means of classification should be secured;' it is enacted, "That in every prison to which the said recited act extends, except Canterbury, Lichfield, and Lincoln, provision shall be made for the following classification, at the least:—

"In all such gaols, the male and female prisoners shall be confined in separate wards or parts of the gaol. The male prisoners shall be divided into five classes: first, debtors and persons committed for contempt of court on civil process; second and third, prisoners convicted, who may be put into either of these classes, as to the visiting magistrates may seem meet, reference being had to the character and conduct of the prisoners, and the nature of their offence; fourth and fifth, prisoners committed for trial, who may also be put into either of these two classes, as to the visiting magistrates may seem meet, reference being had in like manner to the character and conduct of the prisoners, and the nature of their offence.

"The female prisoners shall be divided at least into three classes: first, debtors and persons committed for contempt of court on civil process; second, prisoners convicted; third, prisoners committed for trial.

"In all such houses of correction, the male and female prisoners shall also be confined in separate wards or parts of the house. The male prisoners shall be divided into five classes: first and second, prisoners convicted, who may be put into either of such classes, as to the visiting magistrates may seem meet, regard being had to the character and conduct of the prisoners, and the nature of their offence; third and fourth, prisoners committed for trial, in all houses of correction where such prisoners are received, such prisoners may be put into either of these classes, as to the visiting magistrates may seem meet, regard being had, as already mentioned, to the character and conduct of the prisoner, and the nature of his offence; fifth, vagrants.

"In places where the gaol and house of correction are united, the male prisoners shall be divided into six classes at least: first, debtors and prisoners committed for contempt of court on civil process; second and third, convicted prisoners; fourth and fifth, those committed for trial, such prisoners to be assigned to either of these classes of prisoners convicted or committed respectively, as to the visiting magistrates shall seem meet, regard being always had to the character and conduct of the prisoners, and the nature of their offence; sixth, vagrants.

"The female prisoners, in each of such houses of correction, shall be divided into three classes: first and second, prisoners convicted; the prisoners to be put into either of such classes, as to the visiting magistrates shall seem meet, regard being had to their character and conduct, and the nature of their offence; vagrants shall be assigned to one or the other of these classes, as the visiting magistrates, in their discretion, may see meet; third, where females are committed to any house of correction before trial, they shall be kept in a class by themselves (a)."

By sect. 11, reciting, 'Whereas in some counties of Wales it may be consistent with the due classification of the prisoners, to dispense with some of the wards or airing grounds required by the said recited act [4 Geo. IV. c. 64] and this act,' it is enacted, "That if the court of quarter sessions of any county in Wales, shall, during the present year, present a petition to the lords of his Majesty's privy council, setting forth the whole number of prisoners imprisoned in the common gaol and house or houses of correction of such county, within the last seven years, with the causes of their imprisonment respect-

Regulations herein  
mentioned may be  
dispensed with in  
Welsh counties.

(a) See the 10th sect. of 4 Geo. IV. c. 64, and the six regulations therein, *encl.* 1017.

vely, so as to exhibit in which of the classes prescribed by the said recited act or this act, each such prisoner would have been included, and shewing also the greatest number of such prisoners imprisoned in such gaol and house of correction, at any one time in each of the said seven years; and setting forth fully and particularly the then state of such gaol and house of correction, and an estimate of the expense which would be incurred by enlarging such gaol, or such house of correction, to which the petition shall apply, so as to admit of the whole number of wards and airing grounds required by the said act, or this act, and the amount of the county rate for each of the said seven years, and praying a dispensation with some part of the wards or other accommodations required by the said act or this act, which under the circumstances of such county may to such Court appear unnecessary, it shall be lawful for the said lords of the privy council to take such petition into their consideration, and, if they shall see fit, to make an order thereon, directing in what manner and to what extent it shall be sufficient for such county to comply with the provisions of the said act and this act, and making such regulations touching the same as to them shall seem meet; and such county duly complying with such order, shall not be liable to be indicted, or otherwise impeached, for not further conforming itself to the regulations of the said act and this act, in regard to the extent of its prisons, or the wards into which they are divided, or the accommodation to be found therein; any thing in the said recited act or this act to the contrary notwithstanding."

Sect. 12 enacts, "That any person confined in any prison to which the said recited act extends, for non-payment of any penalties incurred under the revenue laws, may be assigned to such class of convicted prisoners for whom separate ward is therein provided, as the visiting magistrates in their discretion may think fit, regard being had to the character of the prisoner, and his or her conduct while in prison; and the reasons for assigning such prisoner to any particular class of convicts shall be reported by the visiting magistrates to the quarter sessions."

Sect. 13 enacts, "That where, in any prison, there shall be only one prisoner belonging to any class in the said act or herein specified, such prisoner may be assigned, with his or her own consent, to any other class of prisoners of the same sex, which the visiting magistrates in their discretion shall think fit."

Sect. 14, reciting, 'Whereas, by stat. 4 Geo. IV. c. 64, it is required, that when the gaol and house of correction are inclosed within the same boundary-wall, it shall be ascertained and declared what part or parts shall be considered as the gaol, and what as the house of correction,' enacts, 'That notwithstanding any thing in the said act contained, it may be lawful for the justices, in their general or quarter sessions, to declare in any such case that such parts of the buildings as shall be appropriated for the chapel, and for the sick wards or infirmaries, shall be common both to the gaol and to the house of correction, and that in that case a double set of wards shall not be necessary.'

Sect. 15 enacts, "That nothing in the said recited act, or in this act contained, shall oblige any city, town, borough, port, or liberty, to provide for its gaol or house of correction accommodation for any class of prisoners who could not be lawfully committed to such prison before the passing of the said recited act; and that nothing in the said recited act, or this act contained, shall alter or affect the liability of any bodies politic or corporate, or of the inhabitants of any parish, township, or place, or of any individuals bound by statute, tenure, custom, prescription, or usage, to repair or contribute towards the repair of any prison, or to maintain or contribute towards the maintenance of the prisoners confined in any prison, or to pay or contribute towards the payment of any expenses whatever connected with any prison, but that all such parties shall remain liable to all such charges as if the said recited act and this act had not been made."

As to where murderers are to be put, &c. see *ante*, p. 1021.

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PRISONERS.**

5 Geo. 4, c. 85.

Proviso respecting prisoners for breach of revenue laws.

To prevent solitary confinement.

Where gaol and house of correction are contiguous, chapel and infirmary may be common to both.

Proviso as to liability of cities, as to description of prisoners, and contribution towards expenses.

Murderers.

FOOD, CLOTH-  
ING, &c.

(4) *Food, Clothing, &c.*

As to this, see the general regulations, *ante*, p. 1019; as to food in the case of hard labour, see *post*, 1027.

(5) *Employment, Labour, &c.*

We have already noticed some rules as to the employment of prisoners in hard labour, &c., and the hours for employment, &c., *ante*, 1017; and as to hard labour in general, see the 3 Geo. IV. c. 114, *post*, *Hard Labour*. Vol. II.

4 Geo. 4, c. 64.

In what cases persons committed for trial may be employed.

Proviso as to prisoners working together.

Two visiting justices may order prisoners to be employed.

Prisoners able to earn, not to have support from the county.

Account of work done kept by keeper.

Allowance for work done.

The 4 Geo. IV. c. 64, s. 37, after reciting, 'That whereas persons are often committed to prison for trial, who are willing to be employed in such work or labour as can be conveniently executed or done in the prison to which they are so committed, and it is fit that such persons should be so employed rather than that they should be obliged to remain idle during their confinement,' enacts, "That it shall and may be lawful for any one or more visiting justice or justices of any prison to which this act shall extend, to authorize, by an order in writing, the employment of any such prisoners, with their own consent, in any such work or labour; and it shall be lawful for the keeper of such prison to employ such prisoner in such work or labour accordingly, and to pay to such prisoners any such wages or portion of the same, and at such periods, as shall be directed by such justice or justices: provided always, that it shall not be lawful to place together, on account of such employment, any prisoners who would otherwise be kept separate under the provisions of this act."

Sect. 38, after reciting, 'Whereas persons convicted of offences are frequently sentenced to imprisonment without being sentenced to hard labour,' enacts, "That it shall be lawful for two or more visiting justices of any prison to order that all such persons confined in such prison in pursuance of any sentence or conviction, except such prisoners as shall maintain themselves, shall be set to some work or labour not severe: and it is hereby declared, that no such prisoner, who shall be of ability to earn, and who shall have the means of earning or of otherwise providing for his own subsistence, shall have any claim to be supported at the expense of the county, riding, or division, or by the sheriff or the keeper of the prison; provided that when such ability shall cease by reason of sickness, infirmity, the want of sufficient work, or from any other cause, every such person shall, during the continuance of his inability, receive such provision and support as shall be directed for other convicted prisoners in the same prison; and the keeper of every such prison shall keep an account of the work done by every prisoner so set to work as aforesaid, and shall account to such prisoner for so much of the net profits which such prisoner shall have earned, or for such daily or other allowance for the work and labour done by such prisoner, as shall be directed either by the rules and regulations of such prison, or in case of no provision being made on this head by those rules and regulations, then for such part of the said net profits, or for such daily or other allowance as shall be directed by the visiting justices, and shall pay the amount of all accumulations of such allowance to such prisoner at his or her discharge."

5 Geo. 4, c. 85.

No prisoner employed on tread-wheel before conviction.

The 5 Geo. IV. c. 85, s. 16, reciting, 'And whereas, [by stat. 4 Geo. IV. c. 64, s. 38], it was made lawful for one or more visiting justice or justices of any prison to which the same extended, to authorize, by an order in writing, the employment of prisoners committed for trial, with their own consent, in any such work as therein specified,' enacts, "That such consent of every such prisoner shall be freely given, and shall not be extorted or obtained by deprivation or threat of deprivation of any prison or other allowance; and that no prisoner, before conviction, shall, under any pretence, be employed on the tread-wheel, either with or without his consent."

Sect. 17, reciting, 'Whereas, it has been doubted whether prisoners committed to prison for trial, who are unable to maintain themselves otherwise than by being employed in some kind of work or labour in prison, are entitled to receive any prison allowance of food without being required so to employ themselves,' enacts and declares, "That such prisoners shall be allowed such food as may be sufficient for the support of health, without being obliged to perform any kind of work or labour as the condition of such allowance; and that any wages or portion of the same, which may become due to such prisoners from the keeper of any prison, in consequence of any order made by any visiting justice or justices of such prison, or the employment of such prisoners with their own consent, shall be paid to them as directed by such order, in addition to the food so allowed, and without any diminution of such allowance by reason of such payment."

Prisoners committed to gaol for trial, who are able, but refuse to work, are not entitled by law to have any food provided for them by the public; and therefore, where a magistrate reported, as an abuse, to the justices at quarter sessions, that untried prisoners had been compelled to work at the tread-mill, and the justices at sessions ordered that the tread-mill should be applied to the employment of other prisoners as well as those sentenced to hard labour; and that those committed for trial who were able to work, and had the means of employment offered them by which they might earn their support, but who refused to work, should be allowed bread and water only; this Court refused to grant a *mandamus* to compel the justices to order such prisoners any other food (a).

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LABOUR, &c.**

5 Geo. 4, c. 85.

As to prisoners being allowed food without being obliged to work.

(a) *Rex v. Justices of Yorkshire*, 2 B. C. 286. M. Stapylton, Esq., a magistrate for the North Riding of Yorkshire, in his official capacity, visited the use of correction at Northallerton, on 14th October, 1823, and found that several prisoners committed for trial had been compelled to work upon the tread-mill against their inclinations. On the next day he made his report in writing to the justices, in general quarter sessions assembled, of this state of facts, and required the same to be taken into immediate consideration, and rectified. The sessions took the report into consideration, and made an order that the tread-mill should be applicable both as to labour, in the cases of such prisoners as might be sentenced thereto, and the employment of other prisoners; and also, that persons committed for trial, who were able to work, and had means of employment offered them, which they might earn their support, should obstinately refuse to work, should be allowed bread and water only. Upon an affidavit disclosing these facts, and the belief of Mr. Stapylton that bread and water, unaccompanied by any other article of food, would not afford sufficient nourishment for the due support of human nature, that upon such a diet the health of prisoners cannot be preserved. The following argument on motion for a *mandamus* to the justices of the peace for the North Riding of Yorkshire, com-

manding them to inquire into and rectify this abuse, was adopted.—By stat. 4 Geo. IV. c. 64, s. 17, "Any justice is empowered to enter into and examine the state of any gaol, as often as he shall think fit, and is required to report, in writing, any abuse therein, to the next quarter sessions; which abuse, so reported, shall be taken into immediate consideration by the justices at such sessions, and the most effectual measures adopted for inquiring into and rectifying such abuse, as soon as the nature of the case will allow." Now, if this Court see that the justices have not complied with the directions of that section, in rectifying the abuse presented, it will, by *mandamus*, compel them so to do. By sect. 10, certain regulations are prescribed for the management of prisons; and, by the thirteenth regulation, it is provided, that "every prisoner maintained at the expense of any county, &c., shall be allowed a sufficient quantity of plain and wholesome food, to be regulated by the sessions; regard being had (so far as may relate to convicted prisoners) to the nature of the labour required from, or performed by, such prisoners, so that the allowance of food may be duly apportioned thereto: and the justices may order, for such prisoners of every description as are not able to work, or, being able, cannot procure employment sufficient to sustain themselves by their industry, or who may not be otherwise provided for, such allowance of food

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LABOUR, &c.

5 Geo. 4, c. 84.

Convicts may be kept to hard labour, and may be removed to house of correction.

Stat. 5 Geo. IV. c. 84, s. 18 enacts, "That it shall be lawful to keep to hard labour every offender under sentence or order of transportation, while

as the justices shall think necessary for the support of health." Then sect. 37, reciting that "Persons are often committed to prison for trial who are willing to be employed in such work as can be conveniently executed in the prison to which they are so committed, and it is fit that such persons should be so employed rather than that they should be obliged to remain idle during their confinement," enacts, that any visiting justice may "authorize, by an order in writing, the employment of any such prisoners, with their own consent, in any such work; and that the keeper of such prison is to employ such prisoners in such work or labour accordingly, and is to pay to such prisoners any such wages, or portion of the same, and at such periods as shall be directed by such justice." From these two sections it is obvious that such prisoners committed for trial, as have not the means of supporting themselves, and are, consequently, maintainable by the riding, are entitled to a sufficiency of plain and wholesome food; and that the magistrates have no authority to compel such prisoners to work at the tread-mill, or at any other species of employment, against their inclinations. Now, the order of the justices, made subsequently to the reported abuse, is in direct contravention of this act of Parliament. The effect of that order is to compel the untried prisoners to work against their will; for, if they do not work at the employment prescribed, they will have no other allowance than bread and water. That, too, cannot be considered "plain and wholesome food," within the meaning of the 10th section. Such food must necessarily be of a description adequate to the due preservation of health; yet that is negatived by the affidavit. It is true, that no individual case is mentioned in which the allowance of bread and water alone has had a prejudicial effect upon the health of the prisoner, but it is notorious, that many of the diseases afflicting the labouring classes, result from too spare a diet. [Abbott, C. J.—How are we to judge what is "plain and wholesome food?" That is matter upon which the justices are exclusively to decide. Can you refer us to any act of Parliament which makes it compulsory on the county to provide with food persons committed for trial?] The only statutes bearing upon that point are 19 Car. II. c. 4; 31 Geo. III. c. 46, s. 13; and 4

Geo. IV. c. 64. Abbott, C. J.—It appears by the preamble of the 19 Car. II. c. 4, that, before that statute, there was not any sufficient provision made for the relief and setting on work of poor persons committed to gaol for felony and other misdemeanors, and that they actually many times perished before their trial, and that the poor, living then idle and unemployed, became debauched, and came forth instructed in the practices of thievery and lewdness; and that statute then enabled the justices at sessions to provide a stock of materials out of the county rate, for setting on work poor prisoners, and to bestow the profits arising from such labour towards their relief. The statute 31 Geo. III. c. 46, s. 12, extends the provisions of the former statute to all prisoners whatever within the gaols, who may be inclined and willing to work; and, by the recital in the thirteenth section, it appears, that even at that time the health of the prisoners was frequently so affected by want of necessary food as to render them incapable of labour when released; and the justices at sessions are thereby authorized to order money to be paid out of the county rate towards assisting prisoners of every description who are not able to work, or who, being able, cannot obtain employment sufficient to sustain themselves by their industry. It is clear, therefore, that before the last statute, prisoners who were able and unwilling to work were not entitled to be maintained at the public expense; and it is not contended, that that statute casts such a burthen upon the public. There being, therefore, no provision in any act of Parliament to compel the county to provide food for those who are able, but unwilling, to work, we cannot grant a *mandamus* to compel the justices to order any species of food to be provided for such prisoners. We ought to see clearly that the magistrates have neglected some duty imposed upon them by law before we compel them to act in any particular mode. From the facts now before the Court, it does not appear that labour at the tread-mill is a species of work unfit for the employment of the prisoners. I cannot say that such an employment is contrary to law. The legislature appears to have vested in the county magistrates a discretion as to the management and diet of the prisoners. Bayley, J.—I am of opinion that the public are not bound to find food for those who are able, but who are un-

he or she shall remain in the common gaol, if his or her health shall permit, and if one or more of the visiting justices of such gaol shall give a written order to that effect; and that it shall be lawful for one of his Majesty's principal secretaries of state, if he shall think fit, to order that any such offender be removed from the common gaol to the house of correction, and there kept to hard labour."

And, by sect. 19, "The time during which any offender shall continue in any gaol or house of correction, or in any such place of confinement as

**EMPLOYMENT,  
LABOUR, &c.**

5 Geo. 4, c. 85.

Time of imprisonment to be deemed part of term

filling, to work; and if that be so, the justices have already done more than the law required them to do, by ordering such persons bread and water. *Best*,—I think that a writ of *mandamus* ought not to issue in this case, because the magistrates have already done more than we could order them to do. If the law requires a certain thing to be done, we may order it to be done by the jury upon whom the obligation of doing it is imposed. If he is to act according to his discretion, and he will not do so or even consider the matter, we may compel him to put himself in motion to do the thing, but we cannot control his discretion. By the statute 4 Geo. IV. c. 1, s. 17, the justices at sessions are bound, upon its being reported by a magistrate that certain abuses exist in a gaol, to take that report into consideration. In this case a magistrate made a report that prisoners committed for trial were compelled to work on the tread-mill. The justices at sessions took that report into consideration, and determined that the tread-mill should be applicable both as hard labour to such prisoners as were sentenced thereto, and to the employment of all other prisoners. So far they have complied with the act of Parliament, by taking the matter into consideration; but it is said that they have not rectified that which alleged to be an abuse, because they have directed the tread-mill to be used for the employment of all prisoners, and have also ordered that persons committed for trial, who are able to work, and have means of employment offered them by the magistrates, by which they may receive their support, but who obstinately refuse to work, shall be allowed bread and water only; and it is insisted, that this is not plain and wholesome food for their support, and therefore a violation of the thirteenth regulation. It is, however, for us to decide whether it is or be not sufficient, the quality and quantity of the food being left to the discretion of the magistrates. But what if it has a prisoner to whom work is refused, and who is able to do it, but is not, to have any food at the expense of the county? According to the poor law, he who is able to labour is to be maintained by labour only, and nothing

is to be provided for him but a means of employment. Neither humanity nor policy requires that one on whom a charge of felony has been made on oath, should be in a better situation than one who lives unsuspected of crime. The common law made no provision for maintaining prisoners in idleness. And the preamble of the 19 Car. II. c. 4, is a legislative declaration of the mischievous consequences resulting from poor prisoners not having the means of supporting themselves by labour, and from their living in idleness, and that statute, as a remedy for this error, enacts, "That the justices shall provide materials for setting on such prisoners to work." The wise principle of that, as well as all other statutes for the maintenance of the poor was, that employment should be provided for them by which they might support themselves. The 4 Geo. IV. sanctions that principle. The thirteenth regulation enables "the justices to order for such prisoners of every description as are not able to work, or, being able, cannot procure employment sufficient to sustain themselves by their industry, or who may not otherwise be provided for, such allowance of food as they shall think necessary for the support of health." The 37th section enables the magistrates to employ prisoners committed for trial with the consent of such prisoners. This section prevents them from forcing such prisoners to work against their will, but it does not oblige them to find food for such as are able and will not work. An idle person has no right to the maintenance now claimed for him, and therefore we cannot order the magistrates of the county to provide better food for such prisoners than they have already offered them. I do not mean to say that magistrates in all cases would be justified in offering to such prisoners the same severe labour that persons condemned to hard labour are bound to perform. Inasmuch as the object of employment of prisoners committed for trial is support and not punishment, it may perhaps be fit to provide the most profitable and least irksome labour which, consistently with the security of the prisoners and the situation of the gaol, can be provided. Rule refused.



**ESCAPE OF PRISONERS.**

aforesaid, under sentence or order of transportation or banishment, shall be taken and reckoned in discharge or part discharge of the term of his or her transportation or banishment."

**(6) Escape of Prisoners.**

See *ante*, tit. *Escape*; and *post*, tit. *Prison-break*.

Voluntary escape.  
Negligent escape.

If the gaoler voluntarily suffer a prisoner to escape, he shall be punished in the same manner as the prisoner ought to have been who escaped; and if he negligently permit him to escape, he shall be punished by fine and imprisonment. And the sheriff shall answer for him. 2 *Hawk. c. 19, s. 22 et seq. 5 Mod. 415, 416.*

And if a prisoner charged with felony break a gaol, it is said that this seems to be a negligent escape; because there wanted either the due strength in the gaol that should have secured him, or the due vigilance in the gaoler or his officers, that should have prevented it. 1 *Hale, 600.*

The principal gaoler is only fineable for the voluntary escape of a felon suffered by his deputy; for no one shall suffer capitally for any crime, but he who is actually guilty of it. 2 *Hawk. c. 19, s. 27.*

But for a negligent escape suffered by his bailiff, the sheriff is as much liable to answer, as if he had actually suffered it himself; and the court may charge either the sheriff or bailiff for it; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. 2 *Hawk. c. 19, s. 29.*

4 Geo. 4, c. 64.  
Conveying visors,  
&c., into prisons  
to assist prisoners  
to escape.

Stat. 4 Geo. IV. c. 64, s. 43 enacts, "That if any person shall convey or cause to be conveyed into any prison to which this act shall extend, any mask, vizor, or other disguise, or any instrument or arms proper to facilitate the escape of any prisoners, and the same shall deliver or cause to be delivered to any prisoner in such prison, or to any other person there, for the use of any such prisoner, without the consent or privity of the keeper of such prison, every such person shall be deemed to have delivered such vizor or disguise, instrument or arms, with intent to aid and assist such prisoner to escape or attempt to escape; and if any person shall, by any means whatever, aid and assist any prisoner to escape or in attempting to escape from any prison, every person so offending, whether an escape be actually made or not, shall be guilty of felony; and, being convicted thereof, shall be transported beyond the seas for any term not exceeding fourteen years."

Assisting prisoners  
to escape.

Transportation.

Method of trial  
and conviction of  
offenders making  
escape, rescue, &c.

Sect. 44. 'And, to the intent that prosecutions for escapes, breaches of prison, and rescues, may be carried on with as little trouble and expense as is possible,' it is enacted, 'That any offender escaping, breaking prison, or being rescued therefrom, may be tried either in the jurisdiction where the offence was committed, or in that where he or she shall be apprehended and retaken; and in case of any prosecution for any such escape, attempt to escape, breach of prison, or rescue, either against the offender escaping or attempting to escape, or having broken prison, or having been rescued, or against any other person or persons concerned therein, or aiding, abetting, or assisting the same, a certificate given by the clerk of assize, or other clerk of the court in which such offender shall have been convicted, shall together with due proof of the identity of the person, be sufficient evidence to the court and jury of the nature and fact of the conviction, and of the species and period of confinement to which such person was sentenced.' See further, *ante*, *Escape*.

**(7) Refractory Prisoners.**

4 Geo. 4, c. 64.

Power of keeper to  
inquire into and  
punish certain of-  
fences.

Stat. 4 Geo. IV. c. 64, s. 41 enacts, "That the keeper of every prison shall have power to hear all complaints touching any of the following offences: (that is to say), disobedience of any of the rules of the prison; assaults by one person confined in such prison upon another, when no dangerous wound or bruise is given; profane cursing and swearing; any indecent be-

behaviour, and any irreverent behaviour at chapel, all of which are declared to be offences by this act, if committed by any description of prisoners; absence from chapel without leave; idleness or negligence in work, or wilful mismanagement of it, which are also declared to be offences by this act, if committed by any prisoner under charge or conviction of any crime; and the said keeper may examine any persons touching such offences, and may determine thereupon, and may punish all such offences, by ordering any offender to close confinement in the refractory or solitary cells, and by keeping such offenders upon bread and water only, for any term not exceeding three days."

Sect. 42 enacts, "That in case any criminal prisoner shall be guilty of any repeated offence against the rules of the prison, or shall be guilty of any greater offence than the gaoler or keeper is by this act empowered to punish, the said gaoler or keeper shall forthwith report the same to the visiting justices, or one of them for the time being; and any one such justice, or any other justice acting in and for the county, or riding or division of a county, or for the district, city, town, or place to which such prison belongs, shall have power to inquire upon oath, and to determine concerning any such matter so reported to him or them, and to order the offender to be punished by close confinement for any term not exceeding one month, or by personal correction in the case of prisoners convicted of felony, or sentenced to hard labour."

**REFRACTORY PRISONERS.**

4 Geo. 4, c. 64.

Punishment of refractory prisoners by visiting justices, &c.

**(8) Removal of Prisoners in certain Cases.**

Stat. 4 Geo. IV. c. 64, s. 51 enacts, "That whenever the justices in general or quarter sessions assembled shall deem it necessary that the prisoners, or any part of them, shall be removed from any house of correction within their jurisdiction, in order that the same may be repaired, improved, enlarged, or rebuilt, or on account of any contagious or infectious disease therein, or of the over-crowded state of such house of correction, or for any other purposes of this act, it shall and may be lawful for the said justices, by an order in writing to be signed by the chairman of such general or quarter sessions, to direct the keeper of such house of correction to remove such prisoners to such other prison or place of confinement within their jurisdiction, as the said justices shall appoint, and to confine such prisoners therein during the time such necessity shall exist; and that when such house of correction shall be repaired, enlarged, improved, or rebuilt, it shall be lawful for the said justices, by a like order in writing, to direct the said keeper to remove to the house of correction so repaired, enlarged, improved, or rebuilt; or when such contagious disease shall have ceased to exist, or for purposes for which the prisoners shall have been so removed shall have been answered, to remove back to the house of correction from whence the prisoners came, all such prisoners as shall then remain in his custody; and if for any of the causes above recited, the said justices so assembled as aforesaid shall deem it necessary to remove the debtors and other prisoners in any common gaol, the said justices shall give due and sufficient notice thereof in writing to the sheriff of such county, riding, division, city, or town, whereupon it shall be lawful for the said sheriff to remove such debtors and other prisoners to such prison or other place of confinement within his jurisdiction as the justices, with the consent of the said sheriff, shall appoint, and to confine them therein during the time such common gaol shall be repairing, enlarging, improving, or rebuilding, or during the continuance of such contagious disease on account of which the said prisoners were removed, or during such time as shall be requisite for any purposes of this act; and that, when such gaol shall be made fit for the reception and safe keeping of such debtors and other prisoners, then it shall be lawful for the said sheriff to remove thither all such prisoners as shall then be in his custody; and further, if a new common gaol shall be erected, or a prison previously used for other purposes shall be adapted to the use of a common gaol, and the justices in general or quarter sessions assembled shall, with

4 Geo. 4, c. 64. Quarter sessions may remove prisoners in case of want of repair of prison, or of contagious disease, and back again when the cause is removed.

In case of county gaols notice to be given to sheriff, who shall remove such prisoners.

New gaol, or prison, previously otherwise used, may be declared the county gaol.

## REMOVAL OF PRISONERS.

4 Geo. 4, c. 64.

In cases where immediate removal of prisoners is necessary, visiting justices empowered to order the same.

Order of visiting justices laid before sessions.

Proviso for removals of prisoners from county gaols.

31 Car. 2, c. 2.  
When only to be removed.

24 Geo. 2, sess. 2, c. 56.  
Removal of prisoners confined under justices' orders, upon summary convictions, to houses of correction within the same jurisdiction.

Visitors may recommend offenders to sessions on account of good conduct.

Allowance to such offenders on their discharge.

the consent of the sheriff, order and declare, that, from a day to be named such new gaol, or prison newly adapted to such purpose, shall become the common gaol, it shall be lawful for the sheriff, on that day, or at any time thereafter, to remove all prisoners in his custody to the last-mentioned gaol or prison."

Sect. 52 enacts, "That whenever any contagious disease, or other emergency, shall render necessary the immediate removal of the prisoners, or any of them, confined in any gaol or house of correction, and that, previous thereto, it shall be impossible to obtain for such purpose the order of the justices in general or quarter sessions assembled, it shall and may be lawful for the visiting justices of such prison, and they are hereby empowered to issue an order under their hands and seals, to the keeper of every such prison, to remove such prisoners, or any of them, to such other prison or other place of confinement within their jurisdiction, as shall be specified in such order."

Sect. 53 provides and enacts, "That every such removal shall be subject to all such restrictions, as to its duration, as is hereby required and directed, and that every such order of visiting justices shall be laid before the justices assembled at the general or quarter sessions of the peace which shall be held next after such order shall have been made; provided also, that the prisoners confined in any common gaol of any county, city, town or place, shall not be removed without the consent of the sheriff of such county, city, town, or place; provided also, that no removal made under the authority of this act shall be deemed or taken to be an escape; and that nothing herein contained shall extend to discharge the sheriff or other officer from being answerable for the actual escape of any prisoner in his custody."

By stat. 31 Car. II. c. 2, s. 9, if any person shall be committed to any prison for any criminal or supposed criminal matter, he shall not be removed from thence, unless it be by *habeas corpus*, or some other legal writ, or where he is removed from one prison or place to another within the same county, in order to his trial or discharge, or in case of sudden fire or infection, or other necessity, on pain that the person making out and signing or countersigning any warrant for such removal, and the person executing the same, shall forfeit, for the first offence, 100*l.*, and for the second, 200*l.*; or the party grieved, by action of debt, bill, plaint, or information, in the King's Courts at Westminster.

And by stat. 24 Geo. III. sess. 2, c. 56, s. 12, after reciting, that "Whereas there are several persons confined in the county and city gaols in England and Wales, under sentences and orders made by one or more justices or justices of the peace at their sessions or otherwise, upon conviction in a summary way, without the intervention of a jury," it is enacted, "That it shall be lawful for any justice of assize or great sessions, or any two or more justices of the peace within whose jurisdiction such gaol is situate, to remove any such person or persons to any house of correction within the said jurisdiction, there to be confined and to remain, in execution of such sentence or order."

## (9) Discharge of Prisoners, and Allowance, &amp;c., on.

Stat. 4 Geo. IV. c. 64, s. 16 enacts, that "If the said visitors shall at any time observe, or be satisfactorily informed, of any extraordinary diligence or merit in any prisoners under their inspection, they shall report the same to the justices of peace for the county, riding, division, district, city, town, or place, at their next or any subsequent general or quarter session to be holden for the county or place in which such prison is situate, in order that such justices may, if they shall think proper, recommend any such offender to the royal mercy, in such degree or upon such terms as to them shall seem meet; and if his Majesty shall thereupon be graciously pleased to shorten the duration of such prisoner's confinement, such prisoner shall, upon his or her discharge, together with necessary clothing, receive such sum of money for his or her subsistence, as the visiting justices for the time being shall think proper; so as such sum shall not exceed 20*s.*, nor be less

han 6s., in case such offender shall have been confined for the space of one year, and so in proportion for any shorter term of confinement; and such sums of money, as also the expense of such clothing, shall be paid out of the county rate, or other rate applicable to the expenses of prisons."

DISCHARGE OF PRISONERS, &c.  
4 Geo. 4, c. 64.

Sect. 39, after reciting that 'Whereas it is desirable that prisoners discharged from prison should be supplied with the means of returning to their families, or to their place of settlement, or to some place of employment, where they may be engaged in a life of honest labour for their maintenance, and prevented from pursuing evil courses,' enacts, "That it shall and may be lawful for any one or more of the visiting justice or justices of any prison to which this act shall extend, from whence any prisoner shall be discharged, to direct that such moderate sum of money shall be given and paid to any and every such prisoner so discharged, who shall not have the means of returning to his or her family or place of settlement, or resorting to any place of employment or honest occupation, as in the judgment of such justice or justices shall be requisite and necessary for such purpose, under all the circumstances attending the case of any such prisoner; and that such sum of money shall be paid by the keeper of such prison, to or for the use of such prisoner, for the purpose aforesaid; and that all such sums shall be provided for, either out of such bequests or benefactions as aforesaid, or in such manner as is by this act directed with respect to the expense of the support and maintenance of the prisoners in such prisons respectively."

For supplying to prisoners discharged the means of returning to their home, &c.

Stat. 5 Geo. IV. c. 85, s. 22, after reciting that 'Whereas it is desirable that more effectual means should be afforded, whereby prisoners discharged from prison should be enabled to return to their place of settlement,' enacts,

5 Geo. 4, c. 85.

"That when any prisoner discharged from prison shall be desirous of being supplied with the means of so returning, it shall and may be lawful for any visiting justices of such prison, upon application from such prisoner, to take the examination in writing upon oath of such prisoner, as to his or her last legal place of settlement; and upon such examination, and such other evidence as the said visiting justices may be able to procure, it shall be lawful for the said visiting justices, if they shall so think fit, to afford to such prisoner the means of returning to his or her place of last legal settlement, in the manner hereinafter directed."

Discharged prisoners to be afforded means of returning to their place of settlement.

Sect. 23 enacts, "That it shall be lawful for the justices of the peace of each and every county, riding, or division, in England, in their general or quarter sessions assembled, to cause engraved copper plates, or printed forms passes, to be provided, according to the form in schedule (B), annexed to this act, bearing his Majesty's arms, and sealed with the county seal, or with a seal to be specially provided for that purpose; and the said justices may cause the same to be issued to the keepers of the several prisons within their respective counties, ridings, or divisions, for the use of the visiting justices of each such prison, whenever any prisoner or prisoners discharged from, or about to be discharged from such prison, shall apply to be furnished with the same; and the said visiting justices shall, if, after a due consideration of the circumstances, they shall deem it expedient, fill up the blanks on every such pass, and certify the same, and make out a route in the proper column for the purpose, of each such prisoner, and for the child or children, if any, of each such prisoner, specifying the place to which such prisoner and such child or children is or are going, and the time to which the said route is (except in cases of sickness or unavoidable accident) limited, in order that such prisoner may receive such allowances as are authorized by this act, not exceeding 14d. per mile for such prisoner, and 1d. per mile for each child, which, from being in a state of nurture, or without other protection, they have been confined in prison with such prisoner."

Engraved or printed forms of passes to be provided for use of visiting justices.

Allowance to travelling prisoners.

Sect. 24. "That upon the production of such pass to any overseer of the poor of any place through which such discharged prisoner shall proceed, according to the route specified in such pass, he shall, out of any money in his hands applicable to the relief of the poor, pay such discharged prisoner an allowance not exceeding the rate per mile specified in such pass as aforesaid, for the number of miles to the next city, town, or place to which he

Overseers of poor to pay a certain allowance to prisoners on producing their pass.

## DISCHARGE OF PRISONERS, &amp;c.

5 Geo. 4, c. 85.

County treasurer to repay overseer money advanced.  
\* Sic.

Discharged prisoner to deliver up his pass at the last place of receiving allowance.

or she may be going; and he shall indorse on such pass the money so paid, and take a receipt for the same from the discharged prisoner, signed with his or her hand or mark."

Sect. 25. "That the said sums so advanced by any overseer shall, upon production and delivery of such receipt to the treasurer of the county, riding, or division in which the parish or place of such overseer\* (a), be repaid to such overseer, for the use of the fund for the relief of the poor of such parish or place, by the said treasurer."

Sect. 26. "That every such discharged prisoner shall, at the last place of his or her receiving any allowance under this act, deliver up such pass to the overseer of the poor advancing such allowance, who shall transmit the same to the keeper of the prison from which such prisoner shall have been discharged; and if there be indorsed upon such pass, or upon the cover thereof, the words 'pass of a discharged prisoner,' and the said pass be sent without a cover, or in a cover open at the sides, and without any paper or thing inclosed therein, and without any writing other than the matter of such pass, and than the superscription upon the same, or upon the cover thereof, such pass shall be charged with the usual rate of postage at the post-office of the town or place from which it shall be so sent, but the amount of the said postage shall be remitted and returned to the keeper of such prison, on his producing such pass to the postmaster of the town or place to which such pass shall be sent as aforesaid; provided that such keeper shall have first signed the declaration contained in the schedule to this act annexed, and that such declaration shall have been attested by one of the visiting justices of such prison, in the manner prescribed in the said schedule."

## VIII. Gifts, &amp;c. to Prisoners.

4 Geo. 4, c. 64.

How bequests and benefactions may be applied.

Jurisdiction of chief justices and others to examine into gifts for prisoners in London, Middlesex, and Surrey, and other counties, &amp;c.

Jurisdiction of commissioners for charitable uses.

STAT. 4 Geo. IV. c. 64, s. 35, after reciting that 'Whereas provision is made in this act for supplying p or prisoners with food and clothing; and whereas bequests have been made, and benefactions have been given, for supplying such poor criminal prisoners with these necessities,' enacts, "That it shall and may be lawful for the justices in general or quarter sessions assembled, to apply such bequests or benefactions for the benefit of such poor prisoners, either by providing them with the implements of labour, or with the means of returning to their own homes, or in such manner as to the magistrates may appear expedient."

Sect. 36 enacts, "That the chief justices of the Courts of King's Bench and Common Pleas, and the chief baron of the Court of Exchequer, or any one of them, together with the lord mayor and two of the aldermen, or with three of the aldermen of the city of London, for and in respect of the gaols and prisons within the city of London and the liberties thereof, and the said chief justices or chief baron, or any one of them, with three justices of the peace of the counties of Middlesex and Surrey respectively, for and in respect of the gaols and prisons in the counties of Middlesex and Surrey, and the justices of gaol delivery and great sessions, and the justices of peace of every other county, riding, and division of a county, at any general or quarter sessions of the peace to be holden for such county, riding, or division respectively, in their respective jurisdictions, and all commissioners for charitable uses, shall do their best endeavours and diligence to examine and discover the several gifts, legacies, and bequests bestowed and given for the benefit and advantages of the poor prisoners in the several gaols and prisons to which this act shall extend, and to send for any deeds, wills, writings, and books of account whatsoever, and any persons concerned therein, and to examine them upon oath to make true discovery thereof, (and which such chief justices, chief barons, justices of gaol delivery and great sessions,

(a) There is an omission here of the words "is situate."

mayor, aldermen, and justices of the peace, have hereby full power and authority to do), and to order and settle the payment, recovery, and receipt of all such gifts, legacies, and bequests, when so discovered and ascertained. In such easy and expeditious manner, that the prisoners for the future may not be defrauded, but receive the full benefit thereof, according to the true intent of the donors, or the provisions of this act; and that lists or tables of such gifts, legacies, and bequests, for the benefit of the prisoners in every gaol or prison respectively, fairly written, shall be registered by the clerks of the peace of the respective counties and places in the rolls of their respective sessions, without fee or reward, and copies thereof shall be hung up in such gaols and prisons respectively, in some open room or place, to which the prisoners may have resort as occasion shall require."

**GIFTS, &c. TO PRISONERS.**  
4 Geo. 4, c. 64.

Lists of gifts registered, and hung up in gaols.

Prisoners may inspect same.

### IX. *Sale, &c. of Spirituous Liquors in Gaols.*

STAT. 4 Geo. IV. c. 64, s. 40, enacts, "That if any person, in contravention of the existing rules, [see the rule, *ante*, 1020], shall carry or bring, or tempt or endeavour to carry or bring into any prison to which this act shall extend, any spirituous or fermented liquor, it shall be lawful for the warden, keeper, turnkey, or any other of the assistants to the said gaoler or keeper, to apprehend or cause to be apprehended such offender, and to carry him or her before a justice of the peace, (who is hereby empowered to hear and determine such offence in a summary way), and if he shall lawfully convict such person of such offence, he shall forthwith commit such offender to the common gaol or house of correction, there to be kept in custody for any time not exceeding three months, without bail or mainprize, unless such offender shall immediately pay down such sum of money, not exceeding 20*l.*, and not less than 10*l.*, as the justice shall impose upon such offender to be paid, one moiety to the informer, and the other moiety in aid of the rate applicable to the maintenance of such prison; and if any justice shall receive information upon oath, that any spirituous or fermented liquor unlawfully kept or disposed of in any prison, he may enter and search, or use his warrant to enter and search for such liquor; and in case it shall be found, it shall be lawful for the person so finding to seize the same, and use it to be disposed of as the justice shall direct; and if any gaoler or keeper of any prison shall sell, use, lend, or give away, or knowingly permit or suffer to be sold, used, lent, or given away, in such prison, or brought into the same, any spirituous or fermented liquor, in contravention of the existing rules of such prison, he shall, for every such offence, over and above any other punishment by this act enacted, forfeit and lose the sum of 20*l.*"

By stat. 6 Geo. IV. c. 80, s. 134, "No licence shall be granted for the selling of spirits within any gaol, prison, house of correction, or workhouse for any parish poor, and that all licences granted or to be granted contrary to this provision shall be void and of no effect; and if any gaoler, warden, or officer of any gaol, prison, or house of correction, or any governor, master, or officer of any workhouse for any parish poor, shall sell, use, lend, give away, or knowingly permit or suffer any spirits to be sold, used, lent, or given away in any such gaols, prisons, or houses of correction, or workhouses, or brought into the same, other than and except such spirits as shall be prescribed or given by the prescription and direction of a regular physician, surgeon, or apothecary, and to be applied in pursuance of such prescription from the shop of some regular apothecary, every such gaoler, warden, governor, master, or other officer, shall, for every such offence, forfeit and lose the sum of 100*l.*; and in case any such gaoler or other officer, being convicted thereof as aforesaid, shall again offend in like manner, and hereof a second time lawfully convicted, such second offence shall be deemed a forfeiture of his office."

Carrying spirituous liquors into prisons.

Punishment.

unless penalty paid.

Gaoler permitting sale of spirits.

Penalty 20*l.*

No licence for retailing spirits within gaols, &c.

How far only spirits may be used there, &c.

First offence.

Second offence.

sect. 135 enacts, "That it shall and may be lawful for his Majesty's justices of the peace, or any one of them, upon information upon oath that

Justices upon information of the said offences, may

SPIRITUOUS  
LIQUORS,  
SALE OF.

6 Geo. 4, s. 80.  
enter and empow-  
er constable to  
seize, &c.

any spirits are kept and disposed of in any such gaol, prison, house of correction, or workhouse for pariah poor, to enter and search, or to authorize and empower any constable, headborough, or other peace officer of the parish where any such places are situated, by warrant under his hand and seal, to enter and search any such gaol, prison, house of correction, or workhouse; and in case any spirits shall be found therein, (except such as are directed to be used medicinally as aforesaid), it shall and may be lawful for such constable, headborough, or overseer of the poor, to seize such spirits and to cause the same to be forthwith staved and destroyed."

### X. Gaolers and Inferior Officers.

THE gaol itself is the King's; but the keeping thereof is incident to the office of sheriff, and inseparable from it, except such gaols whereof any persons have the keeping by inheritance or succession. This will be found from the 14 Edw. III. st. 1, c. 10, and 19 Hen. VII. c. 10, which enact—That every sheriff within every county within this realm of England, have the custody, rule, keeping, and charge of every the King's common gaols, prisons, and prisoners in the same, in every of the said counties where he is sheriff, during the time of his office, except all gaols whereof any person or persons, spiritual or temporal, or body corporate, have the keeping, of estate of inheritance or by succession. And see 2 Inst. 589.

And therefore, the sheriffs shall put in such keepers for whom they will answer. 14 Edw. III. st. 1, c. 10.

But by stat. 3 Geo. I. c. 15, s. 10, none shall buy the office of gaoler, on pain of 500*l.*, half to the king, and half to him that shall sue.

A gaoler, in fact, is as much punishable for a misdemeanor in his office, as if he was a rightful gaoler. 2 Hawk. c. 19, s. 23.

When a sheriff quits his office, the custody of the county gaol can only belong to his successor. 1 *Ld. Raym.* 136.

Various rules and regulations will be found among the preceding pages, ante, 1017 to 1036, relative to the appointment, office, rights, and duties of gaolers, keepers, and matrons, &c. of gaols.

The 4 Geo. 4, c. 64, s. 14, enacts, "That the gaoler and keeper of every gaol and house of correction, maintained at the expense of any county, or of any such riding or division of a county as aforesaid, in England and Wales, or maintained by any district, city, town, or place, specified in the schedule to this act annexed, marked (A), shall make a report in writing, of the actual state and condition of every such gaol and house of correction, and of the number and description of prisoners confined therein, to the justices, at the several general or quarter sessions to be holden next after the commencement of this act, and at every ensuing general or quarter sessions in every such county, riding, division, district, city, town, or place; and shall at every such general or quarter sessions attend and give answer upon oath, to all such inquiries as shall be made by the justices at such sessions, with respect to the state and condition of every such gaol and house of correction, and of the prisoners confined therein, and with respect to any other matters and things relating to the said gaol and house of correction, respecting which such justices shall deem it necessary to make any inquiry for the purpose of proceeding and continuing to carry this act into execution, and of ascertaining how far every such gaol and house of correction is capable of affording the means of the classification required by this act."

Sect. 19 enacts, "That the keeper of every gaol and house of correction to which this act shall extend, shall, previously to the first day of every assizes, great sessions or sessions of gaol delivery, make out a true and just return in writing of all persons in his custody who have been sentenced to hard labour by the Court at any previous assizes, great sessions, or sessions of gaol delivery, specifying in such return the manner in which such sentences have been carried into execution, the particular species of labour in

14 Edw. 3.  
19 Hen. 7, c. 10.

3 Geo. 1, c. 15.

4 Geo. 4, c. 64.  
Gaolers to attend  
quarter sessions  
next after com-  
mencement of act,  
and future quarter  
sessions, to report  
on actual state of  
prisons, &c.

Returns to be  
made at the sever-  
al assizes by keep-  
ers of prisons of  
the persons sen-  
tenced to hard la-  
bour.

ich such prisoners have been employed, and the average number of hours a day for which such persons so sentenced have been kept to work; ich return shall be signed by such keeper, and also by one at least of the ting justices, who shall add thereto such observations as the case and umstances may appear to him to require; and such return shall be dered to the justice of assize and gaol delivery, and of great sessions, and ll be kept and filed by the proper officer amongst the records of the irt."

ect. 20 enacts, "That the keeper of every prison within England and les, having the custody of prisoners charged with felony, shall, on the nd day next after the termination of every session of the peace, session yer and terminer, or session of gaol delivery, great session, or other ses- held for the trial of prisoners being in such prison, whether such ses- shall be held under any commission, or by virtue of any charter or pre- tion, transmit by the post of that day to one of his Majesty's principal etaries of state, a calendar containing the names, the crimes, and the ences of every prisoner tried at such session, and distinguishing, with ect to all prisoners capitally convicted, such of them as may have been ied by the Court, and stating the day on which execution is to be e upon those who have not been reprieved; and that whenever the rt shall adjourn for any longer time than one week, the day upon which adjournment shall be made, shall be deemed the termination of the ses- within the meaning of this act; and every keeper of any such prison, shall neglect or refuse to transmit such calendar, or shall wilfully trans- a calendar containing any false or imperfect statement, shall for every offence forfeit the sum of 20*l*.

ect. 21. 'And for the better ensuring the strict observance of the rules regulations to be made for the government of the prisons to which this hall extend,' it is enacted, "That at each quarter sessions of the peace, eeper of every prison within the jurisdiction of the Court holding such on, shall, and is hereby required to deliver, or cause to be delivered, to Court, a certificate, signed by himself, which certificate shall contain a uration how far the rules laid down for the government of his prison een complied with, and shall point out any and every deviation there- , which may have taken place; and if any keeper of a prison shall ect to deliver, or cause to be delivered, such certificate as aforesaid, he forfeit for every such offence the sum of 10*l*.

ect. 22 enacts, "That one week before the Michaelmas session in every the keeper of every prison to which this act shall extend, shall make return of the state of his prison for the year then ending, in the form ined in the schedule annexed to this act, marked (B), and shall de- the same, or cause the same to be delivered, to the clerk of the peace is deputy, for the use of the justices assembled at such quarter ses- "

ect. 25 enacts, "That it shall and may be lawful for the justices assem- at the general or quarter sessions, and they are hereby empowered and red, to nominate and appoint such keepers, matrons, taskmasters, dmasters, and other officers, as to them may seem expedient, for every n within their jurisdiction to which this act shall extend, except the r of the common gaol; and to remove, as occasion may require, all rs so by them nominated and appointed: provided always, that no n shall be keeper of any prison in which male prisoners are con- "

ect. 26 enacts, "That it shall and may be lawful for the justices assem- at the general or quarter sessions, and they are hereby empowered, to laries and allowances, to such amount, and subject to such conditions them shall seem meet, for the keeper of the common gaol, and for keeper, matron, taskmaster, schoolmaster, and officer of each gaol and of correction within their jurisdiction; and to order such salaries, and pense of such allowances, to be paid out of the rate lawfully applica- creto; and the salaries and allowances so fixed, to alter, reduce, aug-

GAOLERS, &c.

4 Geo. 4, c. 64.

Filed as of record.

List of prisoners tried for felony to be transmitted to secretary of state by the keeper of every prison.

Penalty 20*l*.

Keeper to deliver to quarter sessions a certificate how far rules have been observed.

Penalty 10*l*.

Keeper to make return to clerk of the peace, &c., previous to Michaelmas sessions.

Quarter sessions may appoint keepers, &c.

Women not to be keepers of certain gaols.

Quarter sessions to fix salaries of keepers, &c.



## GAOLERS, &amp;c.

4 Geo. 4, c. 64.

Gaoler may be superannuated, and allowed a pension.

Proviso as to amount.

When keeper, &amp;c., shall be removed, resign, or die, two justices may proceed as herein mentioned.

Book to be kept in which visits of chaplain, &amp;c., to be entered.

Gaoler permitting sale of spirits.

Penalty 20*l*.

Power of keeper to inquire into and

ment, suspend, or stop from time to time, as occasion shall require: and in case any gaoler or keeper of any prison shall, from confirmed sickness, age, or infirmity, become incapable of executing the office in person, the justices of the peace at any general or quarter sessions of the county, riding, division, district, city, town, or place, respectively, shall take the circumstances of the case into their consideration; and if such justices shall deem it expedient, they are hereby empowered to grant to such gaoler or keeper, such an annuity as they in their discretion shall think proportioned to the merits and time of his service, and may order the payment thereof out of the rates lawfully applicable to the building or repairing of such gaols and prisons: provided always, that the annual amount paid by way of superannuation or allowance to any retired keeper of any prison, shall not exceed the amount of two-thirds of the salary fixed for the succeeding keeper of such prison."

Sect. 27 enacts, "That whenever the keeper or any other officer of any common gaol or other prison to which this act shall extend, shall be removed from, or resign his or her office, or shall depart this life, every keeper or other officer so removed or resigning, and his or her family, and the family of every such deceased keeper or other officer, shall forthwith quit the possession of the house or apartments in which he, she, or they, shall have previously resided by virtue of such office; and that if any keeper or other officer so removed or resigning, or any members of the family of any keeper or other officer so removed, resigning, or departing this life, shall refuse or neglect to quit such possession for forty-eight hours after notice given to him, her, or them, in writing, by the under-sheriff, or other officer appointed by the sheriff, in case the house or apartments of which possession shall be required, shall be in the common gaol, and by the clerk of the peace in case such house or apartments shall be in any house of correction, any two justices, upon proof made before them of such removal, resignation, or death, and of the service of such notice, and of such neglect or refusal to comply therewith, may, by warrant under their hands and seals, direct the sheriff of the county, or other officer, having the return of writs, to eject such keeper, or the family of such keeper, out of such house or apartments, and the sheriff or such other officer shall accordingly clear the possession thereof in like manner as upon a writ of *habere facias possessionem*."

Sect. 34 enacts, "That from and after the commencement of this act, there shall be kept in every prison to which this act shall extend, a book, in which the chaplain and every other officer of the said prisons not residing within such prisons, but attending on, or required to attend on such prison, shall regularly insert the date of every visit made by such chaplain or other such officer respectively; and every such entry shall be signed with the name and in the proper handwriting of such chaplain or other officer respectively, and shall contain such remarks as may be thought necessary on the occasion of any such visit; and every keeper of every such prison shall be responsible for the safe custody of such book, whole, unmutilated, and unaltered, and shall at all times, when required so to do, produce such book for inspection to the justices at every general or quarter sessions, and to the visiting justices, or to any justice of the peace for the county, riding, division, district, city, town, or place, wherein such prison shall be situate; and the chaplain shall, on every Michaelmas quarter sessions, deliver to the justices a statement of the condition of the prisoners, and his observations thereupon."

Sect. 40 enacts, "That if any gaoler or keeper of any prison shall sell, use, lend, or give away, or knowingly permit or suffer to be sold, used, lent or given away, in such prison, or brought into the same, any spirituous or fermented liquor, in contravention of the existing rules of such prison, he shall for every such offence, over and above any other punishment by this act enacted, forfeit and lose the sum of 20*l*." And see further the 6 Geo. IV. c. 80, s. 134, *ante*, 1035, 1020.

Sect. 41 enacts, "That the keeper of every prison shall have power to

## Gaolers and Inferior Officers.

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all complaints touching any of the following offences; (that is to say),  
 1st. Disobedience of any of the rules of the prison.  
 2nd. Assaults by one person confined in such prison upon another, when  
 dangerous wound or bruise is given.  
 3rd. Profane cursing and swearing.  
 4th. Any indecent behaviour, and any irreverent behaviour at chapel,  
 of which are declared to be offences by this act, if committed by any de-  
 tention of prisoners.  
 5th. Absence from chapel without leave.  
 6th. Idleness or negligence in work, or wilful mismanagement of it,  
 which are also declared to be offences by this act, if committed by any pri-  
 soner under charge or conviction of any crime; and the said keeper may  
 punish all such offences by ordering any offender to close confine-  
 ment in the refractory or solitary cells, and by keeping such offenders upon  
 bread and water only, for any term not exceeding three days."

GAOLERS, &c.

4 Geo. 4, c. 64.  
 punish certain  
 offences.

## XI. Fees to Gaolers.

By stat. 55 Geo. III. c. 50, intituled *An Act for the abolition of gaol and  
 fees, connected with the gaols in England*, after reciting 'Whereas it is  
 expedient, for the better government of gaols and bridewells in England, that  
 fees and gratuities payable at the same, for the entrance, commitment,  
 discharge of any prisoner, should be abolished,' enacts, "That, from and  
 the 1st day of October next, all fees and gratuities paid or payable by  
 prisoner, on the entrance, commitment, or discharge, to or from prison,  
 absolutely cease, and the same are hereby abolished and determined."  
 Act 2. 'And whereas in some places such fees and gratuities as afore-  
 said are payable to the gaoler or his servants, and are to him or them as a  
 salary,' enacts, "That it may be lawful for the justices of the peace for any  
 county, city, or town, assembled in general or quarter sessions, to make such  
 allowances to the aforesaid gaoler or servants, as may to them seem fit, by  
 way of salary or compensation for the fees or gratuities, payable by pri-  
 soners, now abolished by this act." And see 32 Geo. II. c. 28, s. 2, *post*, 1049.  
 Act 3 enacts, "That the said justices of the peace for any county, city,  
 town, may direct the said allowances to be paid out of any county rate,  
 city rate, or town rate, now by law authorized to be made and levied."  
 Act 4. 'And whereas it is customary for clerks of the assize, clerks of  
 peace, clerks of the court, or their deputies, or other officers in the  
 courts of assize or session, to demand and take from persons indicted, divers  
 fees in the way of fees;' enacts "That every prisoner who now is or here-  
 tofore shall be charged with or indicted for any felony, or as an accessory  
 thereto, or with or for any misdemeanor, before any court holding criminal  
 sessions within that part of the united kingdom of Great Britain and Ire-  
 land called England, against whom no bill of indictment shall be found by  
 grand jury, or who, on his, her, or their trial shall be acquitted, or who  
 shall be discharged by proclamation for want of prosecution, shall be imme-  
 diately set at large, without payment of any fee or sum of money, for or in  
 respect of his, her, or their discharge, to any person or persons whomsoever;  
 except only in such cases wherein the prisoner shall have been charged,  
 and shall then stand charged with any process authorizing the detention of  
 the prisoner: provided always, that if it shall happen that any prisoner  
 shall so stand charged with any process authorizing his detention as  
 aforesaid, shall have been discharged in supposed obedience to this act, by  
 reason that the sheriff or other officer entitled to have detained him was, at  
 the time of such his discharge, ignorant that there was any such charge  
 against him, it shall in such case be lawful for such sheriff or other officer,  
 receiving information of such charge, presently to retake the prisoner so  
 charged as aforesaid, and thereupon forthwith to detain him in custody

55 Geo. 3, c. 50.

Fees or gratuities  
 payable at gaols  
 and bridewells  
 abolished.

Quarter sessions to  
 make allowances  
 to gaolers, &c.

Allowances paid  
 out of county  
 rates, &c.

Prisoners charged  
 with felony or mis-  
 demeanor and ac-  
 quitted, discharg-  
 ed without pay-  
 ment of fees, &c.

**FEES TO  
GAOLERS.**  
55 Geo. 3, c. 50

Fees usually paid  
to clerks of court,  
assize, &c., abo-  
lished.

County treasurers  
to pay allowances  
for places not usu-  
ally assessed to  
county at large.

Indemnification  
for fees to clerks of  
peace.

Clerks of assize to  
deliver account of  
fees.

Officers exacting  
fees.

Misdemeanor.

Liberates to debt-  
ors granted free of  
expense, compen-  
sation made to she-  
riff for same.

upon such charge, in such manner as the said sheriff or other officer might have done if such prisoner had not been set at large; and that, upon his being so retaken, the said prisoner shall be deemed, for the purpose of that suit, to have been in custody continually from the time when he so first stood charged as aforesaid."

Sect. 5 enacts, "That all such fees as have been usually paid or payable to the several clerks of assize, and clerks of the peace, clerks of the court, or their deputies, in that part of the united kingdom of Great Britain and Ireland called England, in any of the cases aforesaid, shall absolutely cease, and the same are hereby abolished and determined; and, from and after the passing of this act, no clerk of assize, clerk of the peace, clerk of the court, or their deputies, shall ask, demand, take, or receive any sum or sums of money, from any of the said prisoners as fees, for or in respect of his, her, or their discharge."

Sect. 6 enacts, "That in lieu and satisfaction of such lawful fees so abolished as aforesaid, the treasurers, or other proper officers, of the several counties in England, or of such districts, hundreds, ridings, or divisions of a county as are not usually assessed to the county at large, and of such cities, towns corporate, cinque ports, liberties, franchises, and places, as do not pay to the rates of the several counties in which they are respectively situated, shall, on receiving a certificate signed by one or more judge or justice of the peace, before whom such prisoner shall have been discharged as aforesaid, (which certificate the judge or justice is hereby required to give), pay out of the rates of such county, or of such district, hundred, riding, or division, or out of the public stock of such city, town corporate, cinque port, liberty, franchise, or place, such lawful sum as has been usually paid upon that occasion, for every prisoner discharged as aforesaid, to such clerk of assize, clerk of the peace, or clerk of the court, or their respective deputies; which several sums so paid in pursuance of this act shall be respectively allowed to the said treasurer and officers by the justices before whom their accounts shall be passed."

Sect. 7 enacts, "That each and every clerk of the peace, or his or their deputy or deputies, and all and every officer who shall claim any fees or indemnification for the same, by virtue of any of the provisions hereinbefore contained, for and in respect of any such prisoners, shall deliver at each and every session of the peace, or at some adjournment thereof, an account of all fees so due to him, or for which he shall claim any indemnification; which account shall be verified upon oath in court, before the chairman of such sessions."

Sect. 8 enacts, "That the clerks of assize shall, at each and every assize to be holden, deliver in to the judge of the assize who shall sit for the trial of such prisoners, an account of such fees as shall be due to him for and in respect of such prisoners; which account shall be verified upon oath before such judge to whom such account shall be delivered."

Sect. 9 enacts, "That from and after the passing of this act, any clerk of assize, clerk of the peace, clerk of the court, or their deputies or other officers, exacting such fees, shall be rendered incapable of holding his or their offices, and be guilty of a misdemeanor."

Sect. 10. 'And whereas it hath been customary in some places for the sheriff or under-sheriff to demand for the liberate granted to any debtor on his discharge, a fee or gratuity;' enacts, "That such liberate shall be granted to such debtor free of all expenses; and that it shall be in the power of the justices of the peace for each county, city, or town, assembled in quarter session, subject however to the approbation of the judges of assize, to make such compensation to the sheriff or under-sheriff, out of the county, city, or town rate, as shall to them seem fit."

Sect. 11. 'And whereas there are several cities, towns corporate, and places within this kingdom, which do not contribute to the payment of any county rate, and have no town rate, or public stock; and doubts may arise whether such cities, towns corporate, and places, can be legally rated and assessed towards the payment of the salaries, allowances, and compensations

of such fees and gratuities,' enacts, "That in all such cases the fees, allowances, and compensations, in lieu of fees and gratuities heretofore directed to be made, shall be raised, levied, collected, and paid, in such cities, towns corporate, and places, by a separate rate and assessment to be made by the churchwardens and overseers of the poor of the several parishes and precincts within such cities, towns corporate, and places, by such and the like ways, methods, and means, as the rates for the relief of the poor are, can, or may be raised, levied, and collected, in such cities, towns corporate, and places."

ct. 12. 'And whereas it may happen that the sums of money to be paid in the said cities, towns corporate, and places, or some or one of them, to answer and pay such salaries, allowances, and compensations hereinbefore directed to be made in lieu of fees and gratuities by this act abolished, be so small, that it may not be convenient to make an equal separate rate and assessment for the same, upon the said parishes and precincts in such cities, towns corporate, and places,' it is enacted, "That in such unmentioned case, and when and as often as the same shall happen, the fees, allowances, and compensations shall and may, by order of the said judges, or justices in sessions assembled as aforesaid, be paid out of monies from time to time raised for the relief of the poor in the said several cities, towns corporate, and places; and the treasurers or persons from time to time having the management of the said monies raised for the relief of the poor in the same cities, towns corporate, and places respectively be hereby authorized and required to pay the said sums of money so ordered to be paid by the said judge or judges, or justices, of the said last-mentioned monies, when and as often as the same shall be so ordered: provided always, that the order for such allowances as may be made by the justices of the peace assembled in general or quarter sessions, be approved by the judge or judges of assize on the first circuit ensuing after such warrant shall have been made out by the justices of peace assembled in general or quarter session for any county, city, or town, and that such order shall not be deemed or taken as a legal order without such warrant from the judge or judges of assize: provided always, that should there be more than one in the same district, the payments are to be made and levied in such rates and proportions as the respective parishes pay to the rate."

ct. 13 enacts, "That any gaoler, who shall, from and after the 1st day of October next, exact from any prisoner any fee or gratuity for or on account of the entrance, commitment, or discharge of such prisoner, or who detain any prisoner in custody for non-payment of any fee or gratuity, be rendered incapable of holding his office, be guilty of a misdemeanor, and be punished by fine and imprisonment."

ct. 14 enacts, "That nothing in this act contained shall be construed to extend to the King's Bench prison, his Majesty's prison of the Fleet, the Marshalsea and Palace Courts.

stat. 56 Geo. III. c. 116, after reciting stat. 55 Geo. III. c. 50, 'And as doubts have arisen whether the judges of assize have power under the virtue of the said act, to grant to certain officers, who, before the passing of the same, were entitled to certain fees abolished by the said act, a certificate for the purpose of enabling the said officers to receive compensation for such fees so abolished as aforesaid; and whereas it is expedient that such doubts should be removed,' it is enacted, "That, from and after the passing of this act, it shall and may be lawful for the judges of assize, who have gone the several circuits since the passing of the said act, as well as the judges of assize, respectively, to grant such certificate as is required by the said act; and the said judges of assize are hereby authorized and required to receive from every such officer as, previous to the passing of the said act, was lawfully entitled to any fees abolished by the said act, an account in writing of what they severally claim to be due to them for such abolished fees, which account shall be verified upon the oath of the party

**FEES TO  
GAOLERS.**

56 Geo. 3, c. 50.  
How allowances raised for places which do not contribute to county rates.

Allowances in certain places paid out of poor's rates.

Proviso.

Proviso.

Gaolers exacting any fee, &c., from prisoners.

Misdemeanor.

Not to extend to King's Bench, &c.

56 Geo. 3, c. 116, reciting 55 Geo. 3, c. 50.

Judges of assize may grant certificate to certain officers to receive compensation for abolished fees;

## CHAPLAINS.

56 Geo. 3, c. 116.  
to be paid in same  
manner as is pro-  
vided by recited  
act.

Recited act to ex-  
tend to prisoners  
for debt.

Allowances to  
gaoler of Dover  
Castle prison, &c.,  
how to be paid.

• Sic.

54 Geo. 3, c. xcvi.

claiming the same, in like manner as is provided by the said act in respect to the clerks of assize and clerks of the peace."

Sect. 2 enacts, "That the amount of every such account, after being verified as aforesaid, shall be paid in the same manner as is provided in and by the said act, in respect to the clerks of assize and clerks of the peace."

Sect. 3. 'And whereas doubts have arisen whether the said act extends to prisoners confined in gaols and prisons under civil process for debt only, and whether prisoners confined in the gaols and prisons of liberties and franchises under civil process for debt, and the gaolers and keepers of such gaols and prisons, are within the meaning and purview of the said recited act; and whereas it is expedient that such doubts should be removed,' it is enacted, "That the said recited act, and the provisions therein contained shall be deemed and construed to extend and shall extend to all prisoners, as well civil as criminal, whether confined for debt or crime in any of the prisons in England, except as to the said prisons in the said act excepted; and that the gaolers and keepers of all such gaols and prisons, except as aforesaid, and their servants, as well within liberties as without, shall have compensation for their fees or gratuities abolished by the said recited act or this act, as in the said recited act is mentioned."

Sect. 4 enacts, "That the allowances made to the bodar or keeper of the prison of Dover Castle, in lieu of fees and gratuities paid or payable by any prisoner on his or her entrance, commitment, or discharge to or from such prison, and also the compensation to the registrar of the cinque ports, and clerk of Dover Castle, for the *liberati* granted to any debtor, or\* his or her discharge, shall be paid out of the funds raised by virtue of an act of Parliament, passed in the fifty-fourth year of the reign of his present Majesty, intituled *An Act for the relief of poor debtors and others confined within the gaol of Dover Castle*; provided always, that such allowance and compensation shall be verified, allowed, and paid in the same manner as the relief to such poor debtors, and payment for the same, is directed to be allowed, verified, and paid by the said recited act."

## XII. Chaplains.

4 Geo. 4, c. 64.  
Quarter sessions  
may appoint a  
chaplain to each  
prison.

His salary.

How far two pri-

By stat. 4 Geo. IV. c. 64, s. 28, "The justices assembled in general or quarter sessions shall, and they are hereby required, from time to time to nominate for each prison within their jurisdiction, to which this act shall extend, a clergyman of the church of England to be chaplain thereof; and the said justices may, if it seem to them expedient, nominate the same clergyman to be and officiate as chaplain to any two prisons situate within a convenient distance from each other; and the said justices are hereby authorized to appoint a salary to be paid to the clergyman so nominated chaplain as aforesaid, out of the county rate, or rate lawfully applicable to the maintenance of such prisons; and the amount of salary shall be regulated in the following manner, *viz.* where the chaplain shall be appointed to one prison only, and the number of prisoners, including debtors, which the said prison is calculated to receive, does not exceed fifty, then the salary to be paid to him shall not be more than 150*l.*; where the chaplain shall be appointed to one prison only, and the number of prisoners, including debtors, which the said prison is calculated to receive does not exceed one hundred, then the salary shall not be more than 200*l.*; where the chaplain shall be appointed to one prison only, calculated to contain more than one hundred prisoners, including debtors, the salary shall not be more than 250*l.*; and where the chaplain shall be appointed to one prison only, calculated to contain more than two hundred, or where the chaplain shall be appointed to two prisons, whatever the number of prisoners such two prisons may be calculated to contain, it shall be lawful for the justices to appoint the salary at their discretion, with reference to the duties to be performed: provided also, that when any two or more prisons shall be under the custo-

CHAPLAINS.

one and the same keeper, they shall be considered as one prison, with  
ence to the duties and salary of the chaplain: provided also, that in  
of sickness or necessary engagement, the chaplain shall appoint a  
yman to be his substitute for the occasion, such substitute being ap-  
ped of by the visiting justices; and the name and residence of such sub-  
te shall be specified in the chaplain's journal."

ct. 29. "No clergyman so nominated shall officiate in any prison until  
all have obtained a licence for that purpose from the bishop of the  
se wherein the prison is situate, nor for any longer time than while  
licence shall continue in force; and notice of every such nomination  
within one month after it shall take place, be transmitted to the  
p by the clerk of the peace or town clerk."

ct. 30. "Every such chaplain shall, on every Sunday, and on Christ-  
day and Good Friday, perform the appointed morning and evening  
ces of the church of England, and preach at such time or times be-  
the hours of nine and five of the day, as shall be required by the  
and regulations to be made as directed by this act; and shall catechise  
struct such prisoners as may be willing to receive instruction; and  
likewise visit the prison on such other days, and perform such other  
as shall be required by the rules and regulations to be made as di-  
d by this act; and shall administer the holy sacrament of the Lord's  
r to such prisoners as shall be desirous, and as such chaplain may  
to be in a proper frame of mind to receive the same; and such chap-  
hall also frequently visit every room and cell in the prison occupied  
isoners, and shall direct such books to be distributed and read, and  
lessons to be taught in such prison, as he may deem proper for the  
ous and moral instruction of the prisoners therein; and he shall visit  
who are in solitary confinement; and it shall be his particular duty  
ord his spiritual assistance to all persons under warrant or order for  
tion; and he shall have free access to all persons convicted of mur-  
ny law, statute, or usage to the contrary notwithstanding; except to  
persons as shall be of a religious persuasion different from that of the  
ished church, who shall have made a request that a minister of such  
sion shall be allowed to visit them; and every such chaplain shall  
unicate from time to time to the visiting justices any abuse or im-  
cty which may have come to his knowledge; and he shall further  
journal, in which he shall enter the times of his attendance on the  
mance of his duty, with any observations which may occur to him in  
ecution thereof, and such journal shall be kept in the prison, but  
egularly be laid before the justices for their inspection at every quarter  
s, and shall be signed by the chairman of the sessions, in proof of  
me having been there produced; and if it shall appear to the justices  
eral or quarter sessions assembled, that any chaplain is incompetent  
due performance of his duties, or is unfit to be continued in his  
or shall have refused or wilfully neglected to perform the duties re-  
of him by the rules and regulations to be made as directed by this  
cy are hereby empowered to remove him from such office."

l see further as to divine service, &c., *ante*, p. 1018.

. 31. "If any prisoner shall be of a religious persuasion differing  
hat of the established church, a minister of such persuasion, at the  
request of such prisoner, shall be allowed to visit him or her at pro-  
d reasonable times, under such restrictions imposed by the visiting  
s as shall guard against the introduction of improper persons, and as  
revent improper communications."

. 32. "In case any chaplain shall, from confirmed sickness, age, or  
ty, become incapable of executing the office in person, the justices of  
ace, at any general or quarter sessions of the county, riding, division,  
city, town, or place, respectively, shall take the circumstances of the  
to their consideration; and, if such justices shall deem it expedient,  
re hereby empowered to grant to such chaplain such annuity as they  
r discretion shall think proportionate to the merits and time of his

4 Geo. 4, c. 64.  
sons having one  
keeper, considered  
as one.

Clergyman not to  
officiate till li-  
censed by the  
bishop.

Duties of chap-  
lain.

Journal to be kept  
by him.

Quarter sessions  
may remove chap-  
lain.

Dissenting minis-  
ters allowed to vi-  
sit prisoners.

Power to quarter  
sessions to grant  
annuity to any  
chaplain incapa-  
ble, from infirm-  
ity, of executing  
his office.

**SURGEONS.**

4 Geo. 4. c. 64.

Book to be kept  
in which visits of  
chaplain, &c., to  
be entered.

services, and may order the payment out of the rates lawfully applicable to the building and repairing such gaols and prisons: provided always, that the amount so paid by way of superannuation or allowance to any retired chaplain of any one prison shall not exceed the amount of two-thirds of the salary fixed for the succeeding chaplain of such prison."

Sect. 34 enacts, "That, from and after the commencement of this act there shall be kept in every prison to which this act shall extend, a book in which the chaplain and every other officer of the said prisons not residing within such prisons, but attending on, or required to attend on, such prison, shall regularly insert the date of every visit made by such chaplain or other such officer respectively; and every such entry shall be signed with the name and in the proper hand-writing of such chaplain or other officer respectively, and shall contain such remarks as may be thought necessary on the occasion of any such visit; and every keeper of every such prison shall be responsible for the safe custody of such book, whole, unmatulated and unaltered, and shall at all times, when required so to do, produce such book for inspection to the justices at every general or quarter sessions, and to the visiting justices, or to any justice of the peace for the county, riding, division, district, city, town, or place wherein such prison shall be situated, and the chaplain shall, on every Michaelmas quarter sessions, deliver to the justices a statement of the condition of the prisoners, and his observations thereupon."

**XIII. Surgeons.**

4 Geo. 4. c. 64.  
Appointment of  
surgeon.

His duty.

Journal to be kept  
by him.

His salary.

STAT. 4 Geo. IV. c. 64, s. 33, enacts, "That the justices in general at quarter sessions assembled shall, and they are hereby required, from time to time to appoint a surgeon, being a member of one of the royal colleges of surgeons, to each of the prisons within their jurisdiction to which this act shall extend; and every such surgeon shall and is hereby required to visit every prison to which he shall be so appointed twice at least in every week, and oftener if necessary, and to see every prisoner confined therein, whether criminal or debtor, and to report to every general or quarter sessions the condition of the prison, and the state of health of the prisoners under his care; and he shall further keep a journal, in which he shall enter the date of every attendance on the performance of his duty, with any observations which may occur to him in the execution thereof, and shall sign the same with his name; and such journal shall be kept in the prison, but shall regularly be laid before the justices for their inspection at every quarter sessions, and shall be signed by the chairman of the sessions, in proof of the same having been there produced; and it shall and may be lawful for the justices, at every general or quarter sessions after such appointment, to direct a reasonable sum to be paid as salary to such surgeon, and also such sums of money as shall be due for medicines and other articles for the sick."

See also the rules, *ante*, p. 1020.

As to his certificate for the use of spirits, &c., see *ante*, p. 1020.

**XIV. Visiting Justices, &c.**

4 Geo. 4. c. 64.  
Visiting justices  
appointed by ses-  
sions.

STAT. 4 Geo. IV. c. 64, s. 16, enacts, "That the justices in every county, riding, division, district, city, town, or place, to which this act shall extend, at the general or quarter sessions next after the commencement of this act, and at every ensuing general or quarter sessions, shall and they are hereby required to nominate two or more justices who shall consent thereto, to be visitors of each gaol and house of correction within their jurisdiction, and to report the names and places of abode of such visiting justices to one of

His Majesty's principal secretaries of state; and one or more of the visiting justices so appointed shall personally visit and inspect each prison at least twice in each quarter of a year, and oftener if occasion shall require, shall examine into the state of the buildings, so as to form a judgment of the repairs, additions, or alterations which may appear necessary, strict regard being had to the classification, inspection, instruction, employment, and labour required by this act, and shall further examine into the behaviour and conduct of the respective officers, and the treatment, behaviour and condition of the prisoners, the means of setting them to work, the amount of their earnings, and the expenses attending the prison, and of all expenses within the same, and, in matters of pressing necessity, and within the powers of their commission as justices, shall take cognizance thereof, proceed to regulate and redress the same; and if the said visitors shall by any time observe, or be satisfactorily informed of, any extraordinary dilatory or merit in any prisoners under their inspection, they shall report the same to the justices of peace for the county, riding, division, district, town, or place at their next or any subsequent general or quarter sessions to be holden for the county or place in which such prison is situate, under that such justices may, if they shall think proper, recommend any offender to the royal mercy, in such degree or upon such terms as to them shall seem meet; and if his Majesty shall thereupon be graciously pleased to shorten the duration of such prisoner's confinement, such prisoner shall, upon his or her discharge, together with necessary clothing, receive such sum of money for his or her subsistence, as the visiting justices shall think proper; so as such sum shall not exceed 20s., or less than 5s., in case such offender shall have been confined for the term of one year, and so in proportion for any shorter term of confinement; and such sums of money, as also the expense of such clothing, shall be paid out of the county rate, or other rate applicable to the expenses of prisons.

Section 17 provides and enacts, "That it shall be lawful for any justice of the peace for any county, riding, or division, district, city, town, or place, of his own free will and pleasure, and without being appointed a visitor, to go into and examine any prison of such county, riding, division, district, town, or place, at such time or times and so often as he shall see fit, and if he shall discover any abuse or abuses therein, he is hereby required to report them in writing at the next general or quarter sessions of the county or adjourned sessions, which shall be holden for such county, riding, division, district, city, town, or place; and then and so often as a report of any abuse or abuses in any such prison shall be made by the visiting justices, or either of them, or by any other justice of the peace for such county, riding, or division, district, city, town, or place, the abuse or abuses so reported shall be taken into immediate consideration by the justices of the peace for such county, riding, or division, district, city, town, or place, at their general or quarter sessions at which such report shall be made; and they are hereby required to adopt the most effectual measures for inquiring into and rectifying such abuse or abuses as soon as the nature of the case shall allow."

Section 18 provides, "That nothing herein contained shall extend, or be construed to extend, to authorize or empower any visiting or other justice of the peace to converse or hold any intercourse or communication, except as is hereafter mentioned, with any person who may be committed by lawful authority to any such gaol or other prison, there to be kept in safe custody and confinement; but that, nevertheless, it shall and may be lawful for any visiting justice, so appointed as aforesaid, to visit and inspect, at all times when he shall think proper, the apartment or place in which such person shall be kept or confined in any prison, and also to see such person, to hear or receive any representation from him or her as to his or her treatment in such prison, and to inquire and examine into the same; any law to the contrary contained to the contrary thereof notwithstanding."

Section 23 enacts, "That at every general or quarter sessions, the visiting

**VISITING JUSTICES, &c.**

4 Geo. 4, c. 64.  
Duties of such visitors.

Visitors may recommend offenders to sessions on account of good conduct.

Allowance to such offenders, on their discharge.

Any justice, without being appointed a visitor, may visit the prison, and report abuses to sessions.

Proceedings thereon.

How far power of justices may extend as to intercourse with prisoners when they are committed to close confinement.

Visiting magis-



**VISITING  
JUSTICES, &c.**

4 Geo. 4, c. 64.  
trates to report  
state of gaol to  
quarter sessions.

justices shall make a report in writing of the state and condition of each prison within their jurisdiction, of what repairs, additions, or alterations shall have been made or may be required, and of any abuse or abuses which they may have observed, or of which they may have received information, in the management of the prison, as well as of the general state of the prisoners, as to morals, discipline, employment, and hard labour, and observance of rules; and the justices assembled at such sessions shall proceed to consider every such report, and to act forthwith as they may see occasion."

As to the duties of visiting justices in case of refractory prisoners, see *ante*, p. 1030; in case of removal of prisoners, see *ante*, p. 1031.

As to the chairman and clerk of peace of sessions making the annual report, see *infra*.

**XV. Sheriff, County Treasurer, Clerk of Peace.**

4 Geo. 4, c. 64.  
Persons removed  
to part of building  
declared the gaol,  
deemed in custody  
of sheriff.

Proviso for sheriff.

Officers required  
to perform certain  
duties in districts  
where sheriff or  
county treasurer  
has no jurisdiction  
or authority.

STAT. 4 Geo. IV. c. 64, s. 6, enacts, "That all persons who, in pursuance of any such orders, shall be removed to, committed to, or detained in the part of such united or contiguous buildings, which shall be so declared and ascertained aforesaid to be the gaol, shall from thenceforth be deemed to be in the legal custody of the sheriff and of the gaoler appointed by the sheriff in the same manner as if such person had been committed to the common gaol before the passing of this act; provided also, that the sheriff shall not be answerable for the safe custody of any person who, in pursuance of any such order, shall from time to time be removed to, committed to, or detained in any part of such united or contiguous buildings other than the part so ascertained and declared to be the gaol."

Sect. 74. "That all matters and things which by this act the sheriff of any county is required or authorized to do and perform, shall, in those districts, cities, towns, liberties, or places where the sheriff hath no jurisdiction, be done and performed by the bailiff or bailiffs, or other like officer or officers, having or exercising within their respective districts, cities, towns, and liberties, duties analogous to the duties of the sheriff of a county; and that all matters and things which by this act the treasurer of any county is required or authorized to do and perform, shall, in those places where the county treasurer hath no authority, be done and performed by the officer or officers having and exercising within such places duties analogous to those of a county treasurer; and that all matters and things which by this act the clerk of the peace of any county, riding, or division is required or authorized to do and perform, shall, in those places where the clerk of the peace of the county hath no authority, be done and performed by the town clerk, or other like officer having and exercising within such places duties analogous to those of the clerk of the peace of any county."

**XVI. Annual Report to the Secretary of State.**

4 Geo. 4, c. 64.  
A general report  
to be forwarded  
annually to secre-  
tary of state, to be  
laid before Parlia-  
ment.

THE 4 Geo. IV. c. 64, s. 24 enacts, "That a general report, founded on the report of the visiting justices, on the report of the chaplain or chaplains and on the certificates of the keepers of the several prisons, shall be prepared by the clerk of the peace, and submitted to the justices assembled at every Michaelmas quarter sessions; and when approved by the justices at such sessions, such report shall be signed by the chairman of such sessions and shall be by him transmitted, (together with a copy of the schedule (B), delivered by the gaoler), to one of his Majesty's principal secretaries of state; a copy of which report, with the said schedule attached to it, shall be laid before both houses of Parliament, within one month next ensuing, if Parliament shall be sitting, or within one month after the time when Parliament shall next sit."

## II.] Penalties under 4 Geo. IV. c. 64, how Recoverable.

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### ANNUAL REPORT.

stat. 5 Geo. IV. c. 85, s. 8 enacts, "That the chairman of the Michaelmas quarter sessions of the peace which shall be held next after the commencement of this act, for every county, riding, division, district, city, town, place to which the said recited act shall extend, shall transmit, within fourteen days after the commencement of such sessions, to one of his Majesty's secretaries of state, a true and correct statement of the establishment of officers and servants employed in every prison within the jurisdiction of justices assembled at such sessions, specifying the number and description of such officers and servants, the salaries and emoluments of each, by whom such officers and servants are respectively appointed; and the said statements shall be carefully preserved in the office of such secretary of state; and the chairman of every such succeeding Michaelmas quarter sessions shall transmit, within fourteen days after the termination of such Michaelmas quarter sessions, a true and correct statement of any increase or diminution in every such establishment of officers and servants, or in their respective salaries or emoluments, as have been made since the preceding Michaelmas quarter sessions."

5 Geo. 4, c. 85.  
Statement of establishment of officers and servants, shewing the increase or diminution, to be transmitted to secretary of state.

## II. Penalties under 4 Geo. 4, c. 64, how recoverable, &c., Appeal, &c.—Actions, &c.

stat. 4 Geo. IV. c. 64, s. 69 enacts, "That all fines, forfeitures, and penalties imposed by this act, or which shall be imposed by virtue of any rule made in pursuance thereof, shall, on conviction of the offender before any justice of the peace within his jurisdiction, be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice of the peace, who is hereby authorized to hear and examine the offender on oath or affirmation, on any complaint, and to determine the same; and all such fines, forfeitures, and penalties, the application whereof is hereinbefore particularly directed, shall be paid, from time to time, to the treasurer of the county, riding, division, district, city, town, or place, for the time being, and shall be applied and disposed of in aid of the rate applicable to the purposes of this act, and to or for no other use or purpose whatsoever; and for want of sufficient distress, the offender shall be committed to the common gaol or house of correction for such term, not exceeding six calendar months, nor less than one month, as such justice shall think fit."

4 Geo. 4, c. 64.  
Recovery and application of penalties.

stat. 70. "And, for the more easy and speedy conviction of offenders under this act," it is enacted, "That the justice before whom any person shall be convicted of any offence against this act, shall and may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall happen; *videlicet*,

*"Be it remembered, That, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, A. B. is convicted by me, C. D., one of his Majesty's justices of the peace for the \_\_\_\_\_ of \_\_\_\_\_, for the said A. B. [specifying the offence, and the time and place when and where the offence was committed, as the case shall be], and the said A. B. is, for this said offence, adjudged by me, the said justice, to forfeit and pay the sum of \_\_\_\_\_, or to be imprisoned in \_\_\_\_\_, for the space of \_\_\_\_\_, [as the case shall be]. Given under my hand and seal the day and year first above mentioned."*

Form of conviction (a).

stat. 71 provides, "That if any person shall think himself or herself aggrieved by any conviction of any justice, in pursuance of this act, such person may appeal to the justices of the peace at any quarter sessions of the county, riding, division, district, city, town, or place wherein such conviction shall have taken place, within four calendar months after the cause of complaint shall have arisen, such appellant first giving or causing to

Appeal to quarter sessions (b).

(a) See *ante*, Conviction, Vol. I.

(b) As to appeal in general, see *ante*, Appeal, Vol. I.

DEBTORS,  
TREATMENT OF.  
4 Geo. 4, c. 64.  
Notice.

be given ten clear days' notice at least, in writing, of his or her intention to bring such appeal, and of the matter thereof, to the justice or justices before whom the conviction shall have been had, and to the clerk of the peace for the county, riding, or division, district, city, town, or place, in which such conviction shall have been had, and within two days after such notice, entering into recognizance before some justice for such county, riding, or division, district, city, town, or place, with two sufficient sureties, conditioned to try such appeal, and abide the order of, and to pay such costs as shall be awarded by the justices at such session; and the justices at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the matter of such appeal in a summary way, and award such costs to the parties appealing or appealed against, as they the said justices shall think proper; and the determination of such session shall be final, binding, and conclusive, to all intents and purposes."

Costs.

Final.

Order or conviction not quashed for want of form. No certiorari.

Distress not deemed unlawful for want of form.

In action for executing act, general issue.

Double costs.

Venue, where laid.

Sect. 72 enacts, "That no order made touching any of the matters in this act contained, nor any conviction of any offender against this act, shall be quashed for want of form, or be removed or removeable by *certiorari*, by any other writ or process whatsoever into any of his Majesty's Courts of record at Westminster; and that where any distress shall be made for any fine, penalty, or sum of money to be levied by virtue of this act, the distress itself shall not be deemed to be unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto; nor shall such party be deemed a trespasser *ab initio*, on account of any irregularity which shall be afterwards done by the party distraining, but the person aggrieved by such irregularity shall and may recover full satisfaction for the special damage (if any) in an action upon the case; but no plaintiff shall recover in any action for such irregularity as aforesaid, if tender of sufficient amends shall have been made by or on behalf of the party distraining before such action brought.

Sect. 73 enacts, "That if any suit or action shall be prosecuted against any person for any thing done in pursuance of this act, such person may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done by authority of this act; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue his or her action after issue joined, or if upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover double costs, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action, and of the verdict obtained thereupon."

Sect. 75 enacts, "That all actions, suits, and prosecutions to be commenced against any person for any thing done in pursuance of this act shall be laid and tried in the county where the facts were committed, and shall be commenced within six calendar months after the fact committed, and not otherwise."

### XVIII. Debtors, Treatment, &c. of.

32 Geo. 3, c. 28.  
Officer may not carry his prisoner to any tavern or other public house, without his consent, &c.

By the stat. 32 Geo. II. c. 28, s. 1, commonly called the Lords' Act, it is enacted, "That no sheriff, under-sheriff, bailiff, serjeant at mace, or other officer or minister whatsoever, shall at any time or times hereafter convey or carry, or cause to be conveyed or carried, any person or persons by him or them arrested, or being in his or their custody by virtue or colour of any action, writ, process, or attachment, to any tavern, alehouse, or other public victualling or drinking house, or to the private house of any such officer or minister, or of any tenant or relation of his, without the free and voluntary

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TREATMENT OF.

32 Geo. 2, c. 28.

issent of the person or persons so arrested or in custody; nor charge any person or persons with any sum of money for any wine, beer, ale, spirits, tobacco, or any other liquor or things whatsoever, save what he, she, or they shall call for, of his, her, or their own free accord; nor shall he, she, or they procure him, her, or them, to call or pay for any such liquor or things, except what he, she, or they shall particularly and freely ask for; nor shall he, she, or they demand, take, or receive, or cause to be demanded, taken, or received, directly or indirectly, any other or greater sum or sums of money than is or shall be by law allowed to be taken or demanded for any arrest, taking, or for detaining, or waiting till the person or persons so arrested in custody shall have given an appearance or bail, as the case shall require, or agreed with the person or persons at whose suit or prosecution, he, she, or they shall be taken or arrested, or until he, she, or they shall be sent to the proper gaol belonging to the county, riding, division, city, town, or place where such arrest or taking shall be; nor shall exact or take any reward, gratuity, or money for keeping the person or persons so arrested or in custody out of gaol or prison; nor shall carry any such person to any gaol or prison within four and twenty hours from the time of such arrest, unless the person or persons so arrested shall refuse to be carried to some safe and convenient dwelling-house of his, her, or their own nomination or appointment, within a city, borough, corporation, or market town, in case such person or persons shall be there arrested; or within three miles from the place where such arrest shall be made, if the same shall be made out of any city, borough, corporation, or market town, so as such dwelling-house be the house of the person arrested, and be within the county, riding, division, or liberty, in which the person under arrest was arrested; and then and in any such case it shall be lawful to and for any such sheriff, or other officer or minister, to convey or carry the person or persons so arrested, and render him or her to be carried to such safe and convenient dwelling-house as aforesaid, to such gaol or prison as he, she, or they may be sent to, by virtue of writ, action, writ, or process against him, her, or them."

sect. 2 enacts, "That no sheriff, under-sheriff, bailiff, serjeant at mace, or other officer or person, shall at any time or times hereafter, take or receive any other or greater sum or sums for one or more nights' lodging, or for a day's diet, or other expenses of any person or persons under arrest, on writ, action, attachment, or process, other than what shall be allowed as lawful in such cases by some order or orders already made, or which shall hereafter be made by the justices of the peace at some general or quarter sessions which shall be held for the county, riding, division, city, town, or place where such arrest or taking shall be, who are hereby authorized and required, with all convenient expedition, to make some standing order or orders for ascertaining such charges and expenses within their respective counties, ridings, divisions, cities, towns, and jurisdictions, if the same hath not already been there made; and if any such order or orders hath not already been there made, such justices for the time being, at their next general or quarter sessions, are hereby authorized and required to make or alter the same, from time to time, as they shall see occasion; and they are hereby required to cause a copy of every such order, and of every alteration or alteration thereof, signed by the clerk of the peace of every such county, riding, division, city, town, or place respectively, to be put and kept in some conspicuous place in the sessions house, or some other proper place, of every such respective county, riding, division, city, town, or place, which justices shall order, so as the same may be there seen and examined on occasion may require."

sect. 3 enacts, "That all and every sheriff, under-sheriff, and bailiff of any county, riding, division, city, town, or place, and also the respective secondaries and clerk sitters in the respective compters in London, and all other persons intrusted with the execution of process, or who shall enter any actions, or make any warrant or warrants, or any writ or process, in order to have the same executed, shall deliver a printed copy of the several clauses contained in this act relating to debtors, serjeants, and other officers and persons who shall be employed

Nor may officer take for the lodging, &c., of such prisoner, more than shall be allowed.

Sheriffs, &c., to deliver printed copies of these clauses to bailiffs, &c.

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TREATMENT OF.  
32 Geo. 2, c. 28.

under them respectively to execute any writ, process, or attachment, or who shall arrest any person on any action which shall be entered, or otherwise, within their respective sheriffwicks or jurisdictions, to every such bailiff, serjeant, officer, and other person, and shall make it part of the condition of every security or bond which shall be given or made to any such sheriff or under-sheriff, or bailiff of any liberty, by any bailiff, serjeant at mace, or other officer or person, who shall be employed or intrusted to execute any such writ or process as aforesaid under him, them, or any of them, that every such bailiff, serjeant at mace, or officer, and other person respectively, shall and will shew and deliver a copy of the said clauses to every person he shall arrest by virtue of any process, action, writ, or attachment, or under any warrant made out thereon, and carry or go with to any public or other house where any liquor shall be sold; and also shall and will permit every such person who shall be so arrested, or any friend of him or her, to read over the same clauses before any liquor, meat, or victuals shall be at any such public or other house called for, or brought to any such person who shall be so under arrest there; and in case any bailiff, serjeant at mace, or other officer or person, shall in any respect offend in the premises, every such offence, besides the breach of the condition of every such security bond, shall be accounted and deemed a misdemeanor in the execution of the process or action on which any such person was arrested, and shall be punishable as such by virtue of this act."

Where gaolers, &c., shall be guilty of extortion, the court, &c., upon petition of the prisoners, is to examine into the same in a summary way, &c.

Sect. 11 enacts, "That upon the petition, in term time, of any prisoner or person being, or having been, under arrest or in custody, complaining of any exaction or extortion by any gaoler, bailiff or other officer or person, in or employed in the keeping or taking care of any gaol or prison or other place, where any such prisoner or person under, or having been under, arrest or in custody by any process or action, is or shall have been carried, or in respect of the arresting or apprehending any person or persons by virtue of any process, action, or warrant, or of any other abuse whatsoever committed or done in their respective offices or places, unto any of his Majesty's courts of record at Westminster, from whence the process issued, by which any person who shall so petition was arrested, or under whose power or jurisdiction any such gaol, prison, or place is; or in vacation time to any judge of any such courts at Westminster, from whence any process so issued; or to the judges of assize, or justices of great sessions, in their respective circuits; or to the judge or judges of any other court of record, where any prisoner or person being, or having been, under arrest or in custody, was arrested or in custody by process issued out of, or action entered in, any such other court of record within that part of Great Britain called England; and if within the principality of Wales, or county palatine of Chester, then to the justices at some great sessions to be holden for the county in the principality of Wales (a), or for the county palatine of Chester, where any such prisoner or person being or having been under arrest or in custody, was arrested or in custody, in the said principality of Wales, or county palatine of Chester; every such court, judges of assize, and justices of great sessions, and judge and judges of all inferior courts of record, are hereby authorized and required respectively, within their several jurisdictions, to hear and determine the same in a summary way, and to make such order thereupon for redressing the abuses which shall, by any such petition, be complained of, and for punishing such officer or person complained against, and for making reparation to the party or parties injured, as they shall think just, together with the full costs of every such complaint; and all orders and determinations which shall be thereupon made by any of the said courts, or any of the said judges, justices of assize, justices of great sessions, judge or judges of any such inferior court as aforesaid respectively, in such summary way as is herein prescribed, shall have the same effect, force, and virtue, and obedience thereunto may be enforced by the respective courts, judges, justices of assize, justices of great sessions, judge or judges of any such inferior

(a) The 1 Will. IV. c. 70, abolishes the Welsh jurisdiction, see *post*, *Statutes* Vol. V.

rt, by attachment, or in any other manner, as other orders of the said pective courts, judges, justices of assize and great sessions, judge or judges nferior courts of record, may be enforced."

tat. 4 Geo. IV, c. 64, s. 5, provides, "That prisoners for debt may be oved to, and shall always be confined in, the part or parts of such build- or united or contiguous buildings, which shall be so ascertained or be ropriated as and for the gaol of the county, division, city, town, or place; uch removal shall not be deemed or taken to be an escape." And see 49th sect. *ante*, 999.

y stat. 52 Geo. III. c. 160, county justices may order parochial relief ebtors confined in other than county gaols under certain circumstances. his act, see title *Poor*, Vol. IV.

DEBTORS,  
TREATMENT OF.

4 Geo. 4, c. 64.  
Regulation as to  
confinement of  
prisoners for debt.

52 Geo. 3, c. 160.

### XIX. *King's Bench and Marshalsea Prisons.*

y stat. 53 Geo. III. c. 113, after reciting stat. 43 Eliz. c. 2, whereby justices, at the general sessions, were directed to rate every parish to a in sum, in manner therein expressed; and that all surplusage of money h should remain in the stock of any county, should, by the discretion e justices of the peace in their quarter sessions, be bestowed for the re- of the poor hospitals in that county, and for other charitable purposes: reciting stat. 11 Geo. II. c. 20, passed in aid of stats. 43 Eliz. c. 2, and eo. II. c. 29, and that the sums secured to be paid by the said acts are ufficient for the relief of the poor prisoners confined in the said King's h and Marshalsea prisons; and that no adequate relief has been pro- d for the poor prisoners confined in the Fleet prison; and that Bethlehem ital is a charity for the reception and cure of lunatics and distracted per- from all parts of the kingdom, and from his Majesty's fleets and armies; any surplus which shall remain of the monies provided by this act, after ving the poor prisoners in the said prisons, may with great propriety be owed towards the relief of the said hospital: the said acts so far as the relate or apply to the yearly sums provided for the relief of the poor ners confined in the King's Bench and Marshalsea prisons, and also 11 Geo. II., are repealed.

ct. 2 enacts, "That every treasurer of every county and division of a ty mentioned in the schedule to this act annexed, shall, on or before irst day of August in every year, pay out of the public stock or rates of county and division of a county respectively, the several sums of money fied in the schedule to this act annexed, in manner following; that is y, the sums for the relief of the prisoners confined in the King's Bench Marshalsea prisons, to be paid to the treasurer for the county of Surry; the sums for the relief of the prisoners confined in the Fleet prison, to id to the treasurer or chamberlain of the city of London."

ct. 3 enacts, "That the treasurer for the time being of the county of y shall, from time to time, pay the sums of money to be received by from the said treasurers, and also the sums to be paid out of the public or rates of the said county of Surry, for the relief of the prisoners in King's Bench and Marshalsea prisons, to such sufficient person or per- residing near the said prisons respectively, at such times and in such er as the justices of the peace for the county of Surry, or the major of them, at their general quarter sessions, shall from time to time order direct."

ct. 4 directs as to whom the chamberlain of London is to pay the y.

ct. 5 enacts, "That receipts signed by the treasurer for the time being e county of Surry, and the treasurer or chamberlain for the time being e city of London, for any monies payable to them respectively by vir- f this act, shall be sufficient discharges for the same; and that receipts

53 Geo. 3, c. 113.  
Repeal of acts.

Treasurers direct-  
ed to pay sums  
mentioned in sche-  
dule out of county  
rate.

To whom treasurer  
to pay money.

To whom cham-  
berlain of London  
to pay money.

Receipts of treas-  
urers sufficient  
discharges.

KING'S-BENCH,  
&c., PRISONS.

53 Geo. 3, c. 113.

Courts of King's  
Bench and Com-  
mon Pleas may  
enforce compliance  
with regulations  
of acts (a).

Treasurers to re-  
gister names and  
places of abode.

Charge of rules of  
court paid by trea-  
surer.

Neglect.

Money weekly dis-  
tributed to pri-  
soners.

Sum allowed to  
prisoners limited.

signed by any person or persons appointed by the justices of the peace of the county of Surry, and city of London respectively, at their quarter sessions respectively, to receive any monies payable by virtue of this act, shall be sufficient discharges to the treasurer for the county of Surry, and the treasurer or chamberlain of the city of London respectively."

Sect. 6 enacts, "That if any treasurer shall neglect or refuse to pay over any such respective sums of money as ought to be paid by him to the treasurer of the county of Surry, and the treasurer or chamberlain of the city of London respectively as aforesaid, or any treasurer of the county of Surry, or treasurer or chamberlain of the city of London, shall neglect or refuse to pay over such respective sums of money as ought to be paid by him respectively by virtue of this act, then and in any such case, upon the certificate or certificates, on oath, of the treasurer or treasurers, person or persons, to whom the same respectively ought to be paid, being delivered to either of his Majesty's Courts of King's Bench and Common Pleas, or to the Court of Marshalsea, of such neglect or refusal, it shall be lawful for the said Courts of King's Bench, Common Pleas, or Marshalsea, or either of them, to make a rule on every such treasurer so neglecting or refusing as aforesaid, requiring such treasurer to pay the money so reported or certified to be due as aforesaid; and obedience to such rules respectively shall and may be enforced by the said Courts, in such manner and by such ways and means as rules of the said Courts respectively are usually enforced."

Sect. 7 enacts, "That every person who now is or hereafter shall be elected or appointed treasurer of any county, or division of a county, named in the schedule to this act annexed, shall, within one calendar month after the 1st day of August, or within one calendar month after his election or appointment respectively into such office of treasurer, transmit his name and place of abode to the clerk of the crown, in his Majesty's said Court of King's Bench, to be by him entered or registered in a book to be kept for that purpose, for which entries no fee or reward shall be taken; and in case any such treasurer shall neglect or refuse to transmit his name or place of abode as aforesaid, that then, upon the report of the said clerk of the crown, made to the said Court of King's Bench, of such neglect or refusal, every such treasurer shall be liable to be proceeded against in the same manner as in case of neglecting or refusing to pay such money as aforesaid."

Sect. 8 enacts, "That from time to time, and as often as there shall be occasion for the said Courts of King's Bench, Common Pleas, and Marshalsea, respectively, to make any rule or rules as aforesaid, on any of the said treasurers in pursuance of this act, the whole cost and charge of making such rule or rules, and all subsequent charges arising therefrom, shall be paid by the treasurer whose default or neglect shall cause the making of such rule."

Sect. 9 enacts, "That the sum and sums of money, provided by this act, shall from time to time be distributed by the person or persons to whom the same respectively shall be directed to be paid as aforesaid, by weekly payments, for the relief of such prisoners as shall from time to time be ordered to be relieved, in manner hereinafter mentioned."

Sect. 10 enacts, "That it shall be lawful for any justice of the peace for the county of Surry, to order such relief as he shall think proper, to be given to any prisoner confined in the said King's Bench or Marshalsea prisons, and for any alderman or justice of the city of London, to order such relief as he or they shall think proper, to be given to any prisoner confined in the said Fleet prison; but subject, nevertheless, to the provisions hereinafter contained, and to any rules, orders, and regulations, which shall be made as

(a) *In re Mainwaring*, 2 Chit. Rep. 409, a rule upon the treasurer of Middlesex, to pay over the money to the treasurer of Surry, for the expense of

relieving a prisoner in the King's Bench and Marshalsea prisons, under this section, was refused, because a demand and refusal was not sworn to.

hereinafter is mentioned; provided always, that the sum to be given to any prisoner shall not exceed 6*d.* *per diem*."

Sect. 11 enacts, "That no prisoner, who shall be charged in execution debt, shall be relieved by virtue of this act, after the first day of the month next following the time when he or she shall be charged in execution."

Sect. 12 enacts, "That no prisoner shall be ordered to be relieved by virtue of this act, until he or she shall first have made oath before a judge one of the Courts of law at Westminster, or of the Marshalsea, or a commissioner appointed by one of the said judges to take affidavits, that he or she is not worth 10*l.* in all the world, and that he or she cannot subsist himself or herself without the relief or assistance provided by this act; and any such prisoner shall wilfully forswear or perjure himself or herself in giving any such oath as aforesaid, and shall be lawfully convicted thereof, or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury."

Sect. 13 enacts, "That no prisoner shall be relieved by virtue of this act, who shall have become supersedeable, or entitled to be discharged, under any provision for the relief of insolvent debtors."

Sect. 14 directs as to the appropriation of surplus monies.

Sect. 15 enacts, that accounts are to be kept and verified upon oath.

By sect. 16, justices are empowered to make regulations at their sessions, in addition to the provisions of the act.

**KING'S-BENCH  
&c., PRISONS.**

53 Geo. 3, c. 113.

No prisoner charged in execution relieved after first day of next term.

No prisoner relieved possessed of property above a certain sum.

Perjury.

Prisoners supersedeable, &c.

## XX. Schedules and Forms, *List of.*

**SCHEDULE** to 55 Geo. III. c. 113, of List of Sums to be paid for Relief of Prisoners in King's Bench, &c., (No. 1).

**SCHEDULES** to 4 Geo. IV. c. 64—

List of Districts, &c., to which Act to extend, in addition to Counties, (No. 2).

Mortgage, &c., on County Rate, for securing Money borrowed, (No. 3).

Annual Return to Secretary of State, (No. 4).

**SCHEDULES** to 5 Geo. IV. c. 85—

Annual Return to Secretary of State, (No. 5).

Certificate, Route, and Description of discharged Prisoner, (No. 6).

Memorandum for Guidance of Overseers, &c., (No. 7).

Declaration to Keeper of the Prison, (No. 8).

**PROVISION** on 4 Geo. IV. c. 64, s. 40, for carrying Spirits into Prison, (No. 9).

**OTHER** Forms referred to, 1062.



## FORMS.

(No. 1).

Schedule referred  
to by 53 Geo. 3, c.  
113.

The Schedule to which 53 Geo. III. c. 113 refers.

COUNTIES AND DIVISIONS.	The Sums to be paid by them for the Relief of the Prisoners in the Prison of		
	King's Bench.	Flint.	Marshall etc.
<i>Bedford</i> .....	£ 5	£ 5	—
<i>Berks</i> .....	10	10	—
<i>Bucks</i> .....	10	5	—
<i>Cambridge</i> .... { <i>County</i> .....	5	5	—
{ <i>Isle of Ely and Town of Cambridge</i> .....	5	5	—
<i>Chester</i> .....	10	10	—
<i>Cornwall</i> .....	10	5	—
<i>Cumberland</i> .....	10	5	—
<i>Derby</i> .....	10	10	—
<i>Devon</i> .....	20	15	—
<i>Dorset</i> .... { <i>East Division</i> .....	5	5	—
{ <i>West Division</i> .....	5	5	—
<i>Durham</i> .....	15	10	—
<i>York</i> .... { <i>East Riding</i> .....	10	10	—
{ <i>North Riding</i> .....	15	10	—
{ <i>West Riding</i> .....	30	20	—
<i>Essex</i> .... { <i>East Division</i> .....	10	5	—
{ <i>West Division</i> .....	10	5	25
<i>Gloucester</i> .....	15	10	—
<i>Hereford</i> .....	10	5	—
<i>Hertford</i> .....	10	10	—
<i>Huntingdon</i> .....	5	5	—
<i>Kent</i> .... { <i>East Division</i> .....	10	5	—
{ <i>West Division</i> .....	10	5	25
<i>Lancaster</i> .....	30	25	—
<i>Leicester</i> .....	10	10	—
<i>Lincoln</i> .... { <i>Holland Division</i> .....	5	5	—
{ <i>Kesteven Division</i> .....	5	5	—
{ <i>Lindsey Division</i> .....	10	5	—
<i>Middlesex</i> .....	100	50	200
<i>Norfolk</i> .....	15	10	—
<i>Northampton</i> .. { <i>East Division</i> .....	5	5	—
{ <i>West Division</i> .....	5	5	—
<i>Northumberland</i> ..	15	10	—
<i>Nottingham</i> .. { <i>North Division</i> .....	5	5	—
{ <i>South Division</i> .....	5	5	—
<i>Oxford</i> .....	10	5	—
<i>Rutland</i> .....	5	5	—
<i>Salop</i> .....	10	10	—
<i>Somerset</i> .... { <i>West</i> .....	10	5	—
{ <i>East</i> .....	10	5	—
<i>Southampton</i> .....	15	10	—
<i>Stafford</i> .....	15	10	—
<i>Suffolk</i> .... { <i>Beccles Division</i> .....	—	5	—
{ <i>Woodbridge Division</i> .....	5	—	—
{ <i>Bury St. Edmund's Division</i> .....	5	5	—
{ <i>Ipswich</i> .....	5	—	—
<i>Surry</i> .....	50	40	50
<i>Sussex</i> .... { <i>East Division</i> .....	10	5	—
{ <i>West Division</i> .....	10	5	—
<i>Warwick</i> .....	15	10	—
<i>Westmorland</i> .. { <i>East Ward</i> .....	5	—	—
{ <i>Kendal Ward</i> .....	—	5	—

(continued.)

Schedule referred to by 53 Geo. III. c. 113.—(continued.)

FORMS.

Schedule referred to by 55 Geo. 3, c. 113, (continued).

COUNTIES AND DIVISIONS.	The Sums to be paid by them for the Relief of the Prisoners in the Prisons of		
	King's Bench.	Fleet.	Marshalsea.
	£	£	£
Wills.....	15	10	—
Worcester.....	10	10	—
Wales.....	2	2	—
recon.....	2	2	—
rdigan.....	2	2	—
rmarthen.....	3	3	—
rnarvon.....	2	2	—
enbigh.....	3	3	—
int.....	2	2	—
lamorgan.....	3	3	—
erioneth.....	2	2	—
onmouth.....	3	3	—
ontgomery.....	2	2	—
mbroke.....	2	2	—
dnorshire.....	2	2	—

SCHEDULES TO WHICH STAT 4 GEO. IV. c. 64, REFERS.

(No. 2).

of Districts, Cities, Towns, and Places in England and Wales, to which this Act shall extend, in addition to Counties at large.

Schedule (A) to which stat. 4 Geo. 4, c. 64, refers.

Bristol.	Kingston-upon-Hull.	Norwich.
Canterbury (a).	Leicester.	Nottingham.
Chester.	Litchfield (a).	Portsmouth.
Coventry.	Lincoln (a).	Worcester.
Exeter.	Liverpool.	York.
Gloucester.	Newcastle-upon-Tyne.	

(No. 3).

of Mortgage and Charge upon the County Rate for securing the Money borrowed.

Schedule (C) to which stat. 4 Geo. 4, c. 64, refers.

E, A. B., one of his Majesty's justices of the peace, and chairman of the court of  
ter sessions of the peace holden at , the day of , for the county, &c.,  
[as the case may be], C. D., and E. F., esquires, two other of his Majesty's  
es of the peace acting for the said county, &c., and assembled in the said court,  
rsuance of the powers to us given by an act passed in the year of the reign  
Majesty king George the Fourth, intituled &c., [insert the title of this act], do  
y, in open court, mortgage and charge all the rates to be raised within the said  
y, &c., [as the case shall be], under the description of county rates, by the laws  
n being, with the payment of the sum of , which G. H., of , hath pro-  
and agreed to lend, and hath now actually advanced and paid towards defray-  
ie expenses of building, repairing, &c., [as the case shall be], the gaol, bridewell,  
use of correction at , [as the case shall be], for the said county, &c.; and we  
reby confirm the same unto the said G. H., his executors, administrators, and  
ns, for securing the payment of the sum of , and interest for the same, after  
ite of per centum per annum, and do order the treasurer for the said  
y, &c., or other person, [as the case shall be], to pay the interest of the said  
f half-yearly, as the same shall become due, until the principal shall be dis-  
ed, pursuant to the directions of the said act.

The stat. 5 Geo. IV. c. 85, s. 9, re- as relates to the cities of Canterbury,  
so much of stat. 4 Geo. IV. c. 64, Litchfield, and Lincoln.

(No. 4.)

## SCHEDULE

## Form of Annual Return

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
Number of Prisoners the Prison is capable of containing in separate Sleeping Cells.	Number of Prisoners the Prison is capable of containing where more than One Prisoner sleeps in One Cell.	Total Number of Prisoners.	Number of Debtors.	Number of Madmen.	Number of Felons.	Number of Prisoners committed in the Course of the Year.	Number of Tried Prisoners.	Number of Untried Prisoners.	Number of Prisoners above 17 Years of Age.	Number of Prisoners under 17 Years of Age.
		Mich. 18								
<p>Notes.—The Total of the Columns 4, 5, and 6, and the Aggregate of Columns 8 and 9 will be</p>										
19.—Whether Common Gaol, House of Correction, or Bridewell?										
20.—Under whose Jurisdiction and Superintendence?										
21.—Number of Officers, and how appointed?										
22.—Number of Classes, Wards or Divisions, Work Rooms, Day Rooms, and Airing Yards, and whether the same can be extended or increased?										
23.—Dietary or other Weekly Allowance; and Weekly Cost per Head?										
24.—Allowance of Clothing and Bedding, and Cost per Head?										
25.—Description of Employment and Hard Labour?										
26.—Hours of Labour and of Exercise?										
27.—Amount of Earnings, how applied, and in what proportion to each Class of Prisoners, to the Officers of the Prison, and to the Fund applicable to the Maintenance of the said Prison?										
28.—Whether the Classification required by this Act has been observed? If not, for what Reasons; and what Measures have been taken to remedy this Defect?										
29.—What Duties are performed by the Chaplain, what Provision made for Instruction, and whether Prisoners are supplied with Bibles and other Books?										
30.—Attendance of the Surgeon, and whether separate Buildings or Apartments are provided for the Sick?										
31.—Reasons for Non-employment of Prisoners, with Reference to Column 15?										
32.—Reasons for Punishments by Solitary Confinement, by Whipping, or Irons?										
33.— <div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle; margin-right: 10px;">{</div> <div> <p>Is there any Insane Prisoner in Confinement?</p> <p>State his or her Name, Age, and for what Offence committed?</p> <p>How long has he or she been in Confinement?</p> <p>How long has he or she been insane?</p> </div> </div>										
34.—General Observations.										



(No. 5).

## SCHEDULES to

## SCHEDULE - - - - -

## Form of Annual Return

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.
Number of Prisoners the Prison is capable of containing in separate Sleeping Cells.	Number of Prisoners the Prison is capable of containing where more than One Prisoner sleeps in one Cell.	Total Number of Prisoners.	Number of Debtors.	Number of Misdemeanors.	Number of Felons.	Number of Prisoners committed in the Course of the Year.	Number of Tried Prisoners.	Number of Untried Prisoners.	Number of Prisoners above 17 Years of Age.	Number of Prisoners under 17 Years of Age.
		Male. 18 Female. 18	Male. Female.	Male. Female.	Male. Female.	Male. Female.	Male. Female.	Male. Female.	Male. Female.	Male. Female.
<p>Note.—The Total of the Columns 4, 5, and 6, and the Aggregate of Columns 5 and 6 will be</p>										
19.—Whether Common Gaol, House of Correction, or Bridewell?										
20.—Under whose Jurisdiction and Superintendence?										
21.—Number of Officers, and how appointed?										
22.—Number of Classes, Wards, or Divisions, Work Rooms, Day Rooms, and Airing Yards, and whether the same can be extended or increased?										
23.—Dietary or other Allowance; and Weekly Cost per Head?										
24.—Allowance of Clothing and Bedding, and Cost per Head?										
25.—Description of Employment and Hard Labour?										
26.—Hours of Labour and of Exercise?										
27.—Amount of Earnings, how applied, and in what Proportion to each Class of Prisoners, to the Officers of the Prison, and to the Fund applicable to the Maintenance of the said Prison?										
28.—Attendance of the Surgeon, and whether separate Buildings or Apartments are provided for the Sick?										
29.—Reasons for Non-employment of Prisoners, with reference to Column 15.										
30.—Reasons for Punishments, by Solitary Confinement, by Whipping, or Irons.										
31.— <div style="display: inline-block; vertical-align: middle;"> <p>Is there any Insane Prisoner in Confinement? State his or her Name, Age, and for what Offence committed? How long has he or she been in Confinement? How long has he or she been Insane?</p> </div>										
32.—General Observations.										



(No. 6).

Schedule (B) referred to by stat.  
5 Geo. 4, c. 83.



*Certificate, Route, and Description of discharged Prisoners, under the 5th Geo. 4.*

Certificate.

WHEREAS, by the act of Parliament of the fifth George Fourth, cap. , prisoners discharged from prison may, upon application to the visiting justices of this prison, become entitled to certain allowances from the overseers of the poor of any place through which they may pass on their way to the places of their settlement. Under authority of a route and certificate of two such visiting magistrates: And whereas , corresponding in appearance and the account he [or she] gives of himself [or herself] to the description after mentioned, has come before us, two of the visiting justices of the county gaol [or, house of correction] at , and is deemed by us to be a fit object to receive the regulated allowances under the said act; this is to certify the same, and to require the overseers of the poor of the places mentioned in the route, to issue to the said discharged prisoner the allowance specified in the said route, as required by the said act of Parliament: Provided that the discharged prisoner produces the said route himself, [or, herself], and that the description corresponds with his [or, her] appearance, and agrees with the account he [or, she] gives of himself [or, herself], and the number of children he [or, she] has with him [or, her]. Given under our hands and seals, this      day of      .

{ Seal and signature of  
the Magistrate.

*This pass to be in force for      days from the date hereof.*

N. B.—To prevent frauds, all parish officers are not to give the allowances granted by the aforesaid act under the authority of any other form of pass than this, which is prescribed in the schedule of the act of Parliament aforesaid.

Route.

Route for , from , in the County of , to , in the County of .

A.	B.	C.	D.	E.	Remarks.
Names of Places through which the discharged Prisoner is to travel.	Rate per Mile for the discharged Prisoner and Children, if any.	Distance of Place where Relief is advanced, to that where it is to be continued.	Sum paid by each Overseer.	Signature of each Overseer, paying the discharged Prisoner.	
Total Amount paid .... £					

*Directions for filling up these Passes.*

The magistrate is to fill up the description, and to insert in the column marked A. the names of the places through which the discharged prisoner is to travel; and in the column marked B., (in words), the allowance per mile which he (or she) is

# Forms.

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ceive; and also to write the number of children in words, in the proper column following form; and when there are no children, to strike out that part of form. In case of any mistake, the magistrate should make the necessary alterations with a pen, and write his name opposite thereto. The overseer of the poor will insert in the column marked C. the distance of the : to which he advances the allowance; in that marked D., the sum he gives the charged prisoner; and in that marked E., will sign his own name, specifying the h for which he acts. He is also to take before a magistrate any person that nts a pass in which there are alterations other than with the pen, as above di-

## FORMS.

Schedule (B) referred to by stat. 8 Geo. 4. c. 85, (continued).

### Description of the discharged Prisoner.

Prisoner's name.	His (or her) Age.	His (or her) Height.		Colour of his (or her)			His (or her) Dress.	Number of Children.			
		Feet.	Inches.	Hair.	Eyes.	Complexion.		Boys.	Agnes.	Girls.	Agnes.

Description of discharged prisoner.

(No. 7).

Memorandum for the guidance of the Overseers of the Poor, Treasurers of Counties, and Keepers of Prisons.

Memorandum for the guidance of the overseers of the poor, treasurers of counties, and keepers of prisons.

The overseer is to take a receipt from the discharged prisoner, signed with his (or her) name or mark, and he is to be reimbursed the money paid by the treasurer of the county in which he serves the office of overseer, on giving him a receipt for the same, together with the discharged prisoner's receipt. The overseer who makes the receipt is to advance to carry the discharged prisoner to his place of residence, is to send the receipt, route, and pass to the keeper of the prison from which the prisoner was discharged; and the said keeper shall make and sign a declaration in the form next after annexed; which said declaration shall be attested by one visiting justice of the said prison.

(No. 8).

I, the keeper of the county gaol, [or, keeper of the house of correction or prison], in the county of , do declare, that this pass hath come to me without cover, in a cover open at the sides, and without any paper or thing inclosed there- without any writing other than the matter of such pass, and than the super- scription upon the same, or upon the cover thereof.

Declaration of the keeper of the prison.

(Signed) A. B.

I, one of the visiting justices of the said prison, do attest, that, after due ex- amination, I do believe the aforesaid declaration to be true.

C. D.

(No. 9).

Hence the conviction as in the form prescribed by the act, ante, p. 1047. The offence thus:—for that the said A. B., on &c., at &c., in contravention of the following rules, did carry and bring, [or, "attempt and endeavour to carry and bring"], into a certain prison, to which the act of Parliament made and passed in the year of the reign of his late Majesty, and intituled "An Act for consolidat- ing [set out the title of the act, as ante, p. 993], to wit, the gaol at , in

Conviction on 4 Geo. 4, c. 64, s. 40, for carrying spirituous liquors into a prison (a).

The 70th section of the act prescribes the formal part of the conviction. See section, ante, 1047.



## FORMS.

and for the county of , certain spirituous and fermented liquor, to wit, ten quarts of gin; contrary to the form of the statute in such case made and provided. And the said A. B. is, for his said offence, adjudged by me, the said justice, to forfeit and pay immediately, the sum of ten pounds, [not exceeding twenty pounds, and not less than ten pounds], or else to be imprisoned in , for the space of , [not exceeding three months. Given under my hand and seal the day and year first above mentioned.

Forms referred to.

See a form of indictment against parties for not repairing gaols. 3 *Chit. Crim. Law*. 668, 669; also of indictment for destroying a gaol. *Id.* 307.

See forms for prison breaking, post, *Prison Breaking*; also *ante*, *Escape*.

Gardens, Larceny from, see *Larceny*, Vol. III. p. 565 566;—  
Malicious Injuries to, see *Malicious Injuries to Property*,  
Vol. III. p. 734 to 739.

Garments, Assaults to Spoil, &c., see *Assault*, Vol. I. p. 286.

Gas. See *Lighting and Paving of Parishes*, Vol. III.—  
Nuisances from, see *Nuisance*, Vol. III.

Gates, Stealing, &c., of, see *Larceny*, Vol. III. p. 566;—  
Injuries, &c. to, see *Malicious Injuries to Property*, Vol.  
III. p. 733, 741.

Gazette, Proof by, see *Evidence*, *ante*, p. 37.

General Issue. See *Plea*, Vol. V.

Grin. See *ante*, *Excise*, p. 579 to 637;—*Alcouse*, Vol. I.

Glass, Stealing of, see *Larceny*, Vol. III. p. 567;—Duties,  
&c., on, see *ante*, *Excise*, p. 394 to 449.

As to stealing and injuring the works and glass, &c. of the British Plate Glass Company, see the 13 Geo. III., title *Malicious Injuries to Property*. Vol. III. p. 743.

## Gleaning.

It is a vulgar error to suppose that there is in general a right of gleaning on another's lands. And trespass lies against any person who gleans without the owner's consent, and without any particular custom, since no such right exists at common law. *Steel v. Houghton*, 1 H. Bla. 51; *Worger v. Manning*, Id. 53; *Gould, J., diss.* Parishioners or other inhabitants of a particular parish or district may, in some places, have a right by particular custom to glean on lands within that parish or district at proper times, and under proper restrictions; but that custom, like all others against common law right, must be clear and undisputed. Such a custom could extend to non-parishioners or inhabitants of the parish or district.

*R. v. Price*, 4 Burr. 1925, on a motion for an information against a justice of the peace for a misdemeanor in oppressively committing some poor inhabitants of the parish of C. for felony in gleaning in a field belonging to the farmer of that place, (which they insisted they had a right to do by law, by the usage and custom of that parish); oath was made by the farmer before the justice, that these people had stolen his barley in the straw, and now swore that he had forbidden them, and yet they took it by hands, and that he had suffered the loss of about twenty bushels of barley by their carrying it off two days together. *Per curiam*—"We are of opinion, the justice, in this case, so far from acting with any design of oppression or malice, or any bad intention, has behaved with lenity, and it would be very wrong to punish a justice by the extraordinary method of an information, when he has acted fairly and impartially; therefore, we discharge the rule with costs, as stealing under the colour of leasing or gleaning is to be justified—there was no contest between the farmer and the poor at leasing; his only objection and his forbidding is confined to the stealing of it. As to the right of gleaning, it will be time enough to determine the point when it comes directly in question; but here the farmer had not sown his corn, and he has sworn that they stole it."

## Gloves.

[1 Geo. III. c. 10; 25 Geo. III. c. 55; 36 Geo. III. c. 80; 6 Geo. IV. c. 105.]

Stat. 34 Geo. III. c. 10, s. 1, the duty on gloves and mittens imposed by stat. 25 Geo. III. c. 55, is repealed, except the duty on licences; and, by stat. 36 Geo. III. c. 80, s. 1, the said duty on licences is also repealed.

By 6 Geo. IV. c. 105, the 6 Geo. III. c. 19, prohibiting the importation of gloves, &c., is repealed.

As to silk gloves, see *Silk*, Vol. V.

**Ind Behaviour.** See *Surety*, Vol. V.

**Inds, how Described in Indictment,** see *Indictment*, Vol. III. p. 348; how described in a Conviction, see *Conviction*, Vol. I. p. 825.

**Graze**, Setting Fire to, *see* **Burning**, Vol. I. p. 541.

**Grain**. *See* **Corn**, Vol. I.;—*As to* Assaults to obstruct Selling of, *see* **Assault**, Vol. I. p. 282.

**Grand Jurors**. *See* **Jurors**, Vol. III. p. 403.

**Grand Larceny**. *See* **Larceny**, Vol. III. p. 513.

**Greenwich Pensioners**, Personating, &c., of, *see* **Military Lds**, Vol. III. p. 790.

**Grouse**. *See ante*, p. 940, 942.

**Guns**, *as to the* Right to Keep or Use, *see ante*, p. 898, 899;—*as to* Setting Spring Guns, *see ante*, p. 951, and title **Spring Guns**, Vol. V.;—*as to the* Manufacture of, *see* **Fire Arms**, *ante*;—*as to the* Importation, &c. of, into Ireland, *see* **Gunpowder**, *infra*.

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## Gunpowder (a).

[16 Car. II. c. 21; 1 Jac. II. c. 8; 12 Geo. III. c. 61; 46 Geo. III. c. 121; 54 Geo. III. c. 152, c. 159; 1 Wm. IV. c. 44.]

Erecting powder mills near a town, a nuisance.

**I**T seemeth, that erecting powder mills, or keeping powder magazines near a town is a nuisance by the common law; for which an indictment or information will lie. In *R. v. Williams, Easter, 12 Wm.*, there was an indictment against Roger Williams, for keeping four hundred barrels of powder near the town of Bradford, and he was convicted accordingly. And, in *R. v. Taylor, Trinity, 15 Geo. II., 2 Str. 1167*, the Court granted an information against the defendant as for a nuisance, on affidavits of his keeping great quantities of gunpowder near Maldon in Surry, to the endangering of the church and houses where he lived. (Or rather it should have been expressed to the endangering of the lives of his Majesty's subjects). *See tit. Nuisance*, Vol. III. p. 911, 912.

16 Car. I. c. 21. Who may make gunpowder.

By stat. 16 Car. I. c. 21, (passed in 1640, being the last statute of force in that King's reign), all subjects may take and sell gunpowder, and bring into the kingdom saltpetre, brimstone, or any other material for the making of it.

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(a) *See* 2 *Chit. Commercial Law*, 337. *As to* Fireworks, *see tit. Fireworks ante*.

And, by a statute made in the first year of the reign of King James the second (which is also somewhat remarkable), it is enacted—"That if any person shall obtain a grant for the sole making or importing of gunpowder, he shall incur a *præmunire*."

## GUNPOWDER.

1 Jac. 2, c. 8.

By stat. 12 Geo. III. c. 61, s. 1, (which reduces into one and repeals all former acts relating to the making, keeping, and carrying of gunpowder), no person shall use, or cause to be used, any mill or other engine for making gunpowder in any place, except in mills and other places where the manufacture of gunpowder shall be actually carrying on at the time of the commencement of this act, or where it shall afterwards become lawful to carry on such manufacture by licence for that purpose as hereinafter directed, on pain of forfeiting all gunpowder manufactured otherwise, and 2*s.* for each pound thereof.

12 Geo. 3, c. 61.  
In what places  
gunpowder may be  
made.

Act. 2. No person shall, for the making of gunpowder, use any mill or engine worked with a pestle, commonly called a *pestle mill*; on pain of forfeiting all gunpowder manufactured therein, and 2*s.* for each pound.

No pestle mill  
shall be used in  
making.

Act. 3. No person shall, in any mill or engine, make, at any one time, or any single pair of millstones, any quantity of gunpowder, or material to be made into gunpowder, exceeding forty pounds; on pain of forfeiting all above forty pounds, and also 2*s.* for each pound.

What quantity  
shall be made at  
one time.

Act. 5. Provided, that nothing in this act shall extend to the powder now erected in the parishes of Battle, Crowhurst, Saddlecomb, and Hail, in the county of Sussex, so far as relates to the making of such fine grained gunpowder only, as is known by the name of Battle powder.

Exception of Bat-  
tle powder.

Act. 6. No person shall dry, or cause, &c., at any one time in any one place, used for the drying of gunpowder, any quantity exceeding one hundred weight; on pain of forfeiting all above that weight, and 2*s.* for each pound.

What quantity  
shall be dried at  
one time.

Act. 7. No person shall keep in any corning-house, drying-house, dust-house, or other place used in making gunpowder, or in any building or belonging thereto, (except magazines or storehouses constructed with stone or brick, and situate fifty yards at least from the gunpowder), any greater quantity of gunpowder than shall be necessary for the immediate work then carrying on in such house or other place; on pain of forfeiting all the gunpowder above such necessary quantity, and 2*s.* for each pound.

What quantity  
shall be kept in or  
near the place of  
making.

Act. 8. Every person and persons keeping or using any mill or other engine for making gunpowder, shall, besides the magazines or storehouses at their mills, have a good and sufficient magazine remote from their respective mills, for the purpose of receiving and safe keeping all the gunpowder made at such mills, as soon as the same can from time to time be conveniently removed thereto, (which last-mentioned magazine shall be constructed with brick or stone near the river Thames, and below Blackwall, or in any other convenient place to be licensed by the justices as hereinafter directed), on pain of forfeiting 25*l.* for every month during which he makes gunpowder without having such magazine, and 5*l.* for every day during which he (not being hindered by stress of weather, or other just impediment), shall wilfully neglect or delay removing, with due diligence, gunpowder made at such mill from thence, or from the magazine or storehouse adjoining thereto, to the magazine so to be situate remote from the mill.

Magazines to be  
kept remote from  
the mill.

Act. 10. Every such maker who shall keep, or permit to be kept, any gunpowder within twenty yards of any mill or other engine for making gunpowder, or of any drying, corning, or dusting-house, or magazine, or storehouse, or other building belonging, shall forfeit 5*l.* for every week during which it is so kept.

Charcoal not to be  
kept near the mill.

Act. 11. No person, being a dealer in gunpowder, shall keep at any one time more than two hundred pounds of gunpowder, and not being such, more than fifty pounds, in any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other building or place occupied by him,

With permits gun-  
powder may be  
kept.  
What quantities  
may be kept.

## GUNPOWDER.

12 Geo. 3, c. 61.

(all buildings and places adjoining each other being deemed one house within the act), or on any river or other water (except in carriages loading or unloading, or passing on the land, or in ships, boats, or vessels loading or unloading, or passing on any river or other water, or detained there by the tide or bad weather), within the cities of London or Westminster, or within three miles of either of them; or within any other city, borough, or market town, or one mile thereof; or within two miles of any palace or houses of residence of the King, or any of the King's gunpowder magazines; or half a mile of any parish church; or in any other part of Great Britain, except in mills or other places at the commencement of this act used for the making of gunpowder, and in the places where it shall be lawful to make gunpowder, or to keep greater or unlimited quantities of gunpowder by force of this act; on pain of forfeiting all beyond the quantity hereby allowed to be kept, and the barrels in which such shall be, and also 2s. for every pound beyond such allowed quantity (a).

Sect. 12. Provided, that it shall be lawful for any person to keep, for the use of any mine or colliery, any quantity not exceeding three hundred pounds weight, in any magazine or warehouse, so as the same be within two hundred yards of such mine or colliery, and not within any of the limits hereinbefore particularly described.

The sessions to license the erecting of mills or magazines.

Sect. 13. And whereas it may be necessary to have some places appointed, in which it may be lawful to erect new mills or other engines for making gunpowder, with proper magazines and offices adjoining thereto, and to have magazines for keeping unlimited quantities of gunpowder in places where there are no mills; it shall therefore be lawful for the justices in sessions, from time to time, to license the erecting or having such mills and offices, or such magazines for keeping unlimited quantities in places not being within London or Westminster, or any other limits hereinbefore particularly described, the person applying having first given fourteen days' notice in writing of the intention to make such application, as also of the place or places proposed for such purposes respectively, to an overseer or churchwarden of the parish or place wherein it is proposed to erect such new mill and offices or magazine, or of an adjoining parish, if the place be extra-parochial; which overseer or churchwarden shall cause such notice to be publicly read on the Sunday next ensuing in the parish church after divine service.

Sect. 14. And if the justices in the said sessions shall refuse to grant such licence, or to appoint pieces of ground for magazines remote from mills, the party aggrieved may apply to the said justices then present for a special state of the case, and the justices shall certify such case, together with the proofs offered for and against the application, in order that the said case and proceedings may be removed by *certiorari* into the court of King's Bench; and the justices in their return to the *certiorari* shall state such special case. And if the court of King's Bench shall be of opinion that the justices ought not to have refused such licence or appointment, they shall order the justices to grant or to make such at their next sessions, and shall award costs on the writ of *certiorari* as they shall think fit.

No person liable to pay any penalty till six months after adjudication by justices.

Sect. 15. Provided, nevertheless, that no person shall be liable to any penalty or prosecution under this act for keeping unlimited quantities of gunpowder, without such licence of the justices, in any magazine remote from any gunpowder mill, and already built and used for that purpose, in any place not being within London and Westminster, and the other limits hereinbefore described, until the expiration of six calendar months after an

(a) The exception in this section against keeping more than certain quantities of gunpowder in places within certain limits, "or in any other part of Great Britain," following the specified places, is to be taken as a new division of locality; and if the offence be shewn

to have been committed within the limits of that general provision, the information need not go on to negative that it was not within any of the places particularly excepted. *R. v. Mottet*. 1 B. & A. 362.

judication by the justices that the same is dangerous; and they shall not have power to make such adjudication, except on complaint to them by the householder of the parish or place in which the magazine shall be, and on summons of the owner and examination of witnesses.

Sect. 16. And the justices in sessions, on application by such maker, may point proper and convenient pieces of ground, not being in London or Westminster, or other the limits aforesaid, and not exceeding one acre in any one place, with the use of convenient roads thereto, on which they may erect magazines for keeping any quantity, after having agreed with the owner on the purchase of the same. And if such owner shall not agree, or by reason of any impediment cannot agree, the justices shall issue a warrant to the sheriff, to impanel and return a jury to appear before them at a time and place appointed in the warrant, who shall upon their oaths inquire into the true value of the said pieces of ground, with the use of such convenient roads thereto; and the justices may send for any persons interested, and examine any parties or witnesses upon oath; and the verdict of the jury shall be kept amongst the records of the sessions: and the judgment of the said justices thereon shall be final. And the sum of money so to be adjudged, not exceeding thirty years' purchase, shall be paid to the owner of the ground; and upon such payment, or in case of refusal to accept the money, then upon leaving the same with the justices for the benefit of the owner, the inheritance of the ground, and the use of the said roads thereto, shall be vested in the purchaser, his heirs and assigns, for the purpose aforesaid, and not otherwise.

Sect. 18. No person shall carry at any one time more than twenty-five cwt. of gunpowder in any waggon, cart, or other carriage by land; or more than two hundred barrels in any barge, boat, or other vessel by water, except in vessels with gunpowder imported from, or to be exported to, any place beyond the sea, or going coastwise; and the barrels in which it shall be carried shall be close joined and hooped, without any iron about them, and so secured that no part of the gunpowder be scattered in the passage; and each barrel shall contain no more than one hundred pounds of gunpowder: and when conveyed by land shall be entirely closed in a leathern bag, or a bag commonly called a *saltpetre bag*; and every carriage in which gunpowder shall be conveyed by land shall have a complete covering of red, painted cloth, tarpaulin, or wadmill tilts over all the gunpowder therecontained: also no gunpowder shall be conveyed in any barge, boat, or other vessel by water, (except in vessels for importation, or exportation, or going coastwise as aforesaid), that hath not a close deck; and as soon as gunpowder is put on board such vessel, all such gunpowder shall be covered with raw hides or tarpaulins.—And all gunpowder carried in greater quantity or in other manner than is hereinbefore prescribed, and the barrels in which such gunpowder shall be, may be seized by any person, who shall have the same authority to remove such gunpowder and barrels, and for the purpose to use, during the space of twenty-four hours after seizure, the barge or vessel in which such gunpowder shall be seized, and the tackle, beasts, and accoutrements belonging thereto, on paying a recompence for the use thereof, and to detain the same, as is hereinafter given to persons searching under a justice's warrant; and such seizure shall be for his use on conviction of the offender (a).

Sect. 19. And when any barge, boat, or vessel having stale, condemned, or returned gunpowder on board, arrives at the wharf, quay, or other place

What quantities shall be carried at one time.

) It must appear on a conviction upon this section, that the person to whom gunpowder is adjudged was the person who seized it. The justices have no jurisdiction to adjudge the forfeiture, upon a seizure; and for this purpose it should be made to appear that

there was a seizure and a person seizing. It being stated in the adjudicating part of a conviction, that the gunpowder is forfeited "to the use of G. I., the person who seized the same," is insufficient. *R. v. Thomas Smith*, 5 M. & S. 133.

**GUNPOWDER.**

12 Geo. 3, c. 61.

where the same is intended to be landed, no person shall begin to unload, or shall bring down to such wharf, quay, or other place, with intent to load in such vessel, any other gunpowder, until the whole or part of such stale, condemned, or returned gunpowder be first unloaded and carried away from such wharf, quay, or other place of landing: and after such unloading and carrying away of part of such gunpowder, no person shall begin to load, or shall so bring down with intent to load, any greater quantity of other gunpowder than the part unloaded and carried away; on pain of forfeiting all such gunpowder as shall be so brought down or loaded contrary hereunto.

Combustibles not to be kept on ship-board.

Sect. 20. If any person having the care or management of any barge, boat, or other vessel, (except ships for importation, exportation, or going coastwise, as aforesaid), loaded with gunpowder, or any other person on board the same, shall bring, have, or use, or permit, &c., any charcoal or other combustible matter, or any fire or lighted candle, or shall smoke, or wittingly permit any person to smoke, on board the same, he shall forfeit 5*l*.

Gunpowder in carrying not to be delayed.

Sect. 21. If any person having the care of any carriage used for the conveyance of gunpowder by land, shall, after beginning to load therein any quantity, or beginning to unload the same thereout, stop or stay at any place of loading, or in the loading or unloading suffer any longer time to pass than shall be reasonably necessary for that purpose; or if any person having the care of any vessel used for the conveyance of gunpowder by water (except as aforesaid) shall, after beginning to load or unload any quantity of gunpowder, stop or stay at any wharf, quay, or other place of loading, or in the loading or unloading thereof, suffer any longer time to pass than shall be reasonably necessary for that purpose, not exceeding eighteen hours, unless hindered by the weather; or if any person shall take in or carry in such carriage or vessel any other lading of any kind; he shall forfeit 10*l*.

54 Geo. 3, c. 152.

But stat. 54 Geo. III. c. 152, repeals so much of this 12 Geo. III. c. 61, s. 21, as enacts, that no person shall load, take in, carry, or convey, in any waggon, cart, or other land-carriage laden with gunpowder, or in any barge, boat, or vessel laden with gunpowder on any river, (except in the case of vessels laden with gunpowder for importation from, or exportation to, places beyond sea, or going coastwise), any other lading of any kind whatsoever.

12 Geo. 3, c. 61.

Stat. 12 Geo. III. c. 61, s. 22, provides, that none of the aforesaid provisions concerning the conveying, loading, or unloading, shall extend to any other carriage or vessel than such as shall carry a quantity of gunpowder exceeding one hundred weight.

Power of the justices to search.

Sect. 23. And any justice, on demand made and reasonable cause assigned upon oath, may issue his warrant for searching, in the day-time, any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other place, or any carriage, ship, boat, or vessel, in which such gunpowder is suspected to be made, kept, or carried contrary to this act; and all gunpowder found on such search to be made, &c., contrary to this act, and also the barrels, shall be immediately seized by the searcher, who shall with all convenient speed remove the same to such proper place as he shall think fit; and, in case of gunpowder seized in any carriage or vessel, may use for the purpose of removal, during the space of twenty-four hours after seizure, such carriage or vessel, with the tackling, beasts, and accoutrements belonging thereto, (paying afterwards to the owner a sufficient recompence for the use thereof, to be settled by the justices before whom the complaint shall be heard), and may detain such gunpowder and barrels till it shall be adjudged on hearing before two such justices whether the same shall be forfeited.

Regulations on the river Thames.

Sect. 24. No master of any vessel in the Thames outward bound shall receive on board more than twenty-five pounds of gunpowder (except for the King's service) before the arrival of such vessel at or below Blackwall; and the master of every vessel coming into the Thames shall (except in case of the King's service) put on shore in proper places all the gunpowder on board above twenty-five pounds, either before the arrival of such vessel at Blackwall, or within twenty-four hours, (if the weather will permit), and

all not afterwards have on board more than twenty-five pounds (except the King's service), on pain of forfeiting all the gunpowder found on board above twenty-five pounds, and the barrels containing the same, and so 2s. for every pound above the quantity of twenty-five pounds.

Sect. 25. And the master, wardens, and assistants, of the corporation of the town of Deptford Strond, shall appoint searchers, who may, between sun-rising and sun-setting, enter any ship or vessel (except his Majesty's ships) in the Thames above Blackwall, and search for unlawful quantities of gunpowder; and shall have the same powers of seizing, removing to proper places, and retaining, all such gunpowder and barrels, as are hereinbefore given to persons searching by a justice's warrant.

Sect. 26. All penalties on this act shall be recoverable before two justices, on conviction of the offender by confession or oath of one witness, and be distributed, half to the King and half to the informer; and where the penalty is pecuniary, it shall be levied by distress and sale, rendering the overplus, after deducting the penalty and expenses; and for want of sufficient distress, the offender shall be committed to the house of correction, to be kept to hard labour not exceeding six months, nor less than one year.

Sect. 27. Prosecution to be commenced within fourteen days after seizure of the gunpowder, or commission of the offence, where there shall not be any return.

Sect. 29. Provided that this act shall not extend to any mills or other buildings erected for making gunpowder in any lands belonging to his Majesty, or to the keeping of gunpowder at any of his Majesty's storehouses or magazines, or to hinder the trial of gunpowder by his Majesty's officers, or the keeping of gunpowder at the magazines now erected at Barking Creekmouth, in the county of Essex, Erith Level in the county of Kent, or the magazines near Liverpool, or the city of Bristol, or to the carriage of gunpowder to or from the King's magazines under a special order from the Lord of ordnance, or to the carriage of gunpowder with forces on their march, or with the militia during their annual exercise, or which shall be used for the use of such forces or militia.

Sect. 30. Also, this act shall not extend to hinder any person from carrying an unlimited quantity of gunpowder in such close decked vessels, and in such manner as is hereinbefore directed, from any vessels lying below Blackwall, or from such magazines lying below Blackwall, and going to any place on land or sea or coastwise.

By stat. 46 Geo. III. c. 121, that part of stat. 1 Jac. II. c. 8, which prohibits the importation of gunpowder is repealed.

By 54 Geo. III. c. 159, s. 6, it is enacted, "That it shall and may be lawful to and for the said lord high admiral, or three or more of the commissioners for executing the office of lord high admiral aforesaid for the time being, and he and they is and are hereby authorized and empowered, from time to time, by order or notice in writing under his or their respective hand or hands, or the hand of his or their secretary, to prohibit the breaching of any ships or vessels, lighters, barges, boats, or other craft, at any place or places on shore, where it may to them seem proper and necessary to prohibit the same, and also to order at what place or places, within or near all any of such ports, harbours, havens, roads, roadsteads, sounds, channels, creeks, bays, and navigable rivers in this kingdom as aforesaid, no private vessels of war, transports or other private or merchant ship or vessel, lighter, barge, boat, or other craft, shall come, or be laden with or having on board thereof any quantity or quantities of gunpowder, exceeding five pounds weight in the whole; and also to appoint fit and proper places, either afloat or on shore, where all gunpowder, exceeding five pounds weight in the whole, shall and may be left and deposited, by and from, or taken and received into, such ships or vessels, lighters, barges, boats, or other craft; all which orders, notices, and appointments of such places shall be notified in the London Gazette; and that the master-general or principal officers of his Ma-

GUNPOWDER.

12 Geo. 3, c. 61.

Penalties how to be recovered and applied.

General exception.

54 Geo. 3, c. 159. Places appointed for breaching ships, and leaving and receiving gunpowder.



## GUNPOWDER.

54 Geo. 3, c. 129.

Penalty.

In what case pilots rendered incapable.

1 Will. 4, c. 44.

No ordnance, arms, gunpowder, &amp;c., shall be imported into Ireland without licence from the lord lieutenant.

jeſty's ordnance, or any three of them for the time being, ſhall appoint fit and proper perſons there, to take in and receive, and alſo to give and deliver out all ſuch gunpowder, and upon the taking in thereof to give receipts for the ſame, and alſo to grant a certificate to any ſuch owner, maſter, or other perſon, of his having left and deposited all ſuch gunpowder, and having made and ſigned a declaration in writing under his hand of his having ſo done, and that neither he nor any other perſon or perſons, to his knowledge or belief, had any gunpowder, exceeding five pounds weight in the whole, then on board ſuch ſhip or veſſel, lighter, barge, boat, or other craft, as the caſe may require; which declaration every ſuch maſter, owner, or other perſon is hereby required to make, as the caſe may require, and for which ſaid certificate the ſum of 1*l.*, and no more, ſhall be paid; and every ſuch perſon ſo to be appointed as aforeſaid, ſhall be accountable to the owner or owners of all ſuch gunpowder for the ſame, and ſhall deliver the ſame to ſuch owner or owners thereof upon demand, on being paid ſuch reaſonable ſum of money for warehouse room, in proportion to the quantity of ſuch gunpowder, and the time for which the ſame ſhall have been kept, as ſhall be aſcertained and fixed, either by the ſaid lord high admiral, or three or more of the commiſſioners for executing the office of lord high admiral aforeſaid, or by the maſter-general and principal officers of his Maſteſty's ordnance, or any three or more of them, by any rule, order, or regulation to be made in that behalf; and that no ſhip or veſſel having, or having had, any ſuch quantity of gunpowder on board, ſhall be allowed to clear at any cuſtom-houſe in any port where there ſhall be any ſuch place ſo to be appointed as aforeſaid, without producing and leaving ſuch certificate, together with the Chriſtian and ſurname of the pilot (if any) who piloted ſuch ſhip or veſſel into ſuch port, at the cuſtom-houſe of ſuch port; and all and every owner, maſter, pilot, or other perſon having the charge or command of any private ſhip of war, transport, or other private or merchant ſhip or veſſel, lighter, barge, boat, or other craft, which ſhall come, arrive, or be (except in caſes of ſtreſs of weather) within any of the diſtances ſo to be ſpecified as aforeſaid, having on board thereof any quantity or quantities of gunpowder exceeding five pounds weight together in the whole, or which, having come in under ſtreſs of weather, ſhall not unſhip and deliver all ſuch gunpowder within the ſpace of twenty-four hours next after the ceaſing of ſuch weather (and thereof forthwith give notice at the cuſtom-houſe to excuſe the production of ſuch certificate), ſhall forfeit and pay the ſum of 5*l.*, for each and every five pounds weight of gunpowder which ſhall be found, or which ſhall have been on board any ſuch ſhip or veſſel, lighter, barge, boat, or other craft, within any of the diſtances ſo to be ſpecified as aforeſaid, and ſo in proportion for any greater or leſs quantity; and every ſuch pilot, who ſhall wilfully and knowingly offend in the premiſes, and ſhall be thereof lawfully convicted, ſhall, for ever thereafter, be rendered incapable of acting as a pilot."

By the ſtat. 1 Will. IV. c. 44, intituled *An Act to regulate, for one year, the importation of arms, gunpowder, and ammunition into Ireland, and the making, removing, ſelling, and keeping of arms, gunpowder, and ammunition in Ireland*, reciting, 'It is expedient that provision ſhould be made for the further and more effectual attainment of the purpoſes of an act made in the third year of the reign of his late Maſteſty King George the Fourth, for regulating the importation of arms, gunpowder, and ammunition into Ireland, and the making, removing, ſelling, and keeping of arms, gunpowder, and ammunition in Ireland, which will expire at the end of this preſent ſeſſion of Parliament;' it is enacted, "That, from and after the commencement of this act, it ſhall not be lawful for any perſon to import or bring into Ireland any cannon, mortar, ordnance, blunderbuſs, gun, piſtol, or other arms, or any lock, ſtock, barrel, or other part of any gun, piſtal, or other arms, or any ſword, ſword blade, bayonet, pike, pike head, ſpear, ſpear head, weapon of war, or any part of any ſuch weapon, or any inſtrument ſerving the purpoſes of any ſuch weapon, or any cannon balls, muſket

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**GUNPOWDER.**

**1 Will. 4, c. 44.**

**Persons may land arms for personal defence, on registering the same.**

**Arms, &c., im-  
ported without li-  
cence, to be for-  
feited, as also the  
importing vessels.**

**Penalty on im-  
porter, 100%, and  
on master of ves-  
sel, 50%.**

**Offenders may be arrested, and bound before justice of peace with sureties.**

No person in Ireland shall manufacture gunpowder, or keep gunpowder, cannon, or ordnance, without an annual licence of lord lieutenant, &c.

## GUNPOWDER.

1 WHL 4, c. 44.

Penalty, 50*l.*, and  
forfeiture of gun-  
powder, &c.

No person, not li-  
censed as a manu-  
facturer, shall sell  
gunpowder with-  
out an annual li-  
cence for that pur-  
pose.

Penalty 50*l.*, and  
forfeiture of gun-  
powder, &c.

Licences shall not  
be granted to any  
persons not li-  
censed under 3  
Geo. 4, c. 4, with-  
out a certificate of  
justices at quarter  
sessions.

Licence may be  
refused, although  
such certificate be  
granted.

Licences under  
this or any former  
act may be sus-  
pended on notice  
from chief secre-  
tary to party li-  
censed.

or manufacturer of gunpowder; and if such maker or manufacturer of gunpowder shall have any office or place of delivery separate from such mills, the name of the person to whom the gunpowder shall be consigned at such office, and the place where such office is situated, shall also be set forth and described in such licence; and if any person shall, after the commencement of this act, make or manufacture any gunpowder in Ireland, without having obtained such licence as is required by this act for that purpose, or if any person not duly authorized to manufacture, or to keep, or to sell, or deal in gunpowder, shall keep in his or their custody any greater quantity of gunpowder than two pounds weight, or if any person, not licensed to keep cannon or other ordnance, shall keep any such cannon or ordnance in his or her custody, every such person shall, for every such offence, forfeit the sum of fifty pounds; and all gunpowder, and all materials for making the same, and all cannon or other ordnance, found in the possession of, or in any house or other place belonging to such offender, shall be forfeited; and it shall and may be lawful for any justice of the peace to seize, or by warrant to cause to be seized, any gunpowder (exceeding the quantity of two pounds weight), or any cannon or ordnance, in the custody or possession of any person in Ireland, unless a licence for manufacturing, or keeping, or dealing in, or selling the same respectively, duly granted and in force, shall, upon demand, be produced by the person in whose custody or possession such gunpowder, cannon, or ordnance shall be, and shall be so seized."

Sect. 5 enacts, "That, from and after the commencement of this act, no person, not being duly licensed to manufacture gunpowder as aforesaid, shall deal in or sell gunpowder, by retail or otherwise, in Ireland, unless he shall have obtained a licence for that purpose, under the direction of this act, from the lord lieutenant, or other chief governor or governors of Ireland, or his or their chief secretary, or, in his absence, the under secretary, for the time being; and such licence shall be in force for one year from the granting thereof, and no longer; and any person who shall deal in or sell gunpowder, by retail or otherwise, without having obtained such licence as is required by this act, shall forfeit, for every time such person shall sell any gunpowder, the sum of fifty pounds; and all gunpowder, and every cask or vessel in which the same shall be contained, found in the possession of such person, shall be forfeited and seized by any justice of the peace, or any person authorized thereto by warrant from any such justice."

Sect. 6 enacts, "That no licence to deal in or sell gunpowder required by this act, shall be granted to any person not having been licensed under the said act of the third year of his Majesty's reign, unless the person applying for such licence shall produce a certificate under the hands of two justices of the peace, assembled at some quarter sessions of the peace for the county, or county of the city, or county of a town in which the person requiring such licence shall reside, or at some adjournment of such quarter sessions, or under the hand of the clerk of the peace at such sessions or adjournment, in pursuance of an order made at such sessions or adjournment, setting forth that the person applying for such licence is a proper person to be licensed to deal in and sell gunpowder: provided always, that, notwithstanding such certificate or any other matter, it shall be lawful for the lord lieutenant, or other chief governor or governors of Ireland, or such chief or under secretary, to refuse such licence, if he or they respectively shall think proper so to do."

Sect. 7 provides and enacts, "That it shall and may be lawful for the chief secretary of the lord lieutenant, or other chief governor or governors of Ireland, or, in his absence, for his under secretary, for the time being, by an order in writing under his hand, from time to time, whenever, and so often as shall seem expedient, and for such period of time as shall be expressed in such order, to recall, annul, suspend, or prohibit the acting under the authority of any licence to deal in and sell gunpowder granted under this act, or under any act heretofore in force in that behalf; and the party to whom such order shall relate, shall be served with notice of the same by the delivery of a copy thereof to such party in person, or by a copy thereof being left at the

shop or warehouse of such party, and the said order being shewn to some person above the age of twelve years, of or belonging to such party; and each service shall, by the person making the same, be verified by affidavit of each person in writing, before any justice of the peace, or magistrate having jurisdiction where the party so served shall reside; and such justice of the peace is hereby authorized, empowered, and required to administer an oath for the purpose of taking the said affidavit; and such affidavit, when sworn, shall be transmitted to the chief secretary, or, in his absence, to the under secretary of the lord lieutenant, or other chief governor or governors of Ireland for the time being, together with the original order, the copy of which shall be so delivered or left; and any person so licensed and served with such order who shall, at any time whilst such order shall be in force, deal in or sell gunpowder, shall forfeit the sum of 500*l.*, and all gunpowder in the possession of such person; and such gunpowder so forfeited shall and may be seized to the use of his Majesty, by or under the warrant of any justice of the peace, or by any officer of his Majesty's revenue of customs or excise."

Sect. 8 enacts, "That whenever any maker of or dealer in gunpowder shall sell or dispose of any quantity of gunpowder to any person licensed to deal in or sell or to keep gunpowder, the person so selling or disposing of gunpowder, or his or her known clerk or manager, shall indorse on the licence of the person to whom the same shall be sold or disposed of, the quantity sold or disposed of, and the time when, and shall sign his name thereto, or shall, for every neglect therein, forfeit the sum of 20*l.*; and if any person shall sell or deliver any greater quantity of gunpowder than two pounds weight, to any person not producing a licence duly granted for the dealing in or selling gunpowder, or for the keeping of a greater quantity of gunpowder than two pounds weight, every person so offending shall, for every such offence, forfeit 20*l.*"

Sect. 9 enacts, "That it shall be lawful for the chief secretary of the lord lieutenant or other chief governor or governors of Ireland, or, in his absence, for his under secretary, upon the production of any licence for dealing in and selling gunpowder so indorsed, to grant a licence for removing and conveying the quantity of gunpowder mentioned in such indorsement to the person so selling the same to the person so licensed."

Sect. 10 enacts, "That if any person shall, within any period of two calendar months, sell or deliver to any one and the same person, not duly licensed to deal in or sell or to keep gunpowder, a greater quantity thereof than two pounds weight, every person so offending shall, for each such offence, forfeit the sum of 20*l.*"

Sect. 11 enacts, "That it shall not be lawful for any person to remove or cause to be removed from any part of Ireland, either by inland carriage or coastways, any cannon, mortar, ordnance, gun, pistol, or other arms, or any lock, stock, barrel, or other part of any gun, pistol, or other arms, or any balls or bullets, or any gunpowder exceeding the weight of two pounds, any brimstone or saltpetre, without a licence for removing and conveying the same, granted by the chief secretary of the lord lieutenant or other chief governor or governors of Ireland, or, in his absence, by his under secretary; and it shall and may be lawful for any justice of the peace or any officer, or any officer of the revenue of customs or excise, upon information on oath, to search for and seize all such cannon, mortar, ordnance, gun, pistol, or other arms, locks, stocks, barrels, or other parts of arms, balls, bullets, gunpowder, or other articles hereinbefore mentioned, which shall be in progress of removal, or shall be removed, without such licence, or without producing such licence on demand of any justice of the peace, or of any officer of excise or customs, and the same shall be forfeited to his Majesty, together with the cart, car, or other vehicle, on which the same shall be put for conveyance, and every horse or other beast employed in drawing or carrying the same, and the ship, boat, or other vessel conveying the same; and every person who caused the same to be removed shall forfeit the sum of 100*l.*

**GUNPOWDER.**

1 WILL. 4, c. 44.  
Affidavit of such service.

Penalty on selling gunpowder during suspension of licence, 500*l.* and the gunpowder.

Maker of or dealer in gunpowder, selling to a licensed dealer, shall indorse the quantity on the buyer's licence.

Penalty on selling more than 2*lb.* weight to an unlicensed person, 20*l.*

Licence for removing gunpowder bought by licensed dealer.

Penalty for selling more than 2*lb.* within two months to an unlicensed person.

Arms, gunpowder, &c., shall not be removed without licence.

Seizure of arms, &c., illegally removing.

## GUNPOWDER.

1 WILL. 4. c. 44.  
Proviso for arms  
for personal de-  
fence or sporting.

No gunpowder to  
be kept by persons  
not authorized to  
carry arms.

Makers of arms in  
Dublin and Cork  
may send out arms  
without licence  
for removal.

• Sic.

Dealers shall give  
notice of receiving  
gunpowder to ma-  
gistrate, who shall  
view the same,  
and the indorse-  
ment on the li-  
cence, &c.

Penalty on licensed  
persons procuring  
gunpowder for un-  
licensed persons.

Gunpowder mak-  
ers, within thirty  
days after com-  
mencement of act,  
and afterwards  
monthly, shall re-  
turn account of  
their stock, &c.,  
to chief secretary:

and keep books  
with accounts of  
sales, &c., to be  
inspected and stock  
examined under  
orders of chief  
secretary.

Sect. 12 provides, "That nothing herein contained shall extend, or be construed to extend, to prevent any person from carrying arms for the defence of his person, or for sporting, as by law he might before the passing of this act."

Sect. 13 enacts, "That it shall not be lawful for any person, not by law authorized to keep and carry arms, to keep any quantity of gunpowder whatever, whether such person shall or shall not have any licence relating to gunpowder; and that any person herein offending shall be dealt with as if he had not any licence."

Sect. 14 provides, "That it shall and may be lawful for any maker of and dealer in arms, in the cities or liberties of Dublin or Cork, being licensed as hereinafter mentioned, to send arms to persons in the said cities respectively, in the day time, either uncovered, or in packages conspicuously marked with the words\* 'arms,' without obtaining a licence for so removing the same."

Sect. 15 enacts, "That every person licensed to deal in or sell gunpowder shall, within forty-eight hours after receiving any gunpowder by virtue of any licence for the removal thereof, give notice of the arrival thereof to the next justice of the peace or other magistrate; and thereupon it shall be lawful for such justice or magistrate to enter into the house of such person, and to view and examine such gunpowder, and the licence for the removal of such gunpowder, and the licence of such dealer, with the indorsement made thereon by the person who sold such gunpowder; and such person shall declare and shew to such justice or magistrate, if required, all the stock of gunpowder in his or her possession; and if any such person shall not give such notice, or shall not permit such justice or magistrate to view or examine such licences respectively, or such gunpowder, or shall not declare and shew to such justice or magistrate all his or her stock of gunpowder, every such person for each such offence shall forfeit the sum of 20*l*.; and if any gunpowder, not so declared or shewn, shall be found in the possession of such person, the same shall be forfeited, and shall be seized to the use of his Majesty, by or under the order of such justice or magistrate."

Sect. 16 enacts, "That if any licence to deal in, or sell, or to keep gunpowder, shall be made use of for procuring gunpowder for the use of any other person than the person named in such licence, or if any gunpowder bought in the name of any person so licensed shall, with the knowledge of such person, be carried, brought, or delivered to any other than the person so licensed, the person so licensed shall forfeit the sum of 200*l*.; and the licence before granted to such person shall be void."

Sect. 17 enacts, "That every maker or manufacturer of gunpowder, and every person dealing as a factor or agent in selling the same, in Ireland, shall, within thirty days after the commencement of this act, return an account to the chief secretary of the lord lieutenant or other chief governor or governors of Ireland for the time being, or, in his absence, to the under secretary, of all the stock of gunpowder in his or her possession, describing the place or places where the same shall be kept, and the packages containing the same, and shall verify such return by affidavit at the foot of such return, to be sworn before any magistrate, and shall provide a book in which such quantity shall be entered; and shall, from time to time, in the first week of every calendar month, and also upon the completing the manufacture of any quantity or quantities of gunpowder, or receiving the same to be sold, (as the case may be), make a like return, verified as aforesaid, and like entry; and every such maker or manufacturer shall also enter separately in such book, an account of every parcel of gunpowder sold or disposed of, with the time when, and to whom; and it shall be lawful for any person authorized by the chief secretary of the lord lieutenant or other chief governor or governors of Ireland, or, in his absence, by his under secretary, at all reasonable times to have access to such book, and to examine the stock of such maker or seller of gunpowder, or such factor or agent, and compare and balance the same with the account kept in such book; and if it shall appear that any fraud had been committed, or that any

## Gunpowder.

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gunpowder had been sold, sent, or disposed of contrary to the provisions of this act, the person licensed shall forfeit 50*l.*, and the licence to such person shall become void, and such person shall be disabled in future to make, manufacture, or sell gunpowder."

Sect. 18 enacts, "That if any maker or manufacturer of gunpowder, or clerk or agent selling gunpowder, shall not make such returns as aforesaid, or shall not keep such book, or shall omit to make therein any entry required by this act, or shall refuse to permit any person lawfully authorized to inspect the same, or to examine the stock of gunpowder of such maker, manufacturer, factor, or agent, every such offender shall, for every such offence, respectively forfeit the sum of 20*l.*"

Sect. 19 provides, "That every person duly licensed to manufacture gunpowder may send, at any time between sun-rise and sun-set, any quantity thereof to his office or place of delivery mentioned in the licence granted to him, or to his Majesty's stores, and not elsewhere, without obtaining a licence for the carriage or removal of the same; provided that, with every quantity of gunpowder so sent, the maker or his superintendent shall send a manifest, expressing the quantity sent, and whether in barrels, half barrels, or quarter barrels, and the places from which and to which it is sent, which manifest shall be dated and signed by the maker of such gunpowder, his superintendent."

Sect. 20 enacts, "That if any greater quantity of gunpowder than what is expressed in such manifest, shall be so sent, or if the gunpowder therein mentioned shall be sent to any other place than to such office or place of delivery, or to his Majesty's stores, the same shall be forfeited to his Majesty, and the person sending the same shall forfeit 500*l.*"

Sect. 21 enacts, "That all gunpowder exceeding five pounds weight, which shall be removed from any part of Ireland, to any other part of the same, shall be made up in casks with the word 'gunpowder' marked thereon in large letters, upon pain of forfeiting the same to his Majesty; and that it shall be lawful for any person to seize and carry to his Majesty's stores, any quantity of gunpowder exceeding five pounds weight, and not made up and marked; and the person who shall have caused such gunpowder to be carried without being so made up or marked, shall forfeit, for every such offence, the sum of 500*l.*"

Sect. 22 enacts, "That no person shall make, construct, amend, repair, keep for or expose to sale in Ireland, any cannon or other ordnance, or any gun, musket, pistol, or other arms, or any lock, barrel, stock, or other part of any gun, pistol, or arms, or any bayonet, sword, sword blade, spear, spear head, pike, pike head, or instrument serving for a pike or pike head, or other military weapon, without a licence from the chief secretary of the said lieutenant or other chief governor or governors of Ireland, or, in his absence, his under secretary, which licence shall be granted to any known gunsmith or sword cutler, if it shall seem fit to such secretary or under secretary; and if any person shall make or construct, mend, alter, or repair, keep for or expose to sale, any cannon or other ordnance, or any gun, musket, pistol, or other arms, or any lock, barrel, stock, or other part of any gun, pistol, or other arms, or any bayonet, sword, sword blade, spear, spear head, pike, pike head, or instrument serving for a pike or pike head, or other military weapon, without having obtained such licence, every such article so made or repaired, shall be forfeited, and may be seized by any justice of the peace or magistrate, or officer of customs or excise, or by any person lawfully authorized thereto by the warrant of any justice of the peace or magistrate, and every such offender shall forfeit a sum of 100*l.*; and such licence shall be of force for one year, and no longer, from the time of granting thereof."

Sect. 23 enacts, "That every person who shall make, repair, or sell any cannon, ordnance, gun, pistol, or other fire-arms, or any locks, barrel, stock, or other part of any gun, pistol, or other fire-arms, or any sword, bayonet, spear head, pike head, spear, spear head, or instrument serving for a pike or pike head, or any other military weapon, shall keep a book, in which he or she shall enter or cause to be entered, a monthly account of all such articles made, sold, or repaired by such person, and to and for whom the same were

### GUNPOWDER.

1 WILL. 4, c. 44.  
Penalty.

Penalty for not making returns, &c., 20*l.*

Licensed manufacturers may send gunpowder, in the day-time, to their offices or the King's stores, with a manifest only.

Penalty on fraud by manifest, 500*l.* &c.

Gunpowder exceeding 5*lbs.* shall be removed in casks, &c.  
Penalty, 500*l.*

Yearly licences to be had for making or repairing arms.

Penalty, forfeiture of arms, and 100*l.*

Monthly account of arms sold, &c., shall be kept and returned to chief secretary.

## GUNPOWDER.

1 WILL 4, c. 44.

Books may be examined on behalf of chief secretary.

Penalty on default, &c., 20*l*.

Justice of peace may search for arms, &amp;c.

Lord lieutenant may revoke any licence.

Recovery of forfeitures, &amp;c., for use of the crown.

Lord lieutenant in council may remit penalties, &amp;c.

Commissioners, &amp;c., may restore ships, &amp;c., and remit penalties, &amp;c., under certain circumstances.

sold or repaired, and the respective times when; and shall monthly return to the chief secretary of the lord lieutenant or other chief governor or governors of Ireland, or, in his absence, to his under secretary, a copy of such account, verified on oath before any magistrate; and it shall be lawful for any person empowered for that purpose by the chief secretary, or, in his absence, by his under secretary, at all reasonable times, on demand, to have access to such book to examine the same; and if any person making, repairing, or selling any such article, shall not keep such book, or shall not truly enter therein such account as aforesaid, or shall omit to make any such return as aforesaid, verified as aforesaid, or shall not, after demand, produce such book to such person as shall be authorized as aforesaid, or shall not permit such person to examine the same, every person offending shall, for every such offence, forfeit 20*l*."

Sect. 24 enacts, "That it shall and may be lawful to and for any justice of the peace or magistrate, to enter and search, or to grant a warrant to any person or persons to be by him named to enter and search, any house, place, ship, boat, or vessel where or in which such justice or magistrate shall, from information on oath, have reasonable grounds to suspect any arms, ammunition, or gunpowder, to be deposited for any purpose contrary to this act."

Sect. 25 enacts, "That it shall and may be lawful to and for the lord lieutenant or other chief governor or governors of Ireland, at any time, by order under his hand, or signified by the chief secretary, or, in his absence, by the under secretary, to annul and make void any licence granted under this act."

Sect. 26 enacts, "That all pecuniary forfeitures inflicted by this act, shall go and be paid to the use of his Majesty, his heirs, and successors, and may be recovered by information to be filed in the name of his Majesty's attorney-general, in any of his Majesty's courts of record in Dublin; and any forfeiture of any article or thing which by virtue of this act shall and may be seized, shall be sued for, recovered, and applied in the manner and form, and by the ways and means, and with the powers and authorities prescribed, directed, or appointed in and by any law relative to his Majesty's revenue of excise, as if the same were particularly mentioned and expressed, and re-enacted in this present act, with the like remedy of appeal to and for any party who shall think him or herself aggrieved or injured, as in and by any law relating to his Majesty's revenue of excise is provided."

Sect. 27 provides, "That it shall and may be lawful for the lord lieutenant or other chief governor or governors of Ireland, at his and their discretion, to remit or mitigate any penalty or forfeiture sued for under this act, and to order the restoration of any ship, vessel, or boat, or of any arms, gunpowder, or ammunition, or other article, seized under the authority of this act."

Sect. 28 provides, "That in any case in which it shall be made appear to the satisfaction of the commissioner and assistant commissioners of customs acting in Dublin, or the collector of the customs at that port, or the collector of the customs at any other port in Ireland, that any seizure has been made of any ship, vessel, or boat, or of any arms, gunpowder, ammunition, or other article, or that any penalty or forfeiture has been incurred by the owners, or by the master or commander of any ship, vessel, or boat, or by any other person or persons, for any offence against this act, contrary to the intentions, and without the privity, consent, or concurrence of the person or persons liable in any manner to suffer by any such seizure, penalty, or forfeiture, it shall and may be lawful for such commissioner and assistant commissioners, and for any such collector of the customs as aforesaid, at the port in which such circumstances shall take place, to order any ships, vessels, or boats, to be restored in any such manner, and on such terms and conditions as such commissioner and assistant commissioners of customs, or as such collector of customs, shall think fit to direct, and also to remit or mitigate any penalty or forfeiture, as they shall see reason to acquit any party of blame in respect of such offence, or more or less to attribute the

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Commission of such offence to neglect of duty in any such party; and every forfeiture, and every penalty or part thereof so remitted, shall be null and void; and no suit or action shall be brought or maintained by any person whatever on account of any such seizure or detention, or of the imposing of any such forfeiture or penalty."

Sect. 29 enacts, "That in case any action or suit shall be commenced against any person or persons for any matter or thing done or executed in pursuance of this act, such action or suit shall be commenced within three calendar months next after the alleged cause of action shall accrue; and the plaintiff or defendants in such action may plead the general issue, and traverse this act and the special matter in evidence, on any trial to be had thereon, and prove that the same was done under the authority of this act; and if a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall become nonsuited, or discontinue his or their action or prosecution, or if judgment shall be given against such plaintiff or plaintiffs, on demurrer or otherwise, such defendant or defendants shall have double costs awarded to him or them against such plaintiff or plaintiffs."

Sect. 30 enacts, "That this act shall commence and take effect from the first day of this present session of Parliament, and shall be and remain in force for the term of one year from and after the passing thereof, and from thence until the end of the then next session of Parliament."

Sect. 31 enacts, "That this act may be altered, amended, or repealed by any act or acts to be made in this present session of Parliament."

GUNPOWDER.  
1 WILL. 4, c. 44.

Limitation of actions.

Commencement and continuance of act.

Act may be amended.

*Opposites.* See *ante*, *Egyptians*, Vol. II; *Vagrants*, Vol. V.

## Habeas Corpus (a).

- . *The Habeas Corpus Act*, 31 Car. 2, c. 2, and 56 Geo. 3, c. 100, 1077.
- . *Habeas Corpus ad Subjiciendum*, and *Proceedings on*, 1083.
- . *Habeas Corpus ad Deliberandum et Recipiendum*, and *Habeas Corpus cum Causa*, 1086.
- . *Forms*, 1086.

### The Habeas Corpus Act, 31 Car. II. c. 2, & 56 Geo. III. c. 100.

THE 31 Car. II. c. 2, is the most highly remedial act which stands upon statute book. 2 *B. & P.* 539.

The 31 Car. II. c. 2, s. 1, recites, 'Whereas great delays have been used by sheriffs, gaolers, and other officers to whose custody any of the King's subjects have been committed for criminal, or supposed criminal, matters, in taking returns of writs of *habeas corpus* to them directed, by standing

31 Car. 2, c. 2.

) As to the writ of *habeas corpus* in general, see the same fully considered, 1 *Chit. Crim. Law*, 117 to 132; *Com. Dig. Hab. Corp.*; *Bac. Ab. Hab. Corp.*



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CORPUS, &c.

31 Car. 2, c. 2.

Writs of habeas corpus within three days after service to be returned, and the body brought, if within twenty miles, &c.

Such writs, how to be marked.

Writs of habeas corpus, and the proceedings thereon in vacation time.

out an *alias* and *pluries habeas corpus*, and sometimes more, and by other shifts, to avoid their yielding obedience to such writs, contrary to their duty and the known laws of the land, whereby many of the King's subjects have been, and hereafter may be, long detained in prison, in such cases where, by law, they are bailable, to their great charges and vexation:

Sect. 2. 'For the prevention whereof, and the more speedy relief of all persons imprisoned for any such criminal, or supposed criminal, matters: it is enacted, "That whensoever any person or persons shall bring any *habeas corpus* directed unto any sheriff or sheriffs, gaoler, minister, or other person whatsoever, for any person in his or their custody, and the said writ shall be served upon the said officer, or left at the gaol or prison with any of the under officers, under keepers, or deputy of the said officers or keepers, that the said officer or officers, his or their under officers, under keepers, or deputies, shall, within three days after the service thereof as aforesaid, (unless the commitment aforesaid were for treason or felony, plainly and specially expressed in the warrant of commitment), upon payment or tender of the charges of bringing the said prisoner, to be ascertained by the judge or court that awarded the same, and indorsed upon the said writ, not exceeding 12*d.* *per* mile, and upon security given by his own bond to pay the charges of carrying back the prisoner, if he shall be remanded by the court or judge to which he shall be brought according to the true intent of this present act, and that he will not make any escape by the way, make return of such writ; and bring, or cause to be brought, the body of the party so committed or restrained, unto or before the lord chancellor, or lord keeper of the great seal of England for the time being, or the judges or barons of the said court from whence the said writ shall issue, or unto and before such other person or persons before whom the said writ is made returnable, according to the command thereof; and shall then likewise certify the true causes of his detainer or imprisonment, unless the commitment of the said party be in any place beyond the distance of twenty miles from the place or places where such court or person is or shall be residing; and if beyond the distance of twenty miles, and not above one hundred miles, then within the space of ten days, and if beyond the distance of one hundred miles, then within the space of twenty days, after such delivery aforesaid, and not longer."

Sect. 3. "And to the intent that no sheriff, gaoler, or other officer, may pretend ignorance of the import of any such writ;" it is enacted, "That all such writs shall be marked in this manner, *per statutum tricesimo primo Caroli Secundi Regis*, and shall be signed by the person that awards the same; and if any person or persons shall be or stand committed or detained as aforesaid, for any crime, unless for felony or treason plainly expressed in the warrant of commitment, in the vacation time, and out of term, it shall and may be lawful to and for the person or persons so committed or detained (other than persons convict or in execution by legal process) or any one on his or their behalf, to appeal or complain to the lord chancellor or lord keeper, or any one of his Majesty's justices, either of the one bench or of the other, or the barons of the Exchequer of the degree of the coif; and the said lord chancellor, lord keeper, justices, or barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwise upon oath made that such copy or copies were denied to be given by such person or persons in whose custody the prisoner or prisoners is or are detained, are hereby authorized and required, upon request made in writing by such person or persons, or any on his, her, or their behalf, attested and subscribed by two witnesses who were present at the delivery of the same, to award and grant an *habeas corpus* under the seal of such court whereof he shall then be one of the judges, to be directed to the officer or officers in whose custody the party so committed or detained shall be, returnable *immediate* before the said lord chancellor, or lord keeper, or such justice, baron, or any other justice or baron of the degree of the coif of any of the said courts; and upon service thereof as aforesaid, the officer or officers, his or their under officer or under officers, under

eeper or under keepers, or their deputy, in whose custody the party is so committed or detained, shall, within the times respectively before limited, bring such prisoner or prisoners before the said lord chancellor or lord keeper, or such justices, barons, or one of them, before whom the said writ made returnable, and in case of his absence, before any other of them, with the return of such writ, and the true causes of the commitment and detainer; and thereupon, within two days after the party shall be brought before them, the said lord chancellor or lord keeper, or such justice or iron before whom the prisoner shall be brought as aforesaid, shall discharge the said prisoner from his imprisonment, taking his or their recognizance, with one or more surety or sureties, in any sum according to their discretions, having regard to the quality of the prisoner and nature of the offence, for his or their appearance in the court of King's Bench the term following, or at the next assizes, sessions, or general gaol-delivery of and for such county, city, or place where the commitment was, or where the offence was committed, or in such other court where the said offence is openly cognizable, as the case shall require, and then shall certify the said writ with the return thereof, and the said recognizance or recognizances to the said court where such appearance is to be made; unless it shall appear unto the said lord chancellor or lord keeper, or justice or justices, or iron or barons, that the party so committed is detained upon a legal process, order, or warrant, out of some court that hath jurisdiction of criminal matters, or by some warrant signed and sealed with the hand and seal of any of the said justices or barons, or some justice or justices of the peace, in such matters or offences for the which by the law the prisoner is not liable."

Sect. 4 provides and enacts, "That if any person shall have wilfully neglected, by the space of two whole terms after his imprisonment, to pray a *habeas corpus* for his enlargement, such person so wilfully neglecting shall not have any *habeas corpus* to be granted in vacation time, in pursuance of this act."

Persons neglecting two terms to pray a *habeas corpus*, shall have none in vacation time, in pursuance of this act.

Sect. 5 enacts, "That if any officer or officers, his or their under officer or under officers, under keeper or under keepers, or deputy, shall neglect or refuse to make the returns aforesaid, or to bring the body or bodies of the prisoner or prisoners, according to the command of the said writ, within the respective times aforesaid, or upon demand made by the prisoner, or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver, to the persons so demanding, a true copy of the warrant or warrants of commitment and detainer of such prisoner, which he and they are hereby required to deliver accordingly; all and every the head gaolers and keepers of such prisons, and such other person whose custody the prisoner shall be detained, shall, for the first offence, forfeit to the prisoner or party grieved the sum of 100*l.*, and for the second offence the sum of 200*l.*, and shall and is hereby made incapable to do or execute his said office; the said penalties to be recovered by the prisoner or party grieved, his executors or administrators, against such officer, under officer, or deputy, his executors or administrators, by any action of debt, suit, bill, petition, or information, in any of the King's courts at Westminster, wherein essoign, protection, privilege, injunction, wager of law, or stay of prosecution by *non vult ulterius prosequi*, or otherwise, shall be admitted or allowed, or any more than one imparlance; and any recovery or judgment in the suit of any party grieved shall be a sufficient conviction for the first offence; and any after recovery or judgment at the suit of a party grieved in any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence."

Officers how to be proceeded against for not obeying such writs.

Sect. 6. "For the prevention of unjust vexation by reiterated commitments for the same offence," enacts, "That no person or persons, which shall be delivered, or set at large, upon any *habeas corpus*, shall, at any time hereafter, be again imprisoned or committed for the same offence, by any person or persons whatsoever, other than by the legal order and process of law."

Persons set at large not to be recommitted but by order of court.

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31 Car. 2, c. 2.

Persons committed for treason or felony, shall be indicted the next term, or let to bail;

and tried the term, &amp;c., after, or discharged.

The penalty for denying a habeas corpus.

of such court, wherein he or they shall be bound by recognizance to appear, or other court having jurisdiction of the cause; and if any other person or persons shall knowingly, contrary to this act, recommit or imprison, or knowingly procure or cause to be recommitted or imprisoned for the same offence, or pretended offence, any person or persons delivered or set at large as aforesaid, or be knowingly aiding or assisting therein, then he or they shall forfeit to the prisoner, or party grieved, the sum of 500*l.*, any colourable pretence or variation in the warrant or warrants of commitment notwithstanding, to be recovered as aforesaid."

Sect. 7 provides and enacts, "That if any person or persons shall be committed for high treason or felony, plainly and specially expressed in the warrant of commitment, upon his prayer or petition in open court, the first week of the term, or first day of the sessions of oyer and terminer, or general gaol delivery, to be brought to his trial, shall not be indicted some time in the next term, sessions of oyer and terminer, or general gaol delivery, after such commitment, it shall and may be lawful to and for the judges of the Court of King's Bench, and justices of oyer and terminer, or general gaol delivery, and they are hereby required, upon motion to them made in open court, the last day of the term, sessions, or gaol delivery, either by the prisoner, or any one in his behalf, to set at liberty the prisoner upon bail, unless it appear to the judges and justices, upon oath made, that the witnesses for the King could not be produced the same term, sessions, or general gaol delivery; and if any person or persons committed as aforesaid, upon his prayer or petition, in open court, the first week of the term, or first day of the sessions of oyer and terminer, and general gaol delivery, to be brought to his trial, shall not be indicted and tried the second term, sessions of oyer and terminer, or general gaol delivery, after his commitment, or upon his trial shall be acquitted, he shall be discharged from his imprisonment."

Sect. 8 provides, "That nothing in this act shall extend to discharge out of prison any person charged in debt, or other action, or with process in any civil cause, but that, after he shall be discharged of his imprisonment for such his criminal offence, he shall be kept in custody according to the law, for such other suit."

Sect. 9 provides and enacts, "That if any person or persons, subjects of this realm, shall be committed to any prison, or in custody of any officer or officers whatsoever for any criminal, or supposed criminal matter, that the said person shall not be removed from the said prison and custody into the custody of any other officer or officers, unless it be by *habeas corpus*, or some other legal writ; or where the prisoner is delivered to the constable, or other inferior officer, to carry such prisoner to some common gaol, or where any person is sent, by order of any judge of assize, or justice of the peace, to any common workhouse or house of correction, or where the prisoner is removed from one prison or place to another within the same county, in order to his or her trial or discharge in due course of law, or in case of sudden fire or infection, or other necessity; and if any person or persons shall, after such commitment aforesaid, make out and sign, or countersign, any warrant or warrants for such removal aforesaid, contrary to this act; as well he that makes, or signs, or countersigns, such warrant or warrants, as the officer or officers that obey or execute the same, shall suffer and incur the pains and forfeitures in this act before mentioned, both for the first and second offence respectively, to be recovered in manner aforesaid by the party grieved."

Sect. 10 provides and enacts, "That it shall and may be lawful to and for any prisoner and prisoners as aforesaid to move and obtain his or their *habeas corpus*, as well out of the High Court of Chancery, or Court of Exchequer, as out of the Courts of King's Bench or Common Pleas, or either of them; and if the said lord chancellor or lord keeper, or any judge or judges, baron or barons, for the time being, of the degree of the out, of any of the Courts aforesaid, in the vacation time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon

ath made that such copy or copies were denied as aforesaid, shall deny any writ of *habeas corpus*, by this act required to be granted, being moved or as aforesaid, they shall severally forfeit to the prisoner, or party grieved, the sum of 500*l.*, to be recovered in manner aforesaid."

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31 Car. 2, c. 2.

Sect. 11 declares and enacts, "That an *habeas corpus*, according to the true intent and meaning of this act, may be directed and run into any county palatine, the cinque ports, or other privileged places, within the kingdom of England, dominion of Wales, or town of Berwick upon Tweed, and the islands of Jersey or Guernsey; any law or usage to the contrary notwithstanding."

Counties palatine  
and privileged  
places.

Sect. 17 provides and enacts, "That no person or persons shall be sued, unpleaded, molested, or troubled, for any offence against this act, unless the party offending be sued, or impleaded for the same within two years, at the most, after such time wherein the offence shall be committed, in case the party grieved shall not be then in prison; and if he shall be in prison, then within the space of two years after the decease of the person imprisoned, or his or her delivery out of prison, which shall first happen."

Prosecutions for  
offences, within  
what time to be  
made.

Sect. 18. "And, to the intent no person may avoid his trial at the assizes, or general gaol delivery, by procuring his removal before the assizes, at such time as he cannot be brought back to receive his trial there," it is enacted, "That, after the assizes proclaimed for that county where the prisoner is detained, no person shall be removed from the common gaol upon any *habeas corpus*, granted in pursuance of this act, but, upon any such *habeas corpus*, shall be brought before the judge of assize in open court, who is thereupon to do what to justice shall appertain."

After the assizes  
proclaimed, no  
prisoner to be re-  
moved, but before  
the judge of assize.

Sect. 19 provides, nevertheless, "That, after the assizes are ended, any person or persons detained may have his or her *habeas corpus*, according to the direction and intention of this act."

Sect. 20 enacts, "That if any information, suit, or action, shall be brought or exhibited against any person or persons for any offence committed or to be committed against the form of this law, it shall be lawful for such defendants to plead the general issue, that they are not guilty, or that they were nothing, and to give such special matter in evidence to the jury that shall try the same, which matter being pleaded had been good and sufficient matter in law to have discharged the said defendant or defendants against the said information, suit, or action, and the said matter shall be then as available to him or them, to all intents and purposes, as if he or they had sufficiently pleaded, set forth, or alleged the same matter in bar or discharge of such information, suit, or action."

In suits for offences  
against this law,  
the defendants  
may plead the ge-  
neral issue, &c.

Sect. 21. "And, because many times persons charged with petty treason or felony, or as accessaries thereunto, are committed upon suspicion only, whereupon they are bailable, or not, according as the circumstances making out that suspicion are more or less weighty, which are best known to the justices of peace that committed the persons, and have the examinations before them, or to other justices of the peace in the county;" it is enacted,

Persons committed  
as accessaries be-  
fore, to petty trea-  
son or felony,  
shall not be re-  
moved or bailed  
otherwise than be-  
fore this act made.

"That where any person shall appear to be committed by any judge or justice of the peace, and charged as accessary before the fact to any petty treason or felony, or upon suspicion thereof, or with suspicion of petty treason or felony, which petty treason or felony shall be plainly and specially expressed in the warrant of commitment, that such person shall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act."

The 56 Geo. III. c. 100, s. 1 enacts, "That where any person shall be confined or restrained of his or her liberty (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any civil suit) within that part of Great Britain called England, dominion of Wales, or town of Berwick upon Tweed, or the isles of Jersey, Guernsey, or Man, it shall and may be lawful for any one of the barons of the Exchequer, the degree of the coif, as well as for any one of the justices of one bench or the other; and where any person shall be so confined in Ireland, it shall and may be lawful for any one of the barons of the Exchequer, or of the

56 Geo. 3, c. 100.  
Judges to issue, in  
vacation, writs of  
*habeas corpus* re-  
turnable imme-  
diately, in cases  
other than for cri-  
minal matter, or  
for debt.

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56 Geo. 3, c. 100.

justices of one bench or the other in Ireland; and they are hereby required, upon complaint made to them by or on the behalf of the person so confined or restrained, if it shall appear by affidavit or affirmation (in cases where by law an affirmation is allowed) that there is a probable and reasonable ground for such complaint, to award, in vacation time, a writ of *habeas corpus ad subjiciendum*, under the seal of such court, whereof he or they shall then be judges or one of the judges, to be directed to the person or persons in whose custody or power the party so confined or restrained shall be, returnable immediately before the person so awarding the same, or before any other judge of the court under the seal of which the said writ issued."

Non-obedience to  
such writ to be a  
contempt of court.

Sect. 2 enacts, "That if the person or persons to whom any writ of *habeas corpus* shall be directed according to the provision of this act, upon service of such writ, either by the actual delivery thereof to him, her, or them, or by leaving the same at the place where the party shall be confined or restrained, with any servant or agent of the person or persons so confining or restraining, shall wilfully neglect or refuse to make a return or pay obedience thereto, he, she, or they shall be deemed guilty of a contempt of the court, under the seal whereof such writ shall have issued; and it shall be lawful to and for the said justice or baron, before whom such writ shall be returnable, upon proof made by affidavit of wilful disobedience of the said writ, to issue a warrant under his hand and seal, for the apprehending and bringing before him, or before some other justice or baron of the same court, the person or persons so wilfully disobeying the said writ, in order to his, her, or their being bound to the King's Majesty, with two sufficient sureties, in such sum as in the warrant shall be expressed, with condition to appear in the court of which the said justice or baron is a judge, at a day in the ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she, or they are charged; and in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such justice or baron to commit such person or persons so neglecting or refusing to the jail or prison of the court of which such justice or baron shall be a judge, there to remain until he, she, or they shall have become bound as aforesaid, or shall be discharged by order of the Court in term time, or by order of one of the justices or barons of the Court in vacation; and the recognizance or recognizances to be taken thereupon, shall be returned and filed in the same Court, and shall continue in force until the matter of such contempt shall have been heard and determined, unless sooner ordered by the Court to be discharged; provided, that if such writ shall be awarded so late in the vacation by any one of the said justices or barons, that, in his opinion, obedience thereto cannot be conveniently paid during such vacation, the same shall and may, at his discretion, be made returnable in the Court of which the said justice or baron shall be a justice or baron, at a day certain in the next term; and the said Court shall and may proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as upon disobedience to any writ originally awarded by the said Court; provided also, that if such writ shall be awarded by the Court of King's Bench, or the Court of Common Pleas, or Court of Exchequer, in the said countries respectively, which last-mentioned Court shall have like power to award such writs as the respective Courts of King's Bench and Common Pleas in each of the said countries now have in term, but so late that, in the judgment of the Court, obedience thereto cannot be conveniently paid during such term, the same shall and may, at the discretion of the said Court, be made returnable at a day certain in the then next vacation, before any justice or baron of the degree of the coif, or if in Ireland, before any justice or baron of the same Court, who shall and may proceed thereupon in such manner as by this act is directed concerning writs issuing in and made returnable during the vacation."

Punishment.

Judges to make  
writs of habeas  
corpus issued in  
vacation return-  
able in court in the  
next term.

Proviso.  
Courts to make  
writs issued in  
term returnable  
in vacation.

Process of con-  
tempt may be  
awarded in vaca-  
tion against per-  
sons disobeying

Sect. 6 enacts, "That the several provisions made in this act touching the making writs of *habeas corpus*, issuing in time of vacation, returnable into the said Courts, or for making such writs, awarded in term time, returnable in vacation, as the cases may respectively happen, and also for

making wilful disobedience thereto a contempt of the Court, and for issuing warrants to apprehend and bring before the said justices or barons, or any of them, any person or persons wilfully disobeying any such writ, and, in case of neglect or refusal to become bound as aforesaid, for committing the person or persons so neglecting or refusing to jail as aforesaid, respecting the recognizances to be taken as aforesaid, and the proceeding or proceedings hereon, shall extend to all writs of *habeas corpus* awarded in pursuance of the said act passed in England in the thirty-first year of the reign of king Charles the Second, or of the said act passed in Ireland in the twenty-first and twenty-second years of his present Majesty, and hereinbefore recited, in as ample and beneficial a manner as if such writs, and the said cases arising hereon, had been hereinbefore specially named and provided for respectively."

HABEAS  
CORPUS, &c.  
86 Geo. 3, c. 100.  
writs of habeas  
corpus in cases  
within stat. 31  
Car. 2, c. 2.

## II. Habeas Corpus ad Subjiendum, and Proceedings on.

*When granted, &c.*—WHERE a party is illegally or defectively committed and entitled to be discharged or bailed by a superior jurisdiction, he may, in every instance, obtain relief by this writ of *habeas corpus*, which it seems the only remedy, as a writ of *certiorari* would be irregular. *Com. Dig. lab. Corp. (C)*; *R. v. Bowen*, 5 T. R. 158; *Nol. Rep.* 186, S. C.

When granted.

But persons accused of treason or felony, *plainly expressed* (a) on the warrant or commitment, or as accessory, or on suspicion of being accessory before the fact to any petit treason or felony, or upon suspicion of such petit treason or felony, *plainly expressed* on the warrant, cannot be bailed on a *habeas corpus*. 31 Car. II. c. 2, s. 21, *ante*, p. 1081.

By the 7 & 8 Geo. IV. c. 48, s. 17, no writ of *habeas corpus* shall be granted for prisoners for offences against smuggling and the customs, unless the objections to the proceedings be stated. See *ante*, p. 222, title *Ex-ist*.

The writ does not issue as a matter of course, but must be grounded on affidavit, upon which the Court will exercise their discretion, whether or not the writ shall issue. *Hobhouse's case*, 2 Chit. Rep. 207; 3 B. & A. 420, S. C.; see 1 Chit. Crim. Law, 123, 124. The application should be supported by her affidavits than the prisoner's. *Cald.* 246; 1 *Leach*, 255, S. C.

In the case of delay of prosecution, the Court will in general immediately discharge the prisoner on bail. *R. v. Wyndham*, 1 Stra. 4; and see the 11th section of the statute of Charles, *ante*, p. 1080; 1 *Ventr.* 346.

Ill health is not of itself a sufficient ground to induce the Court to interfere. 1 *Stra.* 4, 5; 1 *Leach*, C. L. 117; but see 1 *Stra.* 9.

If a *corpus delicti* appear on the depositions, (which the Court always look to, *R. v. Horner*, 1 *Leach*, C. C. 270), the Court will remand the prisoner, though the warrant of commitment be informal. *R. v. Marks*, 3 *East*, 2; *R. v. Greenwood*, 2 *Stra.* 1138; *R. v. Acton*, 2 *Stra.* 851; 1 B. & C. 2.

Where it is uncertain, both from the depositions and commitment, whether a treason or felony has been committed by the prisoner, if it appears that the defendant has been guilty of a great misdemeanor, the Court will require ample sureties. *And.* 64; *Comb.* 6.

If there be no warrant of commitment shewing the crime, bail will be invariably accepted; 2 *Wils.* 158; *Salk.* 347; and for this reason, among others, an offender should always be carried before a justice of the peace to be committed.

When a party is liable to be detained on a criminal charge, the Court will not inquire into the manner in which the caption was effected. *R. v. Marks*, 3 *East*, 157; *Ex parte Krans*, 1 B. & C. 258. In a late case, where an artery, against whom a true bill for perjury had been found, and a warrant

(a) What is a sufficient expression, see tit. *Commitment*, Vol. I. p. 760.

**HABEAS  
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for her apprehension granted, was apprehended abroad, and brought here in custody, and committed to prison for want of bail, the Court refused to discharge her on *habeas corpus*, on the ground that she had been improperly apprehended in a foreign country. *Ex parte Scott*, 9 B. & C. 446.

A *habeas* will not be granted to bring a party before the Court, who has been committed by the House of Lords or Commons. *Burdett v. Abbott*, 14 East, 1.

And a prisoner confined in Newgate, for high treason in North America, who is only bailable before the King's Bench or under a special commission, cannot be admitted to bail under the *habeas corpus* act, by justices of gaol delivery. *R. v. Platt*, 1 Leach, 157; *Forbes*, 101; 2 Stra. 848.

And the Court will not grant the writ to bring up a prisoner under sentence of imprisonment for a misdemeanor to enable him to shew cause in person against a rule for a criminal information. *R. v. Parkins*, 3 B. & J. 579, n.

It is said that a person committed by rule of Court cannot have this writ. *Bac. Ab. Hab. Corp.* (B 4); *Com. Dig. Hab. Corp.* (C); 8 T. R. 324.

No *habeas* lies for an alien enemy. 2 W. Blac. 1324; 2 Burr. 765.

If a writ of *habeas* be granted on the ground that the party has been illegally committed by a magistrate, the judge will not make it a part of the rule for issuing the writ, that the party shall not bring an action against the magistrate. *Ex parte Hill*, 3 C. & P. 225.

How obtained, its  
form, &c.

*How obtained, and its Form, &c.*—In term time, the writ may be obtained in the Courts of Chancery, King's Bench, Common Pleas, or Exchequer; in vacation, from the Lord Chancellor, or one of the Judges. 31 Car. II. c. 2, s. 2, *ante*, p. 1078.

The application for the writ must be in writing, attested and subscribed by two witnesses; and a copy of the warrant of commitment must be produced before the Court or judge, or an oath made that such copy was refused. 31 Car. II. c. 2, s. 3, *ante*, p. 1078. *Huntley v. Luscombe*, 2 B. & P. 530.

We have already seen that the application must be supported by affidavit, *ante*, p. 1083.

In term time, the application is made by the prisoner's counsel; in vacation, by his attorney.

When the application is made to a judge at chambers, he grants his *fiat*, upon which the clerk in court makes out the *habeas corpus*, and delivers it to the prisoner's attorney.

As to the form of the writ itself, in general, see 1 Chit. Crim. Law, 125-6. It must not be directed in the disjunctive. *R. v. Fowler*, 1 Salk. 350. It should be directed to the officer in whose custody the prisoner actually is. *Godb.* 44; *Bac. Ab. Hab. Corp.* 66. It must be subscribed by the judge awarding it. *R. v. Roddam*, Cowp. 672.

Service of writ,  
and proceedings  
on.

What to be done  
by gaoler, &c.

*Service and Return &c. of Writ, and Proceedings on*—We have already seen the provisions of the 31 Car. II. c. 2, s. 2, which require the party detaining the prisoner in custody after the writ of *habeas* has been served on the gaoler, &c., or left at the gaol or prison, (unless the commitment is for treason or felony, plainly and specially expressed in the warrant of commitment), upon payment or tender of the charges of bringing up and giving security for the charges of bringing back the prisoner, if he shall be remanded, (55 Geo. III. c. 50), and that he will not make any escape, to make return of the writ, and bring the prisoner before the lord chancellor, or lord keeper for the time being, or the judges or barons of the Court from whence the writ of *habeas corpus* issued, or the other magistrates before whom it was made returnable, and at the same time to certify the causes of the detainer, &c., within a certain time, under a heavy penalty for omission, *ante*, p. 1078.

Service on gaoler.

We have seen that the 5th section of the statute of Charles, (*ante*, p. 1079), imposes a penalty on officers not obeying writs of *habeas corpus*. The construction of this section is, that, if the governor of the gaol be present, there is then no deputy or under-keeper on whom a service of the demand can

*Habeas Corpus ad Subjiciendum, &c.***HABEAS  
CORPUS, &c.**

1.] e made; but if the governor be not present, then the deputy may be served; and if the deputy have no deputy, then, in the absence of the deputy, service may be on the turnkey, or may be left at the gaol: for it is the duty of the governor to leave some person in his place. But if the gaoler be in the gaol, and accessible, the demand must be made on him; if he be not accessible, it may be on the deputy. And, at all events, the demand should be served in such a way that the person to whom it is delivered shall understand its nature; and where the principal is (as in this case he was) within the gaol, some pains should be taken that it should come to his hands. *Huntley v. Luscombe*, 2 B. & P. 530.

When the body is returned by the officer to whom the writ is directed, he is to certify the day and cause of the caption (a) and detainer, as in case of an excuse for not bringing the individual. *Vaugh.* 137; *Bac. Abr. Hab. Corp.* (B 9). At the same time, the magistrate, in obedience to a *certiorari* usually issued from the crown office with the *habeas corpus*, returns the depositions upon which the commitment was founded, in order that the Court may be furnished with the means of judging in what way they should dispose of the prisoner. 3 *East*, 157. But where the party is in custody under the sentence of a Court of competent jurisdiction to try his offence, it is sufficient to return that fact, without stating the particulars of the original charge against him; 1 *East*, 306; nor, if the commitment were made out by order of a Court of record, is it necessary to set it forth in its precise language, as must be done when it is merely given under the hand of an individual magistrate. 3 *Salk.* 92; 1 *Chit. C. L.* 127. The return will not be invalid for mere want of form, if it disclose a good cause of detainer. *R. v. Bethel*, 5 *Mod.* 19. The return should always shew a good cause of detainer, and, in some cases, the proof. *R. v. Nash*, 4 B. & A. 295; *R. v. Dey-el*, *Id.* 243; *R. v. Souden*, *Id.* 294.

The return to writ.

A neglect to make the return may be prosecuted by attachment; *R. v. Winton*, 5 *T. R.* 89; or, if the return be false, by an action at the suit of the prisoner, or by indictment. *Salk.* 349; *Bac. Abr. Hab. Corp.* 6.

Neglect to return.

The truth of the return, in criminal cases, cannot be controverted. 2 *Hawk. P. C.* 113. It may in civil cases, as in an information in the Exchequer, for penalties for smuggling, &c. *Ex parte Beeching*, 6 *D. & R.* 209; *B. & C.* 136, S. C.

Truth of return.

Upon the return, the prisoner's counsel may move to file it, and to have the prisoner called into Court and the return read, and, after which, the counsel may argue for the prisoner's discharge. The judge before whom the prisoner is brought is, within two days, to discharge him from imprisonment, on proper sureties for his appearance, if the cause be bailable, and if it be not, then he is to remand him.

Filing return, &c.

Moving to discharge.

It has been ruled, that the King's Bench may remand him to the same gaol from whence he came, and order him to be brought up from time to time, until they have determined to discharge or detain him; *Bac. Abr. Hab. Corp.* 13; or may, during a reasonable time, bail the prisoner *de die in diem*, until they have come to a decision. 5 *Mod.* 19; *Bac. Abr. Hab. Corp.* (B 13).

Remanding accused.

Where the Court think, upon hearing the affidavits on his behalf, that there is probable ground for his being discharged or bailed for a felony, if he be unable to defray the expense of being brought to Westminster for that purpose, the Court will grant a rule to shew cause why he should not be bailed by a magistrate in the country, with a *certiorari* to return the depositions before them. 1 *B. & A.* 209; 6 *M. & S.* 108.

Bailing by magistrate in country.

If the Court or judge determine that the party shall be released from custody, he must thereupon enter into a *recognizance* to appear on his trial; and the writ, the return, and the recognizance must be certified into the Court where the trial is to take place. 31 *Car. II. c. 2, s. 3, ante*, p. 1078.

Recognizance, &c.

The number, sufficiency, and amount of bail in general, have been already

Bail.

(a) *Sed quare* if the cause of the caption need be shewn, see 9 *B. & C.* 447.





(No. 2).

*WILLIAM the Fourth, by the grace of God of the united kingdom of Great Britain and Ireland King, defender of the faith, To the keeper of our gaol of , at , his deputy, greeting.*

Writ of habeas corpus.

*We command you, that you have before us at Westminster-hall, immediately after the receipt of this writ, the body of C. D., being committed and detained in our prison under our custody (as is said), together with the day and cause of the taking and detaining of the said C. D., by whatever name the said C. D. be called in the same, to undergo and receive all and singular such things as our court shall then and there misder of him in that behalf, and that you have then there this writ. Witness Charles Lord Tenterden, at Westminster, the day of , in the year of our reign. By the court,*

(No. 3).

[Indorsed on the writ as follows:—*The execution of this writ appears in a certain schedule hereunto annexed.*

*E. F., Keeper.*

Return to writ of habeas corpus.

*I, E. F., keeper of his Majesty's gaol of , at , in the writ to this schedule annexed named, do certify and return to our sovereign lord the King, that, before the coming to me of the said writ, (that is to say) on, &c., C. D., in the said writ also named, was committed to my custody, by virtue of a certain warrant of commitment, the tenor of which is as follows: [here insert a copy of the warrant]. And these are the causes of the detaining of the said C. D., whose body I have here ready, as the said writ I am commanded.*

*E. F., Keeper.*

(No. 4).

*WILLIAM the Fourth, by the grace of God of the united kingdom of Great Britain and Ireland King, defender of the faith, to C. D. and E. F., esquires, two of our justices assigned to keep our peace in and for our county of , and also to hear and determine divers felonies, trespasses, and other misdemeanors committed within the said county, and to every of them, greeting.*

*We being willing for certain reasons that all and singular informations, examinations, and depositions, taken by and remaining with you, or either of you, in a certain case of felony, or suspicion of felony, charged against C. D., and for which you, one of you, have committed the said C. D. to the prison of , as it is said, be at by you before us, do command you, and every of you, that you, or one of you, do send us, immediately after the receipt of this our writ, all and singular the said informations, examinations, and depositions, with all things touching the same, as fully and perfectly as they have been taken before you, and now remaining in your custody, whatsoever name the said C. D. is called in the same, together with this writ, that may further cause to be done therein what of right and according to the law and custom of England we shall see fit to be done. Witness Charles Lord Tenterden, at Westminster, the day of &c.*

*By the court, indorsed at the instance of the within-named defendants, by rule of writ.*

Certiorari to two committing justices to certify information, examination, and depositions upon which prisoner was committed.

(No. 5).

The return of the justices to the above writ of certiorari may be made by the following indorsement on the writ:

*"The execution of this writ appears in a schedule to the same writ annexed," which schedule may be on a piece of parchment by itself, and annexed to the writ, in the following words:*

*[Kent.]—We, C. D. and E. F. esquires, two of the justices of our lord the King assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the same county committed, by virtue and in obedience to, this writ to us directed and delivered, do, under our respective seals, certify unto his Majesty, in his Court of King's Bench, the informations, examinations, and depositions, of which mention is made in the same writ, together with all matters touching the said charge in the said writ mentioned, and which said information, examination, and depositions, are hereunto annexed and marked A., B., D., &c. In witness whereof we, the said C. D. and E. F., have, to these presents, our respective seals. Given at &c., the day of, &c.*

*C. D. (l. s.)*

*E. F. (l. s.)*

Return of justices to such writ

The information, examination, and depositions, are then to be inclosed within the schedule, and sealed up together with the writ of certiorari.

## FORMS.

(No. 6).

N. vice of bail at  
the judge's cham-  
bers.

Take notice, that C. D., now a prisoner in his Majesty's goal of Maidstone, in and for the county of Kent, on a charge of [as the charge may be], will be brought up by virtue of his Majesty's writ of habeas corpus before the honourable Sir J. B., one of the justices of his Majesty's Court of King's Bench, on &c., by o'clock in the forenoon of the same day, at [his chambers in Serjeant's Inn, Chancery Lane, London], or before such other of the judges of the said Court of King's Bench, who shall be then present, in order to the said C. D. being admitted to bail for his personal appearance at the next session of oyer and terminer and general goal delivery to be held in and for the county of K., then and there to answer all such matters and things as shall be objected against him in his Majesty's behalf; and the names of the bail are E. F. of &c., G. H. of the same parish, gentleman, J. J. of &c., and K. L. of &c. Dated this, &c.

Yours, &c. M. N. Attorney for the said C. D.

To A. B., of &c. the prosecutor, and also to J. P., of &c.

## Hackney Coaches, &c.

[9 Ann. c. 23; 10 Ann. c. 19; 1 Geo. I. st. 2, c. 57; 4 Geo. III. c. 36; 7 Geo. III. c. 44; 10 Geo. III. c. 44; 11 Geo. III. c. 24, c. 28; 12 Geo. III. c. 49; 24 Geo. III. sess. 2, c. 27; 26 Geo. III. c. 72; 32 Geo. III. c. 62; 39 & 40 Geo. III. c. 47; 42 Geo. III. c. 78; 48 Geo. III. c. 87; 54 Geo. III. c. 147; 55 Geo. III. c. 159; 57 Geo. III. c. 125].

BY stat. 9 Ann. c. 23, s. 1, the King may appoint five commissioners for regulating hackney coaches within the bills of mortality.

Which commissioners shall, under hand and seal, license hackney coaches within the cities of London and Westminster, and suburbs thereof, and other places within the bills of mortality, not exceeding one thousand, (and by stat. 42 Geo. III. c. 78, one hundred additional); and on every licence shall be reserved 5s. a-week, (and by stat. 24 Geo. III. sess. 2, c. 27, s. 1, an additional duty of 5s. a-week), to be paid monthly.

By 9 Ann. c. 23, s. 3; 10 Ann. c. 19, s. 158; 12 Geo. I. c. 12, s. 15; they shall also license hackney chairs within the said liberties, not exceeding four hundred; reserving a rent of 10s. a year, to be paid quarterly.

By 54 Geo. III. c. 147, s. 15, they may license one thousand one hundred hackney carriages, of which two hundred may be *chariots*, and the remainder *coaches*.

By 55 Geo. III. c. 159, s. 2, they may, with the consent of the lords of his Majesty's treasury, or any three of them, license two hundred hackney chariots, in addition to the number allowed by 54 Geo. III. c. 147, s. 15.

By 55 Geo. III. c. 159, s. 4, they may, with the consent and approbation, in writing, of the lords of his Majesty's treasury, or any three of them, license any number of carriages with two wheels, and drawn by one horse, as shall be specified in such approbation; the said *chariots* and *carriages with two wheels* to be subject to the same licences, orders, rules, regulations, penalties, forfeitures, &c., as hackney coaches are liable to, either by this or any other act relating thereto.

By stat. 57 Geo. III. c. 125, s. 1, the party holding a licence may drive either a hackney coach or chariot under the same licence, provided he do not drive more than one carriage under the same licence at the same time.

Sect. 2 enacts, "That if any holder of a licence already or in future to

9 Ann. c. 23.  
Commissioners

Licensing and  
duty.

Number of hack-  
ney coaches,  
&c.

Cabriolets.

Same licence to  
serve for a coach  
or chariot.

Holder of licence

be duly granted by the commissioners of hackney coaches for the time being, or the major part of them, to drive a hackney coach or chariot, shall, from and after the passing of this act, use or drive, or cause to be used or driven for hire, under such licence, more than one carriage, (whether coach or chariot), at one and the same time, within the cities of London or Westminster, or the suburbs of the same respectively, or any of the parishes or places comprised within the weekly bills of mortality, or any other place or places within which, by any of the laws now in force, hackney coaches and chariots are to be driven, he or she shall, upon being thereof convicted, on the oath of one or more credible witness or witnesses, before the major part of the said commissioners, forfeit and pay, for every such offence, a penalty not exceeding 10*l.*, in the discretion of the major part of the said commissioners; one half of which forfeiture and penalty shall go to his Majesty, and the other half to the informer, to be levied and recovered as any penalty may be levied and recovered under any act of Parliament relating to hackney coaches; or otherwise it shall be lawful for the major part of the said commissioners to revoke the licence of the person so offending."

By stat. 9 Ann. c. 23, s. 4, no person shall drive or let to hire any hackney coach, without licence, on pain of 5*l.*; nor shall carry any person, for hire, in a hackney chair, without licence, on pain of 40*s.*, in like manner (a).

## HACKNEY COACHES, &c.

57 Geo. 3, c. 135.  
driving more than one carriage at the same time.

Penalty.

Penalty for driving, &c., without licence.

(a) Letting horses, to be used in a gentleman's coach, is not within these acts. *Billings v. Eads*, 2 *Ld. Raym.* 214; *Salk.* 612, S. C.

A stage coachman, by suffering a passenger to leave the coach before he gets out of the bills of mortality, is not within these acts if he takes the whole fare. *v. Betts*, 2 *Ld. Raym.* 1506; 1 *Sees.* 352, S. C.

And to subject a party to the penalties for using a hackney coach without a licence, within the 9 Anne, c. 23, s. 4, and 1 Geo. I. st. 2, c. 57, s. 3, he must profess to act as a *hackney coachman*; and where a stage coachman took up a passenger in the streets, he having booked his fare, and paid it to Kensington, and on arriving at Hyde Park corner, he got out of the coach, and did not proceed further in it, the stage coachman was held not liable. *Cloud v. Turfery & Abbott*, C. P. 2 *Bing.* 318; 9 *Moore*, 595 S. C. his was trespass for seizing and detaining a coach and two horses. Plea—general issue. At the trial a verdict was found for the plaintiff, subject to the opinion of the Court upon the following case:—The plaintiff was the owner of a stage coach duly licensed by the Commissioners of stamps to carry passengers between London and Hammersmith; and the defendant *Turfery* was a messenger to the Commissioners for licensing and regulating hackney coaches. On the 21st April, 1820, the driver of plaintiff's coach took up in *St. Paul's Church Yard*, from which place the coach sets out in London, to proceed towards Hammersmith, one *Lindsay*, who resided in *Queen's Street*, *May Fair*, and who had previ-

ously, at the coach-office of the plaintiff, booked his place, and paid his fare for the whole distance to *Kensington*. When the coach arrived at *Hyde Park Corner*, *Lindsay* desired to be set down, and was set down accordingly. He had not previously made known to the driver of the coach his intention of proceeding no further than *Hyde Park Corner* on that day, but he had on former days been set down in like manner, always booking a place, and paying the full fare to *Kensington*. On the following day, the driver in like manner conveyed the same person, under precisely the same circumstances. The plaintiff's coachman, who so drove *Lindsay*, had been previously warned by the commissioners for regulating hackney coaches, that he was acting illegally in conveying *Lindsay*, as well as others, from place to place within the paved streets. On the 17th June, 1820, the defendant *Turfery*, under and by virtue of two warrants of distress, respectively under the hands and seals of the commissioners for licensing and regulating hackney coaches, and bearing date respectively the 16th of June, 1820, seised and levied as a distress for certain penalties under two convictions, a coach and two horses belonging to the plaintiff, and drove them to, and left them at, the stable-yard of the defendant *Abbott*, in *Drury Lane*, where they were detained by *Abbott* until the plaintiff, to repossess himself thereof, was obliged to pay to the defendants the amount of the two penalties claimed, viz. 10*l.*, together with 1*l.* 2*s.* as costs of the said warrants of distress. The defendants, under the general issue, gave in evidence two con-

HACKNEY  
COACHES, &c.  
Hearnes, &c.

And by stat. 1 Geo. I. st. 2, c. 57, s. 3, no unlicensed person shall ply with any coach or hearse, or shall let to hire any mourning coach, within the liberties aforesaid, on pain of 5*l*., as for driving unlicensed.

Form of conviction.

victions precisely similar to each other, except that in the first the offence was laid on the 21st of April, 1820, and in the second it was laid on the 22nd of April, 1820. The following is a copy of the first of the convictions:—"Be it remembered, that, on the 12th day of May, in the first year of the reign of our sovereign lord George the Fourth, by the grace, &c., in Essex Street, in the parish of St. Clement's Danes, in the county of Middlesex, Sarah Anne Quaife, of Essex Street aforesaid, cometh in her own proper person before us, the major part of the commissioners nominated and appointed by his Majesty's commission under the Great Seal of Great Britain, for the licensing and regulating hackney coaches and chairs, and now here giveth us, the said commissioners, to understand, that one George Cloud, of Hammersmith, in the county of Middlesex, coach-master, heretofore, to wit, on the 21st day of April, in the year of our Lord, 1820, and in the first year of the reign of his said Majesty, the said George Cloud, not then and there being licensed by the commissioners aforesaid, or the major part of them, so to do, did drive and let to hire a certain coach, and divers, to wit, two coach horses, from St. Paul's Church Yard, in the parish of St. Faith, in the city of London, to Piccadilly, in the parish of St. George, Hanover Square, in the liberty of the city of Westminster, in the county of Middlesex, the first mentioned place, to wit, St. Paul's Church Yard, in the parish of St. Faith, then and there being within the bills of mortality, and within and upon the paved streets of London, and the said next mentioned place, to wit, Piccadilly, in the parish of St. George, Hanover Square, in the liberty of the city of Westminster, then and there being within the bills of mortality, and within and upon the paved streets of Westminster, contrary to the form of the statutes in such case made and provided; whereupon the said George Cloud being duly summoned to appear before us, the said commissioners, in Essex Street, in the county of Middlesex aforesaid, to make his defence against the said charge contained in the said information, appeared before us by one Richard Cloud, his agent in that behalf, on the day and year first above mentioned, and having heard the same, the said Richard Cloud, as such agent as aforesaid, is asked by us, the said commissioners, if he can say any thing for

and on behalf of the said George Cloud, why the said George Cloud should not be convicted of the premises above charged upon him, in form aforesaid: who pleadeth and saith, that the said George Cloud is not guilty of the premises, and ought not to be convicted thereof, but he doth not shew to us why the said George Cloud should not be convicted of the offence in the said information above contained against him; and further, at the said time and place, (that is to say), at Essex Street aforesaid, one credible witness, to wit, John Gibbs, of the parish of Lambeth, in the county of Surry, yeoman, came before us, and in the presence of the said Richard Cloud, who appeared, as aforesaid, on behalf of the said George Cloud, the said John Gibbs, upon his oath on the Holy Gospel of God, to him then and there by us administered (we being duly authorized and empowered to administer the said oath), depose and saith, that a driver of the said coach, in the employ of the said George Cloud, on the said 21st day of April, in the year aforesaid, did drive to hire a certain coach and two coach horses, from St. Paul's Church Yard, in the parish of St. Faith aforesaid, in the city of London aforesaid, to Piccadilly, in the parish of St. George, Hanover Square, within the liberty of the city of Westminster aforesaid, in the county aforesaid, the same places then and there respectively, as aforesaid, being within or on the paved streets of London and Westminster, as aforesaid; and that the said John Gibbs then and there saw the driver of the said coach of the said George Cloud take up in the said coach, which he was then and there driving, at St. Paul's Church Yard aforesaid, in the parish of St. Faith aforesaid, in the city of London aforesaid, a certain person, whose name is as yet unknown; and that the said driver of the said coach of the said George Cloud then and there carried and conveyed the said person in the said coach, for hire, from St. Paul's Church Yard aforesaid, in the parish of St. Faith aforesaid, in the city of London aforesaid, to Piccadilly aforesaid, in the parish of St. George, Hanover Square, in the liberty of the city of Westminster aforesaid, in the said county; and upon hearing and duly examining the whole matters aforesaid, it manifestly appeareth to us, that the said George Cloud is not licensed by us, and that he is guilty of the premises above

By stat. 24 Geo. III. st. 2, c. 27, s. 7, if any person shall drive a mourning coach or hearse to a funeral, within the cities of London or Westminster,

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COACHES, &c.  
24 Geo. 3, c. 27.

charged upon him in and by the information aforesaid; therefore the said George Cloud, on the said 12th day of May the first year &c. aforesaid, before the commissioners aforesaid, by the testimony of the said John Gibbs, a credible witness as aforesaid, according to the form of the statutes in such case made and provided, is convicted of the offence aforesaid, and hath forfeited the sum of 5*l.* of lawful money of Great Britain, to be distributed as the law directs. In witness whereof, we, the said commissioners, to this present record of conviction, have set our hands and seals, Essex Street aforesaid, in the county of Middlesex, the said 12th day of May, the said first year of the reign of our said lord the King that now is."—The petition for the opinion of the Court is, "Whether the plaintiff was entitled to recover? If the Court should be of that opinion, the verdict was to stand; if the Court should be of a contrary opinion, a nonsuit was to be entered." Counsel for plaintiff were stopped by the Court. Argument for the defendants.—The plaintiff has clearly been guilty of an offence under stat. 9 Ann. 23, s. 4, and 1 Geo. I. c. 37, s. 1. By the first of those statutes, a monopoly was given to the licensed owners of hackney coaches within the cities of London and Westminster, upon the consideration of a certain rent, certain regulated fares, and various rules, by-laws, and penalties, to which they were subjected; it would, therefore, be a great injustice if they were exposed to the competition of other coaches. [*Gaselee*,—Before you are let in to argue the merits, you must support the conviction. The thing prohibited in 9 Ann. is the letting, or letting to hire, any hackney coach, without being duly licensed; but the conviction nowhere states that the plaintiff drove, or let to hire, a hackney coach]. Within the spirit of that act, for the necessary protection of hackney coach owners, any coach must be licensed as a hackney coach, in which the driver conveys persons from street to street for hire, and this the driver appears to have done in the plaintiff's coach: besides, he is alleged to have let to hire coach horses, which the act also prohibits; but by 1 Geo. I. he is liable to a penalty, if he drives for hire with a coach whatever, unless previously licensed by the hackney coach commissioners. [*Burrough*, J.—The information alleges that the driver of the plaintiff did drive to hire a certain coach, and

conveyed a person in the coach for hire, instead of alleging, according to the words of the act, that he drove for hire with a coach]. It is clear, from the whole case, that the plaintiff knew that he was infringing the rights of the hackney coachmen; and, in an action like the present, the Court will decide on the merits of the case, and not on the technical language of the conviction. Stat. 55 Geo. III. c. 185, s. 11, 12, only allows the drivers of stages to take up passengers in the streets, for the places of their ultimate destination. *Per Best*, C. J.—If the conviction is not strictly regular, and our judgment is to go against the plaintiff, a man may be punished who is in law unconvicted of any offence. He may have done that which has rendered him liable to a conviction, but unless that conviction is legally and regularly obtained, execution must not ensue. Now, the conviction, to be good, must pursue not only the words, but the spirit of the act of Parliament. This has not been done in the present instance, either with reference to the statute of Anne, or that of Geo. I. The fact is, as it has been stated, that licensed hackney coachmen were allowed to claim a monopoly, in respect of certain rents which they paid to government for the same; and the statute of Anne was passed to prevent others, who were not thus licensed, from interfering with their business; clearly, however, the statute was not intended to apply to stage coaches, which, in driving along, might take up and put down their passengers in the streets. According to the words of the act, the party, to make himself liable, must profess to act as a hackney coachman, which, in this case, he did not profess, but, on the contrary, is stated to have made a contract perfectly legal, and which he was bound, if called on, to make. Under this contract he was conveying a passenger to Kensington, but, on the road, that passenger wished to alight, and I know of no law which gives the coachman the power of forcing him to go on. With respect to the statute of Geo. I. there is a fatal variance between the words of the act and the information, in which it is nowhere stated that the plaintiff drove for hire. I am therefore of opinion, that the conviction cannot be supported on either of these statutes, and that stat. 55 Geo. III. has no reference to the matter at all; the conviction is consequently bad, and the plaintiff is entitled to recover. Judgment for the plaintiff.

**Hackney Coaches, &c.**

**HACKNEY  
COACHES, &c.**  
24 Geo. 3, c. 27.

Carts, &c., within  
the bills.

ster, or the suburbs thereof, or elsewhere within the bills of mortality, or within five miles of Temple Bar, without having a number fixed on the fore standard, shewing it to be licensed, he shall forfeit 5*l*. And on information given to the commissioners, they may summon the driver thereof, and, although no express hiring shall be proved, it shall be adjudged a driving for hire.

Sect. 8. No person shall drive any cart, car, dray, or other such like carriage within the limits aforesaid, or within the borough of Southwark, except the owner thereof shall have entered his name and place of abode with the said commissioners, and also caused his name, and the number of such carriage, to be put upon some conspicuous part thereof; and in case of neglect or refusal, every such owner or driver of such carriage, so residing and driving within the limits aforesaid, shall be liable to all the penalties and forfeitures created by any laws now in being relative to the owners or drivers of such like carriages.

But in *R. v. Powell*, 4 *T. R.* 572, it was determined that the owner of a cart, who does not *reside* within the bills of mortality, or within five miles of Temple Bar, need not enter his name and place of abode with the commissioners of hackney coaches, or have his name or any number upon the cart, though it be driven within those limits.

Stage coaches.

The 55 Geo. III. c. 185, s. 11 & 12, allow the drivers of stage coaches to take up passengers in the streets, for the places of their ultimate destination.

Using a hackney  
coach as a stage  
coach.

By stat. 12 Geo. III. c. 49, s. 2, no person who shall regularly use such hackney coach as a *stage coach* to and from any of the towns or places in the neighbourhood of London or Westminster, shall be obliged to carry any fare out of the ordinary course of his stage work or duty; provided that he do, by painting in legible characters on the door of such coach, or on a board to be affixed on such door, plainly denote and distinguish the same to be a stage coach to and from any such town or place.

Plying for hire  
when returning to  
town.

By stat. 48 Geo. III. c. 87, s. 5, every hackney coachman discharged in the country, and plying for and picking up promiscuous passengers, thereby converting their hackney coaches into stages, shall, for every such offence, incur a penalty of not exceeding 3*l*., nor less than 20*s*.

No coach to ply  
for hire in New  
or Old Bond  
street (a).

By stat. 32 Geo. III. c. 62, s. 23, no person shall stand and ply for hire with any hackney coach, within either New or Old Bond Street, in the parish of St. George, Hanover Square; and if any person shall drive, stand with, and ply for hire with any such coach in either of the said streets, he shall, on conviction, on the oath of one witness, within seven days, either before the commissioners or one justice, forfeit not exceeding 40*s*. nor less than 10*s*. half to the informer, and half to the poor of the said parish; which, if not paid, such offender shall be committed to the house of correction to hard labour, not exceeding one month, nor less than seven days, unless such penalty be sooner paid.

Size of horses

By 9 Ann. c. 23, s. 4, no horse to be used with any hackney coach shall be under fourteen hands high.

Mark.

And by sect. 4, every coach and chair shall have a distinct mark on each side; and if any shall alter such mark, he shall forfeit 5*l*., half to the informer, and half to the King.

Regulation of  
numbering.

Stat. 55 Geo. III. c. 159, s. 7, empowers the commissioners to regulate the number and mode of distinction to be adopted by each coach and chariot; and enacts that every owner who shall neglect to comply therewith, shall be subject to the revocation of his licence, or shall forfeit any sum not exceeding 10*l*., at the discretion of the commissioners; and that in case of non-payment the same may be levied by distress.

(a) Where a paving act authorized the commissioners to direct and regulate the hackney coach stands within their district, it was held they might re-

move it altogether, if it obstructed the public street. *R. v. Rawlinson*, 4 *D. & R. M. C.* 186.

## Hackney Coaches, &c.

1093

By stat. 11 Geo. III. c. 28, s. 2, the commissioners shall order the several persons who take out licences for hackney coaches, that they provide check strings or wire, to be placed in such convenient part of every such coach as the said commissioners shall seem meet; and every hackney coachman, lying for hire without such check string, or wire, shall forfeit 5s., to be recovered as other penalties by any law relating to hackney coaches.

**HACKNEY  
COACHES, &c.**  
Drivers to have  
check strings.

By stat. 39 & 40 Geo. III. c. 47, s. 4, the commissioners shall appoint persons to inspect licensed hackney coaches and the horses: such inspection to be made four times at least in each year, and also as often as the commissioners shall appoint; the report of the same as to their state and condition to be made to the commissioners. The commissioners may suspend the licence where the coach shall be found defective as to repair, safety, or cleanliness, or the horses unfit or insufficient, till the same be rectified.

Inspection.

Stat. 55 Geo. III. c. 150, s. 11, enacts, "That in case any driver of any hackney coach or chariot shall leave his coach or chariot at any theatre, or other place of public resort or entertainment unattended, whether he shall be hired or not, it shall and may be lawful for any inspector of hackney coaches, officer of police, constable, or other peace officer, watchman, or constable, to drive away such coach or chariot, and deposit the same at the nearest place of deposit; and the driver of such hackney coach shall be subject and liable to a penalty not exceeding 5*l.*, to be levied in case of non-payment, by distress upon the goods and chattels of the offender."

Leaving coach unattended.

By 48 Geo. III. c. 87, s. 6, no such (hackney) coachman shall be compellable to carry more than four adult persons inside, and a servant outside, at one time; and shall have 1*s.* above the regular fare for every additional adult person over that number; and if he shall drive into the country, and there wait, and return with any additional adult person, whom he shall hire to carry, and shall carry, and after waiting return with, he shall have 1*s.* for going, and 1*s.* for returning, above his regular fare.

Penalty.

Number of persons to be carried

And stat. 54 Geo. III. c. 147, s. 14, after reciting stat. 48 Geo. III. c. 87, s. 6, 'And whereas doubts have arisen as to what shall be termed an agreement to carry, and also as to the word adult in the said act;' enacts, "That from and after the passing of this act, every hackney coachman may refuse to carry more than four adult or grown up persons (and not being children in arms or lap) in his coach, and a servant outside, at one and the same time, and shall not at any time be compellable to carry above that number of such persons; but if he shall agree to carry, or shall actually carry above that number of such persons in his coach at one and the same time, he shall be entitled to demand, and to receive, and be paid for every such additional person, of whatever age he or she may be (not being a child in arms or lap), whom he shall so agree to carry, or shall actually carry, 1*s.* over and above his regular fare, under the circumstances, and as allowed by the said act."

In coaches;

And stat. 55 Geo. III. c. 159, s. 3, enacts, "That no owner or driver of any hackney chariot shall be compellable or compelled to carry more than two persons (not being children in arms or lap) in his chariot, and a servant on the outside at the same time; but every owner or driver of any hackney chariot who shall actually carry any greater number shall be entitled to demand, and to receive for every such additional person (not being a child in arms or lap) the sum of 1*s.* over and above his regular fare; and if he shall carry any such additional person into the country, and bring the same or any other additional person back again, shall be entitled to demand and receive, over and above his regular fare, the sum of 1*s.* for going into the country, and the sum of 1*s.* for returning; any thing in any act or acts of Parliament relating to hackney coaches, to the contrary notwithstanding."

In chariots;

sect. 4, enacts, that no owner or driver of any two-wheeled carriage shall be compellable to carry more than two persons. *Post*, 1094.

In two-wheeled  
carriages.

By stat. 48 Geo. III. c. 87, the former fares on hackney coaches are re-ferred; and by schedules (A), (B), other fares are to be taken in lieu thereof.

Fares.

By sect. 1, hackney coachmen may demand and take for the hire of any



**HACKNEY  
COACHES, &c.**

48 Geo. 3, c. 87.  
How to be calcu-  
lated.

Hackney coaches  
to go the distances  
specified in 32 Geo.  
3, c. 47, and 39 &  
40 Geo. 3, c. 47,  
within the periods  
specified.

48 Geo. 3, c. 87, s.  
4, repealed.  
Additional fares.

Going off the  
stones after certain  
hours.

Going into the  
country.

Proviso.

Additional fares  
allowed according  
to the price of  
oats.

Luggage.

Cabriolets drawn  
by one horse li-  
censed.

Duty on licences.

Fares of.

hackney coach the rates and fares described in either of the schedules (A) or (B) to this act annexed, calculating either according to time or distance as such coachman may please.

Sect. 2. The fares shall be calculated only by the hour or mile, and not by the day.

Sect. 3. Reciting that whereas the period of sunset has been liable to dispute, it is enacted, that hackney coachmen shall be compellable to go on every day of the week, after eight in the evening, between Lady Day and Michaelmas Day, and after five in the evening, between Michaelmas Day and Lady Day, the distances, and under the circumstances mentioned in stats. 32 Geo. III. c. 47, and 39 & 40 Geo. III. c. 47.

Stat. 55 Geo. III. c. 159, s. 5, after repealing so much of stat. 48 Geo. III. c. 87, as relates to additional fares when hackney coaches are driven into the country, enacts, "That, from and after the passing of this act, such additional fares shall be, and the same are hereby repealed; and that from henceforth the several additional fares after mentioned shall be payable and paid; that is to say, in case any hackney coach or chariot shall be hired in any part of the cities of London and Westminster, or the suburbs thereof, the borough of Southwark, or any place adjoining thereto, where there is a regular continuation of carriageway pavement, or at any standing for hackney coaches or chariots beyond any such regular continuation of carriageway pavement, and discharged after the hour of seven in the evening, between the periods of Michaelmas Day and Lady Day, and after the hour of nine in the evening, between the periods of Lady Day and Michaelmas Day, at any place where there is not a regular continuation of carriageway pavement as aforesaid, there shall or may be demanded over and above the ordinary and established fare, the full rate or fare allowed by the said recited act, to the nearest extremity of continued carriageway pavement, or to any standing for hackney coaches or chariots beyond any such regular continuation of carriageway pavement, where such coach or chariot shall have been hired, at the option of the person discharging such coach or chariot; and in case any hackney coach or chariot shall be hired and driven into the country, and then discharged in the day-time, and not after the hours hereinbefore respectively mentioned, there shall or may be demanded, for the return thereof to the nearest extremity of continued carriageway pavement, or to any standing for hackney coaches or chariots beyond any such regular continuation of carriageway pavement, where such coach or chariot shall have been hired, at the option of the person discharging such coach or chariot, for each and every mile above the number of four miles, the additional rate or fare of 6*d.*: provided, nevertheless, no such allowance for return shall be made for any lesser distance than four miles, calculated as aforesaid."

By stat. 39 & 40 Geo. III. c. 47, s. 2, 3, when the average price of oats computed according to stat. 31 Geo. III. c. 30, shall exceed 2*s.* per quarter, the commissioners for licensing hackney coaches may allow additional fares to be taken, *vis.* 6*d.* on every 2*s.* fare; 1*s.* on every 4*s.* fare, and so in like manner, 6*d.* additional on every additional 2*s.*, provided the coach goes or is kept to the full amount of the fare; and such additional rates may be continued till thirty days after oats are reduced to 1*l.* 1*s.* per quarter.

Coachmen are not obliged to take luggage without receiving something additional to the fare. That something must be *reasonable*.

By stat. 55 Geo. III. c. 159, s. 4, it is enacted, "That it shall be lawful for the commissioners for licensing and regulating hackney coaches, by and with the approbation and direction in writing of the lords commissioners of his Majesty's treasury, or any three or more of them, and they are hereby authorized and empowered under their hands and seals to license such number of carriages with two wheels, and drawn by one horse, as shall be specified in any such approbation and direction as aforesaid; and the owners and drivers of such two-wheeled carriages shall be chargeable and charged with the like sum for licences as are now payable for licences for hackney coaches, and shall be entitled to demand, take and receive two thirds of the

amount of the fares, rates, and benefits established by law for hackney coaches and chariots; and no owner or driver of any such two wheeled carriage shall be compellable to carry more than two persons; and all orders, rules, regulations, bye-laws, penalties, forfeitures, clauses, provisions, matters, and things, contained in any act or acts of Parliament relating to hackney coaches or chariots in the cities of London and Westminster, shall extend and apply to, and be put in force, in relation to all such licensed carriages, and the owners and drivers thereof, and to all persons using the same, in like manner in every respect, and as fully and effectually, as if the same were in this act severally and respectively re-enacted and repeated in relation to such carriages, and as if the said carriages had been included in the said acts."

And by stat. 7 Geo. III. c. 44, s. 13, a chairman may take for any distance not exceeding one mile, 12*d.*; for any distance above one mile, and not exceeding one mile and four furlongs, 1*s.* 6*d.*; for every further distance, not exceeding four furlongs, 6*d.*; and by the hour, 1*s.* 6*d.* for the first hour, and 6*d.* for every half hour after.

And by stats. 9 Ann. c. 23, s. 16, 17; 1 Geo. I. st. 2, c. 57, s. 1, the commissioners may make bye-laws for the good government and regulation of licensed hackney coachmen, to bind all persons licensed, and the renters of such licences, and the drivers. The same to be approved by the lord chancellor, commissioners of the great seal, two chief justices, and chief baron, or three of them.

By 55 Geo. III. c. 159, s. 10, it is enacted, "That no agreement or engagement whatever, at any time or on any occasion made with the driver of any hackney coach or chariot, for the payment of more than his established fare, shall be binding on the person or persons making the same, at any such person or persons may, notwithstanding any such agreement of engagement, refuse, on discharging such coach or chariot, the payment of any sum beyond the established fare; and in case such person or persons shall actually pay to the driver of any hackney coach or chariot, whether in pursuance of any such agreement or engagement, or not, any sum exceeding his established fare, which shall have been demanded or required by such driver, the person or persons paying the same shall be entitled, on complaint against such driver, to recover the overplus paid; and such driver shall be subject and liable to a penalty not exceeding 5*l.*, to be levied in case of non-payment by distress upon the goods and chattels of the offender."

But by 57 Geo. III. c. 125, s. 3, it is enacted, "That it shall be lawful for any person to require any hackney coachman to drive for a stated sum of money a distance in the discretion of such hackney coachman; and in case such coachman shall exceed the distance to which such person was entitled to be driven for such stated sum of money, the coachman shall not be entitled to demand more than the sum for which he was so engaged to drive."

By stats. 7 Geo. III. c. 44, s. 12; 12 Geo. III. c. 49, s. 1, every licensed coachman plying for hire within the cities of London and Westminster, or the suburbs thereof, or elsewhere, within the bills of mortality, shall be obliged and compellable, on every day of the week, at seasonable times, to go to any place within the distance of ten miles from either of the said cities.

By stat. 48 Geo. III. c. 87, s. 7, if drivers be directed to wait at places of public resort, he shall receive of those so directing him a reasonable sum in and above the fare for driving thither, the sum so received to be accounted for when such coach shall be finally discharged.

By stat. 1 Geo. I. st. 2, c. 57, s. 2, if any hackney coachman shall refuse to go at, or exact more for his hire than according to the above act or bye-laws, he shall forfeit a sum not exceeding 3*l.*, nor under 10*s.*

By stat. 48 Geo. III. c. 87, s. 11, hackney coachmen exacting more than their fair fare, shall be liable to the penalties, and their fares shall be recoverable under former acts.

By stat. 55 Geo. III. c. 159, s. 12, it is enacted, "That no driver who shall be hired for hire, shall refuse, on the pretext of having been out twelve hours, (although he may have been out that time), to go with any person or persons

## HACKNEY COACHES, &c.

To carry two persons. Orders, &c., in former hackney coach acts to extend to such carriages.

Chairs.

Bye-laws may be made by commissioners.

Agreement to pay more than fare, not binding.

Over-payment to be recoverable back.

Penalty.

Coachmen not to charge more than agreed for, though he exceeds the distance.

Limitation of distance.

Waiting at public places.

Drivers refusing to go, or overcharging.

**Hackney Coaches, &c.**

HACKNEY  
COACHES, &c.

desirous of hiring his coach or chariot, in any direction, or to any distance prescribed by law, at the established fares."

And by stat. 39 & 40 Geo. III. c. 47, s. 5, every hackney coachman where coaches are standing, shall be compellable to go with any person when desired, and on refusal (unless he prove being hired,) shall be liable to the like penalties as persons refusing to carry for hire, by any law now in being.

Misbehaviour of  
coachmen, water-  
men, &c.

By stat. 9 Ann. c. 23, s. 44, if any person who shall drive a coach or carry a chair for hire, acting under a person licensed, shall be guilty of misbehaviour, by demanding more than his fare, or giving abusive language, or other rude behaviour, he shall, on conviction on oath, forfeit not exceeding 20s. to the poor; and if he shall not be able, or shall refuse to pay, he shall be committed to Bridewell or some other house of correction, to be kept to hard labour for seven days, and receive the public correction of the house before he be discharged.

And by stats. 9 Ann. c. 23, s. 49; 7 Geo. III. c. 44, s. 16, on misbehaviour of a coachman or chairman by abusive language, or otherwise, the commissioners may revoke his licence, or inflict on him a penalty, not exceeding 3l. to the poor; and, on non-payment, he shall be committed to Bridewell or some other house of correction, to be kept to hard labour for thirty days.

And by 55 Geo. III. c. 159, s. 14, "Every driver of any hackney coach or chariot, or any chairman or waterman, who shall make use of any abusive or insulting language, or other rude behaviour, or who shall obstruct any inspector of hackney coaches, officer of police, constable, or other peace officer, watchman, or patrol, in the execution of his duty, and who shall on complaint being made before any justice of the peace, or the commissioners of the hackney coaches, or the major part of them, be convicted of the same, shall be subject and liable to a penalty, at the discretion of such justice or justices, or commissioners as aforesaid, not in any case exceeding 10l.; and in default of the payment of such penalty so to be awarded, to be committed to prison for a period not in any case exceeding two months."

Drivers to carry  
property left in  
coaches to the  
hackney coach of-  
fice, within a cer-  
tain time.

Sect. 9 enacts, "That every driver in whose coach or chariot any property whatever shall be left, by any person or persons hiring the same, and who shall not carry such property within four days after the same shall have been so left, in the state in which it was found, to the hackney coach office, and deposit the same with one of the clerks of the said office, shall be subject and liable to a penalty not exceeding 20l., at the discretion of the said commissioners, or the major part of them; and the clerk with whom such property is deposited is hereby required to give a receipt for the same, and to make an entry in a book to be kept at the said office, of the description thereof, the name and address of the driver bringing the same, and the day on which it is brought; and the property so entered shall be returned to the person or persons respectively, who shall prove to the satisfaction of the said commissioners, or the major part of them, that the same belonged to him, her, or them, such person or persons previously paying all expenses incurred, together with such reasonable sum to the driver who brought the same, as, with reference to the value of the property in question, the said commissioners shall award; provided, nevertheless, that if such property shall not be proved to belong to some person or persons within one year, the same having been advertised in such manner as the said commissioners may direct, such property shall be sold; and after deducting from the produce of the sale all the expenses incurred, the balance shall be paid to the driver who deposited the same."

Provido.

Persons refusing  
to pay or injuring  
coach, &c.

By stat. 9 Ann. c. 23, s. 22, 23, if any person shall refuse to pay, or shall deface any coach or chair, any justice may grant his warrant to bring him before him; and, on proof upon oath, may award satisfaction to the party, and, on refusal to pay, may bind him over to the next sessions, who may determine the same.

And by stat. 55 Geo. III. c. 159, s. 6, after reciting, 'And whereas, by the laws (a) now in force, authority is given to justices of the peace to award satisfaction, in case of persons refusing or omitting to pay to coachmen or

chairmen the money due for the hire of their coaches, or wilfully injuring such coaches or chairs, and to issue their warrants for bringing such persons before them, but no authority is given to enforce the payment of such satisfaction so awarded, and it is expedient that such authority should be given, it is enacted, "That if any person shall refuse or omit to pay the driver of any hackney coach or chariot, or any chairman, the money justly due to him for the hire of the coach or chariot or chair hired, or shall wilfully deface or in any manner injure the same, it shall and may be lawful for any justice of the peace, upon complaint thereof, to grant a summons, or, if it shall appear to him necessary, a warrant, for bringing before him the offending party or parties, and, upon proof made upon oath, to award reasonable satisfaction to the party so complaining for his damage and costs, and also a reasonable compensation for the loss of time on his attendance in establishing such complaint, and, upon refusal to pay or make such satisfaction, to commit such person or persons to prison, there to remain for any time not exceeding one month, or until the amount of such satisfaction shall be paid and discharged."

And by stat. 55 Geo. III. c. 159, s. 8, it is enacted, "That upon any complaint of the owner of any hackney coach or chariot licensed by the said commissioners against his or her driver, or of a driver against his master, it shall be lawful for the said commissioners, or the major part of them, and they are hereby empowered to inquire into the same, and to determine therein, and to award such compensation to be made as to them respectively shall seem proper; and to punish any such owner or driver, by inflicting any penalty not exceeding 10*l.*, and, in case of non-payment, the same may be levied by distress on his, her, or their goods or chattels."

Commissioners to hear and determine complaints between owners and drivers of hackney coaches.

Penalty.

And by stat. 10 Geo. III. c. 44, s. 6, every licensed person who shall neglect or refuse (being duly summoned for that purpose) to appear by himself or his renter, shall forfeit 10*s.*, to be recovered as the other penalties; and if such licensed person shall neglect or refuse to appear, together with his renter, upon the third summons, the complaint may be heard and determined in his absence.

And by stat. 24 Geo. III. sess. 2, c. 27, s. 3, if any owner of a licensed hackney coach shall refuse or neglect to appear with his driver before the commissioners upon the third summons left at his usual place of abode, the said commissioners may revoke such licence, and license another person in his room.

By stat. 55 Geo. III. c. 159, s. 13, "It shall and may be lawful for the said commissioners for the time being, or the major part of them, or any justice or justices of the peace, when it may appear to them necessary, upon any complaint being lodged before them against any owner or driver of any hackney coach or chariot, or against any waterman or assistant to hackney coachmen, or against any chairman, to issue their summons for his appearance before them, or their warrant for the apprehension of such owner, driver, waterman, or chairman, to be examined touching the said complaint, or to answer the same as the case may be."

Commissioners or justices may summon, on complaint, owners, drivers, assistants, or watermen, before them.

By stat. 7 Geo. III. c. 44, s. 15, in every case where any person for any offence mentioned in any law relating to the licensing and regulating of hackney coaches and chairs shall be liable to be committed to prison, it shall be lawful for the commissioners, or any three or more of them, either to commit such offender to prison, as by any former act, and for any time not exceeding one month, or to commit such offender to Bridewell or other house of correction, there to be kept to hard labour for any time not exceeding one month, and also to receive the correction of the house.

Imprisonment of offenders.

By stat. 10 Geo. III. c. 44, s. 5, in all cases where they may commit offenders to Bridewell or other house of correction as aforesaid, they may commit them immediately upon such offenders being convicted before them.

And by sect. 7, all the offences mentioned in this act, or in 7 Geo. III. c. 44, may be determined, and all the forfeitures recovered and levied, not only by the commissioners, but also by any justice, mayor, bailiff, or other magistrate, as by 9 Ann. c. 23, directed.

## Hackney Coaches, &amp;c.

HACKNEY  
COACHES, &c.

Rents and penalties

may be levied by  
distress.Penalties to be  
transmitted to re-  
ceiver-general.Application of pe-  
nalities.Compensation to  
be paid to hack-  
ney coachmen  
improperly sum-  
moned.Numbered stage  
coaches;  
booking houses.Coach before a  
tradesman's door.

Under this 7th section of this act, justices, on conviction, may immediately commit the offender. *Duck v. Addington*, 4 T. R. 467.

By stat. 26 Geo. III. c. 72, s. 3, if any hackney coachman, or his renter, shall be in arrear for any rent made payable by his licence for any longer time than is expressed therein, the said commissioners may revoke such licence, and levy the money upon the goods of either the owner or renter, in like manner and form as by any law now in being with respect to the owner.

By stat. 9 Ann. c. 23, s. 12, the rents and penalties to be levied by distress, by warrant of three commissioners; which distress shall be sold in ten days, returning the overplus, charges of the distress and of the warrant being first deducted, (if, on seven days' notice, they do not pay the fine without such warrant), and, in default of distress, to be imprisoned till paid; and, if any rent shall be unpaid for fourteen days, the commissioners may withdraw the licence.

And moreover, by stat. 9 Ann. c. 23, s. 17; 1 Geo. I. st. 2, c. 57, s. 7; 4 Geo. III. c. 36; 7 Geo. III. c. 44, s. 19; 10 Geo. III. c. 44, s. 7, the breach of the bye-laws and of these rules and orders may be punished by any justice of the peace, mayor, bailiff, or other magistrate, where the offence shall be committed, in like manner as by the commissioners.

By stat. 10 Geo. III. c. 44, s. 8, all penalties levied by any justice, mayor, bailiff, or other magistrate, shall by them be transmitted to the receiver-general of the duties on hackney coaches and chairs, and they shall also transmit a certificate thereof to the commissioners within ten days after levying such penalty, on pain of 10*l.*, half to the King and half to him that shall sue.

By the 55 Geo. III. c. 159, s. 15, all the penalties to be recovered under this or any former act relating to hackney coaches, shall be applied, one moiety thereof to his Majesty, and the other moiety to the informer.

Sect. 16. The penalties and provisions of former acts are continued in force.

By stat. 48 Geo. III. c. 87, s. 8, Whereas, by the laws now in force, hackney coachmen are not obliged to go with persons desirous of hiring their coaches, provided they have been out twelve hours; and whereas they have been oftentimes improperly summoned for refusal; it is enacted, That every hackney coachman who shall in civil and explicit terms declare to any person desirous to engage his coach, either that he hath been at work twelve hours with his coach and horses, or that he is actually hired, and shall afterwards be summoned for refusal, and shall prove that he had been so at work, or so *bonâ fide* hired, and it shall not appear that he conducted himself improperly to the party summoning, he shall not be punished; but the commissioners for licensing hackney coaches, before whom such complaint shall be heard, shall require the person summoning to compensate the coachman for loss of time in attending the office, not exceeding 5*s.* nor less than 3*s.*, to be levied and recovered as any other penalty relating to hackney coaches.

Sects. 9 and 10 of 48 Geo. III. c. 87, relate to numbered stage coaches plying in the streets, and to the number of their booking houses.

There are several other regulations by stat. 39 & 40 Geo. III. c. 47, which are under the management of the commissioners for hackney coaches, but it is not deemed requisite to insert them.

In *Slater v. Swann*, 2 Str. 872, *Raymond*, C. J., said, if a hackney coach stand before a tradesman's door, and hinder customers, he may lawfully take hold of the horses, and lead them away, and is not bound to take his remedy for damages. See *post*, Nuisance, Vol. III.

The 34 Geo. III. c. 65, relates to watermen on the Thames, &c., see *R. v. Broderip*, 4 D. & R. M. C. 12.

# Hackney Coaches, &c.

1099

Stat. 48 Geo. III. c. 87.

HACKNEY  
COACHES, &c.

## SCHEDULE or TABLE (A).

Schedule (A).

For every hackney coach hired and taken any distance, there shall be paid the rates and fares following; that is to say—

Fares according to distance.

For every distance within .....		One mile .....	1 0
Above one mile .....		One mile and a half .....	1 6
Above one mile and a half .....		Two miles .....	2 0
Above two miles .....		Two miles and a half .....	3 0
Above two miles and a half .....		Three miles .....	3 6
Above three miles .....		Three miles and a half .....	4 0
Above three miles and a half .....		Four miles .....	4 6
Above four miles .....		Four miles and a half .....	5 6
Above four miles and a half .....		Five miles .....	6 0
Above five miles .....		Five miles and a half .....	6 6
Above five miles and a half .....		Six miles .....	7 0
Above six miles .....		Six miles and a half .....	8 0
Above six miles and a half .....		Seven miles .....	8 6
Above seven miles .....		Seven miles and a half .....	9 0
Above seven miles and a half .....		Eight miles .....	9 6
Above eight miles .....		Eight miles and a half .....	10 6
Above eight miles and a half .....		Nine miles .....	11 0
Above nine miles .....		Nine miles and a half .....	11 6
Above nine miles and a half .....		Ten miles .....	12 0
Above ten miles .....		Ten miles and a half .....	13 0
Above ten miles and a half .....		Eleven miles .....	13 6
Above eleven miles .....		Eleven miles and a half .....	14 0
Above eleven miles and a half .....		Twelve miles .....	15 0

And so for any further distance after the like rate and proportion of sixpence for every half mile, and an additional sixpence for every two miles completed.

## SCHEDULE or TABLE (B).

Schedule (B).

For every hackney coach hired and taken for any time, there shall be paid the rates and fares following; that is to say—

Fares according to time.

For any time within .....		Thirty minutes .....	1 0
Above thirty minutes .....		Forty-five minutes .....	1 6
Above forty-five minutes .....		One hour .....	2 0
Above one hour .....		One hour twenty minutes .....	3 0
Above one hour twenty minutes .....		One hour forty minutes .....	4 0
Above one hour forty minutes .....		Two hours .....	5 0
Above two hours .....		Two hours twenty minutes .....	6 0
Above two hours twenty minutes .....		Two hours forty minutes .....	7 0
Above two hours forty minutes .....		Three hours .....	8 0
Above three hours .....		Three hours twenty minutes .....	9 0
Above three hours twenty minutes .....		Three hours forty minutes .....	10 0
Above three hours forty minutes .....		Four hours .....	11 0

And for any further time after the rate and proportion of sixpence for every fifteen minutes.

N. B. It will be seen, ante 1094, that the fares of cabriolets are two-thirds of Cabriolet fares. those of hackney coaches.

## Hair Powder.

For the manner of making hair-powder, and the excise duty thereon, see title *Taxes*, Vol. II. (Search), &c. and *Taxes*, Vol. V.

**Hand-letters.** Proof of, see *ante*, p. 58.

**Harbours.** See *Emigration*, *ante*, p. 730; *Judgment*, Vol. III.

**Harbour.** Filling up, see *Rivers and Navigation*, Vol. V.

## Hard Labour, Punishment of.

3 Geo. 4. c. 114.  
repealed by 53 Geo. 3.  
c. 116.

Persons convicted  
of the offences  
herein mentioned,  
may be sentenced  
to imprisonment  
with hard labour.

By the 3 Geo. IV. c. 114, intitled *An Act to provide for the more effectual punishment of certain offences, by imprisonment with hard labour*, after reciting, that, by 53 Geo. III. c. 162, it was enacted, 'That it should and might be lawful for any court to pass upon any person who should be lawfully convicted before such court of felony with benefit of clergy, or of any grand larceny, or of any petit larceny, the sentence of imprisonment to hard labour, either simply and alone, or in addition to any other sentence which such court might or should be authorized to pass upon any person lawfully convicted of any of the offences aforesaid, as to such court should seem fit; and such person should thereupon suffer such other sentence, and be moreover imprisoned and kept to hard labour, or be simply imprisoned and kept to hard labour, in such place and for such time as such court should think fit to direct, not exceeding the time for which such courts might then imprison for such offences: And whereas it is expedient that the provisions of the said act should be extended to certain aggravated misdemeanors, and offences below the degree of felony,' it is enacted, "That, from and after the passing of this act, whenever any person shall be convicted of any of the offences hereafter specified and set forth: that is to say,

" [Any assault with intent to commit felony (a).]

" Any attempt to commit felony.

" Any riot.

" Any misdemeanor for having received stolen goods knowing them to have been stolen.

" [Any assault upon a peace officer, or upon an officer of the customs or excise, or upon any other officer of the revenue, in the due discharge and execution of his or their respective duty or duties, or upon any person or persons acting in aid of any such officer or officers in the due discharge and execution of his or their respective duty or duties.]

" [Any assault committed in pursuance of any conspiracy to raise the rate of wages.]

" Being an utterer of counterfeit money, knowing the same to be counterfeit.

" Knowingly and designedly obtaining money, goods, wares, or merchan-

(a) This enactment is repealed, but re-enacted in other words by the 9 Geo. IV. c. 31, *ante*, *Assault*, Vol. I.

dizes, bills, bonds, or other securities for money, by false pretences, with intent to cheat any person of the same.

" Keeping a common gaming house, a common bawdy house, or a common ill governed and disorderly house.

" Wilful and corrupt perjury, or of subornation of perjury.

" Having entered any open or inclosed ground with intent there illegally to destroy, take, or kill game or rabbits, or with intent to aid, abet, and assist any person or persons illegally to destroy, take, or kill game or rabbits, and having been there found at night armed with any offensive weapon.

" [In each and every of the above cases, and whenever any person shall be convicted of any or either of the aforesaid offences, it shall and may be lawful for the court before which any such offender shall be convicted, or which by law is authorized to pass sentence upon any such offender, to award and order (if such court shall think fit) sentence of imprisonment with hard labour, for any term not exceeding the term for which such court may now imprison for such offences, either in addition to or in lieu of any other punishment which may be inflicted on any such offenders by any law in force before the passing of this act; and every such offender shall thereupon suffer such sentence, in such place, and for such time as aforesaid, as such court shall think fit to direct."]

This statute, so far as it relates to the assaults therein mentioned, and above noticed in brackets, is repealed by the 9 Geo. IV. c. 31; but its provisions are nearly re-enacted by the same act. See *ante*, Assault, Vol. I.

By the 7 & 8 Geo. IV. c. 29, relating to *Larceny*, s. 4, reciting ' With regard to the place and mode of imprisonment for all indictable offences punishable under this act,' [see *Larceny*, Vol. III. p. 552] it is enacted, " That where any person shall be convicted of any felony, or misdemeanor punishable under this act, for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, or of such imprisonment with hard labour, as to the court in its discretion shall seem meet."

By the 7 & 8 Geo. IV. c. 30, relative to *Malicious Injuries to Property*, s. 27, it is enacted, " That where any person shall be convicted of any indictable offence punishable under this act, [see *Malicious Injuries to Property*, Vol. III. p. 723], for which imprisonment may be awarded, it shall be lawful for the court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, or of such imprisonment with hard labour, as to the court in its discretion shall seem meet."

See also the various titles of offences throughout this work, as to when hard labour may be imposed in other cases than the above.

As to the mode of enforcing this punishment, and how it is to be regulated, &c. see title *Gaols*, Vol. II. pp. 1017, 1026, 1027.

HARD LABOUR,  
PUNISHMENT  
OF.

3 Geo. 4, c. 114.

7 & 8 Geo. 4, c. 29.

In larceny.

7 & 8 Geo. 4, c. 30.  
Malicious injuries  
to property.

Other cases.

Mode of enforcing.

Hares and Harepices, &c. See *ante*, Game, p. 934.



## Hats.

THE 6 Geo. IV. c. 105, repeals the 24 Geo. III. sess. 2. c. 21, and 59 Geo. III. c. 52, relative to the importation of hats. See *ante*, *Excise and Customs*, Vol. II.

## Hawkers and Pedlars (a).

[7 Geo. III. c. 43; 48 Geo. III. c. 84; 50 Geo. III. c. 41; 52 Geo. III. c. 106; 6 Geo. IV. c. 80.]

Who are.

A HAWKER is an itinerant trader, who goes about from place to place, carrying with him, and selling, wares. By Dr. Johnson, a hawker is defined to be "one who sells his wares by proclaiming them in the street."

A pedlar is a hawker in small wares. By Dr. Johnson, he is defined to be "one who travels the country with small commodities."

Expediency of laws as to.

The trade carried on by persons keeping fixed establishments is, generally speaking, much more beneficial to the state than that of itinerant hawkers and pedlars. The character of the local trader is better known, and, therefore, there is greater security for the respectability of his dealings. He contributes also by the number of persons he employs, and the taxes he pays, much more than the itinerant trader, to promote the wealth and increase the prosperity of the country. Hence has arisen the expediency of framing laws which may operate as a restraint upon itinerant traders, may diminish their number, and, while they prevent any illegal practices, may, by obliging such persons to take out licences, and to submit to certain other regulations, be productive of revenue and profit. See 2 *Chitty's Commercial Law*, 163.

We will divide our considerations under this title, as follows:—

- I. *Duties and Licences, &c., who subject, &c. to, &c.*, 1103.
- II. *Certificate to obtain Licence*, 1105.
- III. *Packages, &c., to be marked*, 1106.
- IV. *Exemptions from taking out Licence*, 1106.
- V. *Licensed Hawkers may set up any Trade*, 1110.
- VI. *What Goods, &c., Hawkers prohibited hawking*, 1110.
- VII. *Selling by Auction prohibited, &c.*, 1112.
- VIII. *Hawking contrary to, or without a Licence, or refusing to produce it*, 1112.
- IX. *Hiring or lending Licences*, 1117.
- X. *Forging Licences*, 1118.
- XI. *Constables refusing to assist, &c.*, 1118.
- XII. *Recovery and Application of Penalties, Non-attendance of Witnesses*, 1119.

(a) See the *Law Magazine*, Vol. I. 334; 2 *Chit. Commercial Law*, 163; and *Law of Hawkers and Pedlars*, by a County Magistrate.

XIII. Conviction—General Issue, &amp;c., 1119.

XIV. Appeal, 1121.

XV. Forms, see *List of*, post, 1121.DUTIES,  
LICENCES, &c.

## 1. Duties, Licences, &amp;c.

By stat. 50 Geo. III. c. 41, intituled *An Act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches*, sect. 1, after reciting, that Whereas it is expedient that the powers and provisions contained in any acts of Parliament relating to the duties upon hawkers and pedlars should be brought together into one act, and that the said duties should be placed under the management of the commissioners of hackney coaches, it is enacted, That, from and after the 1st day of August, 1810, an act passed in a Parliament holden in the ninth and tenth years of his late Majesty King William, intituled *An Act for licensing hawkers and pedlars; for a further provision for the payment of the interest of the transport debt for the reducing of Ireland*; and all acts made for continuing, altering, or regulating the duties thereby imposed, as far only as the said acts relate to such continuance, alteration, or regulation, and all powers, provisions, and clauses contained in any act or acts of Parliament relating to the collection of the same duties, shall be repealed, except such of the said powers, provisions, and clauses as may be necessary to be kept in force for the recovery of any arrears of the said duties hereby repealed, or any penalties incurred under any of the acts hereby repealed: provided always, that nothing herein contained shall be construed to revive any act or provision which had been repealed by any of the acts or provisions repealed by this act, and which were not in force at the time of passing this act; but the same shall continue repealed, notwithstanding any thing contained in this act.

9 & 10 Will. 3, c. 27, and all acts relating to the duties thereby imposed, &c., repealed.

But, by sect. 31, All the powers, rules, penalties, and forfeitures, exemptions, and things whatsoever, which, by stat. 9 & 10 Wm. III. c. 27, or by any other law now in force relating to the duties by that act granted, are provided, settled, or established (other than so far as the same is or are inconsistent with, or repugnant to, this act, and other than in such cases or which different provisions are prescribed by this act), shall be exercised, and put in execution for the managing, raising, levying, recovering, and paying the several duties hereby granted, as fully as if all the said powers, &c., were repeated in this present act.

Powers of recited act of 9 & 10 Will. 3, where applicable, extended to this act.

By sects. 3 and 8, The licensing is left to the commissioners appointed or the time being for licensing and regulating hackney coaches.

Who to grant licences.

Sect. 11. Persons already authorized out of London to grant licences are to continue to do so till their authority is annulled.

Sect. 4. The treasury may make allowances to the commissioners of hackney coaches, and their officers, for their services.

Allowances to commissioners.

And by sect. 2, All licences shall continue in force until the 1st of August next following the dates of such licences; and they are to be annual licences.

Licences to be annual.

Before the licence is granted it is necessary that the applicant should produce the certificate as required by sect. 12. See *post*, 1105.

Certificate for.

By sect. 10, the duties are to be paid at the time of receiving the licences.

Duty payable at time of granting.

By sect. 33, The duties are to be paid from time to time into the hands of the cashier, for the time being, of the duties on hawkers, pedlars, and petty chapmen, and paid into the Exchequer, and made part of the consolidated fund.

Duties to be paid to cashier, &c.

Sect. 6 enacts, "That, from and after the said first day of August, there shall be raised, answered, and paid to and for the use of his Majesty, his heirs and successors, the rates and duties following, that is to say, by every hawker, pedlar, petty chapman, and every other trading person and persons going

Who liable to duties, and amount of.

## PACKAGES, &amp;c.

## TO BE MARKED.

50 Geo. 3, c. 41.

*years last past, and during all that time hath usually resided in the said parish, chapelry, or otherwise, [as the case may be], of , and is a person of good character and reputation, and is a fit person to be licensed to exercise the trade of a hawker, pedlar, and petty chapman. Dated the day of*

A. B. Minister.

C. D. }

E. F. } *Householders."*

## III. Packages, &amp;c. to be marked.

Packages of hawk-  
er to have the  
words 'Licensed  
hawker,' &c.

By 50 Geo. III. c. 41, s. 14, Every person to whom any such licence as aforesaid shall be granted, under or by virtue of this act, and who shall trade with or under colour of such licence, shall cause to be written, painted, or printed, in large legible Roman capitals, upon the most conspicuous part of every pack, box, bag, trunk, case, cart, or waggon, or other vehicle or conveyance in which he or she shall carry his or her goods, wares, and merchandise, and of every room and shop in which he or she shall so trade, and likewise upon every hand-bill or advertisement which he or she shall give out, distribute, or publish, the words 'licensed hawker,' together with the number, name, or other mark or marks of distinction so written or printed upon his or her licence as aforesaid; and that every such person in any respect making default herein, shall forfeit, for every offence, the sum of 10*l*.

Penalty.

Persons not licen-  
sed using such  
words.

Sect. 15 enacts, "That if at any time from and after the said 1st day of August, [1810], any person, other than to whom such licence shall have been so granted as aforesaid, shall write, paint, or print, or cause to be written, painted, or printed, or kept or continue written, painted, or printed, upon any pack, bag, box, trunk, case, cart, waggon, or other vehicle or conveyance, for any goods, wares, or merchandise, or in any room or shop in which he or she shall sell or expose to sale, or keep for sale, any goods, wares, or merchandise, the words 'licensed hawker,' or 'licensed pedlar,' or any other word or words to that effect; every person offending therein shall forfeit for each offence the sum of 10*l*."

Penalty.

## IV. Exemptions from Taking out Licence.

Goods may be ex-  
posed to sale in  
public markets.

STAT. 50 Geo. III. c. 41, s. 5, enacts, "That nothing herein contained shall extend or be construed to extend to hinder any person or persons from selling or exposing to sale, any sorts of goods or merchandise, in any public mart, market, or fair, legally established within the kingdom of England, dominion of Wales, and town of Berwick-upon-Tweed, but such person or persons may do therein as they lawfully might have done before the making of this act; any thing herein contained to the contrary notwithstanding."

Duty for licences.

It was formerly supposed, that, under the above proviso, or a similar one contained in the 29 Geo. III. c. 26, s. 17, that hawkers might have exposed their goods to sale on market days, in any part of a market town, as they might have done before the passing of any of the hawkers' acts. But in *R. v. Redfearne*, 4 T. R. 273, it was decided that no hawker could expose goods to sale in any part of a market town, but the public market place. See 1 *Law Mag.* 341.

Proviso for certain  
trades, &c.

Sect. 23 enacts, "That nothing in this act shall extend to prohibit any person or persons from selling any printed papers licensed by authority, or any fish, fruit, or victuals, nor to hinder the real worker or workers, or maker or makers of any goods, wares, or manufactures of Great Britain, or his, her, or their children, apprentices, or known agents or servants, usually residing with such real workers or makers only, from carrying abroad or exposing to sale, and selling by retail or otherwise, any of the said goods, wares, or manufactures, of his, her, or their own making, in any mart, market, or fair, and in every city, borough, town corporate, and market town, nor any tinkers, coopers, glaziers, plumbers, harness-menders, or other

persons usually trading in mending kettles, tubs, household goods, or harness whatsoever, from going about and carrying with him or them proper materials for mending the same."

The manufactures of Scotland may be vended in England by wholesale, without a hawker's licence. *Maxwell v. Mayor*, 3 Burr. 1314; 1 Bla. Rep. 271, S. C.

*Victuals*—Barm or yeast is *vituals* within this exempting clause, and therefore, a person purchasing that article of brewers, and carrying the same from town to town, and selling the same, is not liable to the penalty imposed by that statute upon hawkers trading without a licence. *R. v. Hodgkinson*, 10 B. & C. 74 (a).

EXEMPTIONS  
FROM TAKING  
OUT LICENCE

Foreign manufac-  
tures.

Victuals.

(a) *R. v. Hodgkinson*, 10 B. & C. 74. Upon an appeal against a conviction under the hawkers' and pedlars' act, the court of quarter sessions for the county of Derby confirmed it, subject to the opinion of this Court on the following case:—The defendant had been for some time past in the habit of purchasing barm or yeast of the brewers at Burton-upon-Trent, and afterwards carried the same about to the neighbouring towns and villages, and exposed such barm or yeast to sale, and sold it to such persons as applied to him for it, for the purpose of being used in the making of bread and beer. The defendant took a quantity of barm or yeast to the township of Litchurch, in the county of Derby, on the 14th day of November last, and there exposed the same to sale in his usual way, without licence as a hawker. The question for the opinion of the Court was, whether the barm or yeast so exposed to sale was to be considered as "*vituals*" within the 23rd section of the 50 Geo. III. c. 41, by which it is enacted, "That nothing in that act shall extend to prohibit any persons from selling any printed papers licensed by authority, or any fish, fruit, or *vituals*," &c. *N. R. Clarke*, and *Fynes Clinton*, in support of the order of sessions.—Yeast is not *vituals* within the meaning of that word in the 50 Geo. III. c. 41, s. 23. It is used in the preparing of *vituals*, and operates chemically. [*Bayley, J.*—Is it not a material necessary to the making of good bread?] The same may be said of fire. The effect of the yeast is by producing fermentation to render the bread lighter, and improve its quality. It is manifest, from the words *fish* and *fruit* in the exempting clause, that the legislature meant to exempt such *vituals* only as were sold in a state fit to be eaten. [*Lord Tenterden, J.*—Then flour would not be within the exemption]. It is not *vitual* within the meaning of the act. *R. v. Waddington*, 1 East, 143, will be relied upon by the other side. There, hops were considered to be a *vitual*, but that case

turned materially upon the words of the 5 & 6 Edw. VI. c. 14, which contained the words "any corn growing in the fields, or any other corn or grain," butter, cheese, fish, or other dead *vituals* whatsoever. Tea is an article of very general consumption, yet, in *R. v. MacGill*, 2 B. & C. 142, it was held, that a person exposing to sale and selling tea as a hawker without a licence, was liable to the penalty imposed by this act. *Brodrick, contra*.—Yeast is a *vitual* within the meaning of that word in this act of Parliament. It comes from beer, and is used as an ingredient in bread. *R. v. M'Gill*, 2 B. & C. 142, turned upon other statutes; the sale of tea by any hawker or pedlar having been prohibited by the 9 Geo. II. c. 35, s. 20, and the 10 Geo. I. c. 10, s. 14, having enacted that tea should not be sold except in entered places. In the 12 Edw. IV. c. 8, ale, beer, and wine are considered as *vituals*, and the dealers in such articles are called *vituallers*. In 4 Inst. 262, Lord Coke says, that, in the 18 Edw. II. malt had been adjudged to be no *vitual* of itself; but, in *R. v. Waddington*, 1 East, 143, hops were held to be a *vitual*. In the 55 Geo. III. c. 99, s. 2, yeast is recognized as an ingredient in the making of bread. It is as essential as salt, which is not used as food *per se* but for the cooking and preserving of *vituals*. It was adjudged, in the 44 & 45 Eliz., by the justices and barons of the Exchequer, that salt is a *vitual*, and that the buying and selling thereof was within the statute 5 Edw. VI., and the reason assigned by Lord Coke is, that it was not only of necessity of itself for the food and health of man, but that it seasoneth and maketh wholesome beef, pork, &c., butter, cheese, and other viands. 3 Inst. 195. Lord Tenterden, C. J.—I think that the word *vituals* in the 50 Geo. III. c. 41, s. 23, comprises every thing which constitutes an ingredient in the food of man, and all articles which mixed with others constitute food. Yeast or barm may not perhaps be necessarily used in the making of bread, but it generally is

EXEMPTIONS  
FROM TAKING  
OUT LICENCE.

Workers or mak-  
ers of goods.

*Workers or Makers of Goods*—A person buying books in sheets and making them up, and then going from London into the country and selling them, is within the act, and is not exempted from penalties as the maker of the goods. *Moore v. Edwards*, 2 Chitt. Rep. 213. Clarke moved to set aside a verdict obtained for the plaintiff in a *qui tam* action for penalties on the hawkers' and pedlars' act. The defendant bought books in sheets, and made them up, and carried them from London into the country, and sold them at places where he did not reside; and it was contended that he was a maker of the goods within the exception in the hawkers' and pedlars' act.—Abbott, C. J., "This case comes within the act of Parliament. A person going from London into the country is within the term 'travelling,' and the defendant is not within the exception, as a maker of the commodity." Rule refused.

It has also been decided at *Nisi Prius*, that this exemption as to the makers of goods, extends beyond mere handicraftsmen, and that it comprehends within it wholesale tradesmen vending their own manufactured goods by means of their known servants or agents usually residing with them. *R. v. Thomas, Lancaster Sum. Ass. 1827, cor. Hullock, B.*, 1 Law Mag. 342.

Selling, &c., in  
any mart, city, or  
market.

*In any Mart, &c., City, &c., and Market*—A manufacturer is, by the above 23rd section, allowed to hawk the manufactured goods in those places only which are mentioned in it. *R. v. Websdell*, 2 B. & C. 136; 3 D. & R. 360. S. C., post, 1116, n. In that case the defendant had been convicted for hawking shoes at Cromer, without a licence. On appeal to the quarter sessions, it was proved, on behalf of the appellant, that he was a shoemaker, and that he was the real worker and maker of the shoes which he had exposed to sale; but as it appeared from the evidence, that Cromer was not a mart, &c. nor a city, borough, &c., the sessions were of opinion that the conviction was good, and the Court of King's Bench thought that they had decided right.

Agents or servants  
residing with  
maker.

*Agents or Servants usually residing with such real Worker, &c.*—The enactment, also, that nothing in the 50 Geo. III. c. 41, shall extend to hinder the real worker, or maker of any goods, &c., or his, her, or their children, apprentices, or known agents, or servants, usually residing with such real worker or maker, from carrying abroad, or exposing to sale, and selling by retail, or otherwise, any of the said goods, &c., of his, her, or their own making, in any mart, market, or fair, and in every city, borough, town corporate, and market town, applies to such agents or servants only as reside in the same house with the makers of the goods, as part of his family. *R. v. Mainwaring*, 10 B. & C. 66 (a).

used, and I am therefore of opinion that it is within the exempting clause. *Bayley, J.*—I think, construing the word *victuals* liberally, we must understand it to comprise yeast. *Littledale and Parke, J.*, concurred. Conviction quashed.

(a) *R. v. Mainwaring*, 10 B. & C. 66. Upon appeal against six several convictions of the defendant under the hawkers' and pedlars' act, 50 Geo. III. c. 41, the sessions confirmed the convictions, subject to the opinion of this Court, on the following case:—Zachariah Boyle, on and before the 21st of October, 1828, was and still is a large china and earthenware manufacturer at Hanley in Staffordshire. Before the 21st of October, he consigned to Gainsborough, a market town, to his own order, a quantity of china and earthenware, of which the several articles mentioned in the conviction formed a part. The china and earthenware were conveyed by a car-

rier's boat from Hanley to Gainsborough, and Boyle was the real worker and maker of all of it, and it was manufactured by him at Hanley. The defendant Mainwaring was, on and before the 21st of October, and still is, a servant in the sole employ of Boyle. He resided with his wife and family at Hanley, in a separate dwelling-house, being his own, a freehold, within three hundred yards of the house and manufactory of Boyle, and never left that place except when employed elsewhere by his master. When at Hanley, he superintended and assisted at the manufactory, and was employed by Boyle to sell the before-mentioned china and earthenware at Gainsborough. His salary was a fixed yearly salary, and did not depend on the amount of any sale that he might effect, nor did he receive any commission or benefit, nor was he liable to any charges or loss whatever which might arise or be incurred in

By stat. 52 Geo. III. c. 108, s. 1, "No person, being a wholesale trader in lace, in woollen, linen, silk, cotton, or mixed goods, or any of the goods, wares, or manufactures of Great Britain, and selling the same by wholesale, shall be deemed or taken to be a hawker, pedlar, or petty chapman within the intent and meaning of the [stat. 50 Geo. III. c. 41], or any other act relative to hawkers, pedlars, or petty chapmen, or of any or either of them; and that all and every such person and persons, his, her, or their appren-

EXEMPTIONS  
FROM TAKING  
OUT LICENCE.

52 Geo. 3, c. 108.

No wholesale trader deemed hawker, nor shall he or his servants be lia-

the sale, conveyance, or otherwise, of the said china and earthenware, but rendered a regular account of the same to his master, who bore all losses and expenses, and received all the proceeds and profits. The defendant took possession of the china and earthenware so consigned, upon its arrival at Gainsborough, and took a room at an inn there, and on the day mentioned in the conviction sold part thereof by public auction. The defendant had no hawker's licence, and had previously been selling at Nottingham and other places. The question for the opinion of this Court was, whether the defendant was protected from penalty under the twenty-third section of the act 50 Geo. III. c. 41, as the known agent or servant usually residing with the real worker or maker of the goods which he sold at Gainsborough. — *N. R. Clarke*, and *Fynes Clinton*, in support of the order of sessions. — The defendant was not within the exception. The question is, whether the defendant was an agent or servant *usually residing* with the real worker or maker, within the 50 Geo. III. c. 41. By s. 23 it is enacted, that nothing in the act shall extend to prohibit any persons from selling any printed papers licensed by authority, or any fish, fruit, or victuals, nor to hinder the real worker or workers of any goods, or his or their children, apprentices, or known agents, or servants *usually residing with such real workers*, from carrying abroad, or exposing to sale and selling by retail, or otherwise, any of the said goods, &c. Assuming that the defendant in this case was the known agent for the real worker or maker, still he was not an agent *usually residing* with the real worker, for he resided in a dwelling-house of his own, distinct from that of his employer. In furtherance of the general intention of the act, (which was to protect tradesmen residing in towns and paying taxes), the exemption ought to be construed literally. — *Denman*, *Hildyard*, and *Whitehurst*, *contra*. — If the legislature had intended to confine the exemption to agents living under the same roof with their employers, they would have used more definite words to express that intention. Assuming that the object of the legislature in the enact-

ing clause was to encourage the regular trader, the object in the exempting clause was to afford encouragement to the real manufacturer, and that clause ought to be construed liberally, to effect that object. In *R. v. Turner*, 4 B. & A. 510, the defendant did not reside with the maker of the goods. In the 22nd section, which enables hawkers to exercise any trade in the place where they are resident, the word *resident* applies to the place or town, and not the dwelling-house. That word, like the word *inhabitant*, may vary in its import according to the subject matter to which it applies. The word *inhabitant* either refers to a place where a man sleeps, 2 *Inst.* 702, or the place where he is mere occupier of land. *Jeffrey's case*, 5 *Coke*, 67. In the 52 Geo. III. c. 108, which amends the 50 Geo. III. c. 41, the words *usually residing with* are altogether omitted. That is a legislative declaration that they are immaterial. — Lord *Tenterden*, C. J. — The 23rd section exempts from the operation of the act "the real worker or maker of any goods, or his or their children, apprentices, or known agents or servants *usually residing* with such real workers." The word *residing* may undoubtedly vary in its import, according to the subject to which it is applied. The sense of that word, however, is explained in this section, by the words with which it is accompanied. The words "children or apprentices" apply to persons residing with their parents or masters, as part of their family, in the same house. That being so, I think we ought to understand the other words "agents or servants" to apply to such agents and servants as reside in the same house with their employers, as members of their family. Here the defendant was not a member of the maker's or manufacturer's family: he had a separate dwelling of his own. If we were to hold that the words imported only a residence in the same town, the consequence would be, that the exemption would apply to a case where a manufacturer and his agent lived on the western side of Temple Bar, but not to a case where one of them lived on the western and the other on the eastern side of Temple Bar.

WHAT GOODS  
PROHIBITED.

52 Geo. 3, c. 106.  
 liable to penalties for  
 going from house  
 to house selling  
 goods by whole-  
 sale only.  
 Persons not prohib-  
 ited from carry-  
 ing about coals in  
 carts, &c.

tices, servants, or agents, selling by wholesale only, shall go from house to house, and from shop to shop, to any of their customers, who sell again by wholesale or retail, without being subject or liable to any of the penalties or forfeitures contained in the said recited act, or in any of the said acts touching hawkers, pedlars, and petty chapmen; any thing in any of the said acts contained to the contrary notwithstanding."

Sect. 2 enacts, "That nothing in the said [stat. 50 Geo. III. c. 41], contained, shall extend to prohibit any person or persons from carrying about coals in carts, or on horses, mules, and asses, and selling the same by retail, or subject any such person or persons to any duty, penalty, or forfeiture imposed by the said recited act."

## V. Licensed Hawkers may set up any Trade.

50 Geo. 3, c. 41.  
 Hawkers duly li-  
 censed, may set up  
 trade in place of  
 residence.

5 Eliz. c. 4.

General issue.

Double costs.

\* Sic.

By 50 Geo. III. c. 41, s. 22, "It shall be lawful for any person or persons who, on the 1st day of May, was or were duly licensed to trade as hawkers and pedlars, to set up, occupy, use, or exercise any craft, mystery, or occupation, used or occupied within this realm, in any place where they shall be resident inhabitants, although they shall not have been brought up in such craft, mystery, or occupation, seven years as apprentices (a); and also to set any person to work in such craft, mystery, or occupation, although such person shall not have been apprentice therein as aforesaid, any penalty, matter, or thing contained in [5 Eliz. c. 4], to the contrary notwithstanding; and that if any such person or their wives or children shall be prosecuted for using or exercising any such craft, mystery, or occupation, in any city, town, or place, and shall make it appear that they had such licence as aforesaid, they shall, upon the general issue pleaded, be found not guilty, in any action, bill, plaint, information, or indictment for such cause exhibited against him, and in all cases where costs are allowed, such person so acquitted shall be entitled to and shall receive double costs; and that no such persons, their wives, or children, during the time they shall use and exercise such craft, mystery, or occupation, in any parish or place, shall be removeable therefrom to his, her, or their last legal place of settlement, until such person or persons shall become actually chargeable to such parish or place, any law not\* (b) in being, relative to the settlement of the poor, to the contrary thereof notwithstanding." By 35 Geo. III. c. 101, no person can be removed until "actually chargeable."

## VI. What Goods Hawkers, &amp;c., Prohibited dealing.

48 Geo. 3, c. 84.  
 Spirituous liquors,  
 tea, tobacco, &c.

By stat. 48 Geo. III. c. 84, s. 7, If any hawker, pedlar, petty chapman, or other trading person going from town to town, or to other men's houses (c), and trading on foot, or with horses or other cattle, or otherwise, shall offer for sale, tea, brandy, rum, geneva, or other foreign spirits, tobacco, or snuff, although he may have a permit for the same, it shall be lawful for the person to whom the same shall be offered, to stop, arrest, and detain the person so offering, and to seize such goods, and to carry them to the next warehouse for the customs or excise, and to carry the person before a justice of peace, who may require him to enter into recognizance, as directed in stat. 45 Geo. III. c. 121; and he shall be subject to the provisions in the said act; and, if the offender be a subject of his Majesty, and a seaman, and capable of serving in the navy, may send him to some officer of the impress service, to be dealt with according to stat. 47 Geo. III. c. 88.

(a) See also the stat. 54 Geo. III. c. 96, Vol. 1, tit. Apprentices. It repeals so much of the 5 Eliz. c. 4, as restrained persons from exercising any art, unless

they had served an apprenticeship of seven years, &c.

(b) Query, "now in being?"

(c) See *R. v. Little*, ante, 1104.

2, c. 66, or be by such justice committed to prison, and prosecuted for the penalties incurred for such offence. See this enactment in full, *ante*, p. 675.

And by stat. 6 Geo. IV. c. 80, s. 138, "No person or persons shall hawk, or shall sell or expose to sale, any spirits, by whatever name or names they are or may be called or distinguished, in or about the streets, highways, or other places, or in or from any boat or other vessel upon the water, or in any other manner or place whatsoever, except in such place as hereinbefore in this act mentioned or allowed, upon pain of forfeiting all such spirits, and the sum of 100*l.*, for every such offence; and it shall and may be lawful to and for any one or more justice or justices of the peace for the county, riding, division, city, or liberty respectively, wherein such offence shall be committed, on his or their own view, or on the confession of the party, or by the proof, on the oath of one or more credible witness or witnesses, made of such offence, to convict any person or persons so offending as aforesaid; and such person or persons so offending and convicted shall, immediately on such conviction, pay the said sum of 100*l.*, or some mitigated amount, not being less than one fourth part thereof; and on such offender or offenders refusing or neglecting to pay the said sum, the justice or justices so convicting as aforesaid shall and may, by warrant or warrants under his or their hand and seal, or hands and seals, commit the offender or offenders to hard labour in the house of correction for the said county, riding, division, city, or liberty respectively, for the space of three months, to be reckoned from the day of the said commitment; and the person or persons so committed shall not be discharged until he, she, or they shall have paid the said sum of money, or until the full expiration of the said three months."

Sect. 139. "It is and shall be lawful for one or more such justice or justices of the peace as aforesaid, on any information upon oath made before him or them against any person or persons, for hawking or selling, or exposing to sale any spirits, contrary to this act, to issue his or their warrant or warrants, under his or their respective hands and seals, to be directed to any constable or other ministerial officer of the peace, for the apprehending and bringing such offender or offenders before such justice or justices of the peace, in order to such offender or offenders being by such justice or justices dealt with according to law."

Sect. 140. "And whereas, for want of a constable or other ministerial officer of the peace being at hand, to apprehend such offender or offenders, he, she, or they has or have often escaped unpunished, it is further enacted, "That it shall and may be lawful for any person or persons whomsoever, to seize and detain any person or persons who shall hawk, or sell, or expose to sale, in manner aforesaid, any spirits, by whatsoever name, or names they are or may be called or distinguished, for such reasonable time as he, she, or they may give notice to the constable, headborough, tithingman, churchwarden, overseer of the poor, or some other peace or parish officer or officers, who are hereby required to carry such person so seized and detained before some one of his Majesty's justices of the peace for the county or place where such offence or offences shall be committed; which said justice of the peace is hereby required to proceed to the examination of such person so seized and brought before him for such offence, in the same manner as if such person so seized had been apprehended and brought before him by a constable or any other ministerial officer of the peace, under such warrant as aforesaid."

By stat. 7 Geo. III. c. 43, s. 7, 8, 9, if any *foreign cambric*, or *French lawn*, shall be found in the possession of any hawker, pedlar, or petty chapman, he shall forfeit the same, and also all the other goods in the pack where the same shall be found, and shall also be adjudged to have forfeited his licence; half the said goods to be disposed to the use of the King, and half to the officer who shall sue for the same; and if no officer shall sue within one month, then any other person may sue.

Stat. 50 Geo. III. c. 41, s. 16 enacts, "That if any hawker, pedlar, petty chapman, or other trading person as aforesaid, shall, from and after the said

WHAT GOODS  
PROHIBITED.

6 Geo. 4, c. 80.  
Persons hawking spirits, to forfeit them, and 100*l.*, and may be convicted by one justice, and if the penalty be not paid, immediately committed to the house of correction for three months, or until paid.

One or more justice, upon information on oath, may issue warrant to apprehend such offenders.

Any person may detain a hawker of spirits, and give notice to a peace officer, who is to carry the offender before some justice.

7 Geo. 3, c. 43.  
Foreign goods.

50 Geo. 3, c. 41.  
Hawkers dealing in smuggled goods.



HAWKING  
WITHOUT LI-  
CENCE, &c.

What an offence  
within act.

With respect to what is a hawking, and who are hawkers, within the act, and bound to take out a licence, see *ante*, 1104; as to who are exempt therefrom, see *ante*, 1106 to 1109.

A person exposing to sale and selling tea as a hawker, without a licence, is liable to the penalty, although, even with a licence, he would be liable to a penalty for selling tea in an unentered place. *R. v. M'Gill*, 2 B. & C. 142; 3 D. & R. 377, S. C. (a).

George M'Gill, was convicted under the hawkers' act, for travelling from house to house, and exposing to sale divers parcels of tea, without any licence, it was contended that the defendant ought to have been convicted under 12 Geo. III. c. 46, s. 6, which prohibits the selling of tea, except under certain regulations; but the Court were of a different opinion. They said, that 50 Geo. III. c. 41, was passed to protect domiciled tradesmen, the other statute, to assist the collection of duties; that the effect of the latter was not to destroy the prohibition contained in the former, but that the two provisions were consistent, and might stand together; that the first imposed a penalty upon persons trading at all, as hawkers, without a licence; the second imposed a penalty upon the sale of tea by hawkers, even with a licence; and, therefore, that a person who exposed tea to sale as a hawker, and had no licence, offended against both the above-mentioned provisions, and was liable for a penalty for each breach of the law. There is much obscurity in this part of the statute. The 17th and 20th sections are in terms the same as the 11th and 14th sections of the 9 & 10 Wm. III. c. 27, and in both these acts the same difficulty occurs, as to the imposing a penalty of 10*l.* given by the one section, or of 40*l.* given by the other, for trading without a licence, &c. In practice, convictions are always for 10*l.* and in *R. v. Webbsell*, it was decided, that a conviction in that penalty was proper. It is fair to suppose, that the sum in the 20th section should have been 10*l.*, and not 40*l.*, and that the latter sum was inserted by mistake.

It may also be mentioned, that, unless we suppose that the sum of 40*l.* has been inserted by mistake for 10*l.*, the statute is inconsistent with itself, as it enacts that the said sum of 40*l.* shall be recovered before a magistrate, whereas the 24th and 25th sections enact, that penalties above 20*l.* incurred under this act, shall be recovered in any court of record at Westminster, and penalties, below that sum, before a justice of the peace.

(a) *R. v. M'Gill*, 2 B. & C. 142; 3 D. & R. 377, S. C. The defendant was convicted under stat. 50 Geo. III. c. 41,

s. 17, for hawking tea without a licence. The conviction stated, that, on &c., at &c., the defendant was charged with being a hawker, &c., carrying to sell, and exposing to sale, without any licence as to do, certain goods, to wit, divers parcels of tea; and that he being such person, did, on the day and year aforesaid, at Worcester, carry to sell, and expose to sale, divers parcels of tea, and was then and there found trading as aforesaid, without any licence so to do. The conviction then stated the evidence; and that the justice did thereupon convict him of the same, and adjudge that he had forfeited 10*l.* Upon appeal, the justices at sessions confirmed the conviction, subject to the opinion of the Court on the following case: George M'Gill, as the agent of D. S. (which D. S. at the several times hereafter mentioned was a licensed tea-dealer), on the 17th of April, 1822, at Worcester, carried to sell several packages of tea, and then and there, at the house of one H. G., sold to him one of the said packages, containing a quarter of a pound weight of tea; and afterwards, on the same day, G. M'Gill, as such agent, carried to sell, and exposed to sale, at the house of one W. P., another package, containing also a quarter of a pound weight of tea, but did not then and there sell the same. At the several times when he, the said G. M'Gill, as such agent, so carried to sell, and exposed to sale, the said first-mentioned quarter of a pound of tea, neither he, nor D. S., his employer, had any hawker's licence, according to 50 Geo. III. c. 41.

—*Pearson*, and *O. Russell*, in support of the order of sessions, cited *R. v. Turner*, 4 B. & A. 510 (*ante*, 1104), as a decisive authority, to shew that agents are liable. And they also argued that, if a party be charged with trading as a hawker without a licence, it is no answer to say, that, by the same act he offended against another statute also; for a man may by one act commit several misdemeanors. [*Best, J.*—If an unqualified person kill game without taking out a licence, he is liable to a penalty for so doing, although a licence would not protect him from the penalty imposed upon unqualified persons]. That argument is conclusive against the defendant.—*Denman*, and *Winter*, *contra*, contended that the de-

As to the amount of the penalty, it was held in that and in a prior case, that a conviction in a penalty of 10*l.* for trading *without any licence* was cor-

HAWKING  
WITHOUT LI-  
CENCE, &c.

Amount of pe-  
nalty.

fendant should have been convicted under the 12 Geo. III. c. 46, s. 6, and not under the hawkers' and pedlars' act, 50 Geo. III. c. 41.—*Cur. adv. vult.*—The judgment of the Court was, on a subsequent day during the sittings, pronounced by *Bayley, J.*, as follows:—The question principally agitated in this case was, whether a person exposing tea to sale as a hawker, was liable to the penalty imposed by the 50 Geo. III. c. 41, upon persons trading as hawkers without a licence. There was also another point which might have been raised, and upon which the Court delivered an opinion in *R. v. Websdell*, viz. whether the penalty of 10*l.* was that which ought to have been imposed. The Court then thought 10*l.* the right penalty, and that opinion has been confirmed by a further consideration of the subject. As to the first point, it was argued, that inasmuch as one act of Parliament had made it illegal to sell tea in any but an entered place, and another had provided that no hawker should sell tea, that, therefore, a hawker was not liable to a penalty for exposing it to sale without a hawker's licence. If the 50 Geo. III. c. 41, had been the first act upon the subject, and no penalty had previously existed for trading as a hawker without a licence, there might, perhaps, have been some doubt, whether it extended to any cases in which a licence would not have legalized the sale; but looking at the whole series of enactments relating to hawkers and pedlars, and taking into consideration the time when they were first prevented from selling tea, it will be plain that they are still liable to a penalty for selling it as hawkers without a licence. The first enactment respecting them was the 8 & 9 Wm. III. c. 25\*, which is nearly the same as the 9 & 10 Wm. III. c. 27, and contains two clauses material as to the amount of the penalty to be imposed. The 17th section of the 50 Geo. III. c. 41, has this provision, "that if any such hawker shall trade as aforesaid, without, or contrary to, or otherwise than as shall be allowed by such licence, such person shall, for every such offence, forfeit the sum of 10*l.*" Three terms are there introduced, "without," "contrary to," or "otherwise than as shall be allowed by," such licence; and it will hereafter appear, that

those terms were advisedly introduced to apply to three descriptions of offences. Section 20 enacts, that any person may seize any such hawker found trading without a licence, or who, being found trading, shall refuse to produce a licence, and have him carried before a magistrate, who is thereby authorized to convict the person so charged, and by warrant under seal to cause the *said sum* of 40*l.* to be levied. Now, that section does not expressly impose any penalty; and the 17th section, to which it apparently refers, has a penalty of 10*l.*, and not 40*l.*: it is, therefore, fair to suppose, that the sum in the 20th section should have been 10*l.*, and not 40*l.*, and that the latter sum was inserted by mistake; and an examination of the earlier statutes on this subject will shew clearly that such was the fact. The 19th section imposes a penalty of 40*l.* upon any person trading with a borrowed licence, or one that does not contain his real name. The 8 & 9 Wm. III., and 9 & 10 Wm. III. c. 27, had not any such clause; the 3rd section of the latter imposed a penalty of 12*l.* upon hawkers trading "without," or "contrary to," such licence as the 1st section requires them to take. The 5th section imposes a penalty of 50*l.* for travelling with a forged licence; and the 8th section authorizes the apprehension of hawkers travelling without a licence, contrary to the act, and directs that they shall be taken before a magistrate, who, if the offence be proved, shall convict them, and forthwith direct the *said sum* of 12*l.* to be levied by distress, &c. The *said sum* of 12*l.* there manifestly refers to the penalty imposed by the third section, that being the only sum of 12*l.* which had been before mentioned; and the expressions "without a licence," and "contrary to the act," in the 8th section, are applicable to the trading without or contrary to the licence mentioned in the 3rd section. The next act material to be considered on this point is the 25 Geo. III. c. 78; but in the mean time, some alteration was made in the law as to the sale of tea and cambrics. The 10 Geo. I. c. 10, s. 14, provided, that tea should not be sold except in an entered place. By that provision the right to sell it was made local; the 9 Geo. II. c. 35, s. 20, enacted, that it

\* This act is not printed at length in the quarto edition, but it is so in the folio edition, published by order of the House of Lords.

HAWKING  
WITHOUT LI-  
CENCE, &c.

rect. And see *R. v. Websdell*, 2 B. & C. 136; 3 D. & R. 360, S. C. *infra*, note (a).

should not be sold by any hawker and pedlar. The object of the statutes before cited, more particularly applying to hawkers and pedlars, appears to have been to protect domiciled tradesmen; of the two latter, to assist the collection of duties. The effect of them is, not to destroy the former prohibition against trading as a hawker without a licence, but to add a cumulative penalty for hawking tea, even with a licence; for the two provisions are consistent, and may well stand together. The first imposes a penalty upon persons trading at all as hawkers without a licence; the second imposes a penalty upon the sale of tea by hawkers, even with a licence; and, therefore, a person who exposes tea to sale as a hawker, and has no licence, offends against both the above-mentioned provisions, and is liable to a penalty for each breach of the law. The 7 Geo. III. c. 43, s. 7, made cambrics found in the possession of any hawker or pedlar liable to forfeiture. Then came the 25 Geo. III. c. 78, as to hawkers and pedlars, the 4th section of which resembles the 3rd of the 9 & 10 Wm. III. c. 27, but has this difference—the penalty was before confined to persons trading “without” or “contrary to” the licence; this enactment has the additional words “or otherwise than as shall be allowed by” such licence. That expression could only be applicable to those cases in which a licence would not legalise the trading. The 25 Geo. III. c. 78, s. 4, alters the penalty from 12*l.* to 10*l.*; and between the 4th section, which corresponds to the 3rd section of the 9 & 10 Wm. III., and the 7th section, which corresponds to the 8th section of the former act, introduces, in sect. 6, a provision, that persons trading with a borrowed licence shall be liable to a penalty of 10*l.* In the 7th section, which, as in the former act, refers to the first penalty of 10*l.*, the expression “said sum of 10*l.*” is retained. The 25 Geo. III. c. 78, was repealed by the 29 Geo. III. c. 26, which, however, contained most of the same provisions. Thus, the 11th and 14th sections of the latter correspond with the 4th and 7th of the former; the 13th section also of the latter corresponds with the 6th section of the former, except as to the amount of the penalty, which was raised from 10*l.* to 40*l.*; and this shews how the mistake in the 14th section arose. In the 25 Geo. III. c. 78, two penalties of 10*l.* had

been imposed in different sections preceding that in which the justice is directed to cause the said sum of 10*l.* to be levied. In the 29 Geo. III. c. 26, one of those penalties was increased to 40*l.*; and it must have been erroneously supposed that the expression *said sum* referred to that penalty which was raised, and not to that for trading without, or contrary to, or otherwise than as allowed by, the licence, which still remained a 10*l.* penalty. These sections were exactly followed in the 50 Geo. III. c. 41, and in like manner the mistake crept into that act also. Upon the question, whether the defendant is liable to a penalty for selling tea, as a hawker, without a licence, we are of opinion that he is; and that the words, “otherwise than as allowed by the licence,” introduced into the modern acts relating to hawkers and pedlars, shews, that when hawkers were prevented from selling tea even with a licence, it was not intended to exempt them from the penalty before imposed upon the sale of any goods, wares, &c., without a licence. For these reasons, we think that the conviction was right.—Order of sessions confirmed.

(a) *R. v. Websdell*, 2 B. & C. 136; 3 D. & R. 360, S. C. This was a conviction under stat. 50 Geo. III. c. 41, for hawking shoes without a licence. The conviction set out an information, that the defendant, on &c., at Cromer, in the county of Norfolk, was a hawker and trading person, going to other men’s houses, &c., and, being such person, did, on the day aforesaid, at Cromer, carry to sell, and expose to sale, divers goods, wares, &c., to wit, a quantity of shoes, and was then and there found trading without any licence so to do; whereupon he was summoned, &c., and the justice did convict him of the said offence, and adjudge that he had forfeited the sum of 10*l.* The sessions, upon an appeal, quashed the conviction, subject to the opinion of this Court, upon the following case:—It was fully proved, on behalf of the appellant, that he was a shoemaker, and that he was the real worker or maker of the said shoes, which he “carried to sell and exposed to sale:” but as it appeared from the evidence that Cromer was not a mart, market, or fair, nor a city, borough, town corporate, or market town, the Court were of opinion that the conviction was good, although the words, “or elsewhere,” omitted in the 50 Geo. III. c. 41, are in the 9 & 10

## IX. Hiring or Lending Licences.

HIRING  
OR LENDING  
LICENCES.

Br 50 Geo. III. c. 41, s. 19, it is enacted, "That in case any person shall let out, or hire or lend any licence to him or her granted as aforesaid, or

50 Geo. 3, c. 41.  
Hiring or lending  
licences.

Wm. III. c. 27. But it was objected, on behalf of the appellant, that the conviction was bad in point of form; first, because, in setting forth the offence, it was not stated that the shoes were not of the manufacture of the appellant; and, secondly, because the conviction was under sect. 20 of the 50 Geo. III. c. 41; and that, therefore, the penalty adjudged (if any) should have been 40*l.*, and not 10*l.* And on these grounds the conviction was quashed. After hearing *Cooper* in support of the order of sessions, and *O. Russell*, and *E. Alderson contra*,—*Bailey, J.*, said—There is much obscurity in the 50 Geo. III. c. 41; nor is it found there for the first time. It has existed from the passing of the 29 Geo. III. c. 26. The 11th and 14th sections of that act are in terms the same as the 17th and 20th sections of the 50 Geo. III. c. 41; and in both these acts the same difficulty occurs, as to imposing a penalty of 10*l.* or 40*l.* It has been contended, that a person trading without a licence is liable to the penalty of 40*l.* imposed by the 20th sect., and is not within the 17th section, which imposes a penalty of 10*l.* If that were clear, the conviction in a penalty of 10*l.* would be bad; but the meaning of the act should be quite plain, to induce us to come to such a conclusion; for if there be a doubt, we should adopt that construction which will bear with the least hardship on the party convicted. In the 17th section there are three propositions:—"If any such hawker shall trade *without, or contrary to, or otherwise than as shall be allowed by* such licence, he shall forfeit 10*l.*" It does not say, such hawker "having obtained a licence," and trading, &c. There are not, then, any words confining the operation of that section to a person having obtained a licence; and the fair meaning of the words, "shall trade without such licence," appears to be, "shall trade without having obtained a licence." In *R. v. Turner*, this objection, if good, would have been decisive; yet it was never suggested, and in practice convictions are always for 10*l.* In the last edition of *Burn's Justice* a form is given in which the penalty is 10*l.*; and that is worthy of consideration, although it cannot be treated as an express authority. For these reasons, I think that the words in the 17th section,

"trading without such licence," are not confined to persons who have obtained a licence, and travel without it. If that be the right construction, then the only question is, whether the 23rd section exonerates the defendant from any penalty, or whether he is exempted by the proviso in the 9 & 10 Wm. III. c. 27, sect. 9. If the question had turned upon the 9 & 10 Wm. III. c. 27, he would have been within the exemption, for that authorizes the manufacturer of goods to sell them in market towns, &c. *or elsewhere*. That, however, is not an empowering but an exempting clause; and the 29 Geo. III. c. 26, which imposed a higher duty, contained the same prohibitory clause as the 9 & 10 Wm. III. That being general, would have entirely repealed the exemptions in the former act; but then a new proviso is introduced, differing essentially from that in 9 & 10 Wm. III. c. 27, for the words, *or elsewhere*, are omitted. A similar proviso was introduced into the 50 Geo. III. c. 41; and it is manifest, that the words, *or elsewhere*, were omitted because the legislature thought them too large. I am therefore of opinion, that, as the prohibition in the 50 Geo. III. c. 41, is general, and the exempting clause confined to marts, markets, fairs, cities, boroughs, towns corporate, and market towns, the defendant was not justified in selling the articles in question in a place not coming within that enumeration.—*Per Best, J.*—The act in question is certainly very obscure, but I think that both points must be determined against the defendant. As to the first, viz. the right of a manufacturer to hawk his own wares: when the 9 & 10 Wm. III. c. 27, was passed, the legislature intended that a manufacturer should be allowed to sell his own goods any where; but the same indulgence was not extended to them by the 50 Geo. III. c. 41. That limited their privileges to certain places. It has been said, that the 9 & 10 Wm. III. c. 27, is only repealed as to the duties; but sect. 31 of the 50 Geo. III. c. 41, shews that every provision of the former act, which would be inconsistent with the latter, was intended to be repealed. But that argument is unnecessary, for the 50 Geo. III. c. 41, imposes new duties; and a person not having the licence thereby required, cannot hawk at all, except in

MIRING  
OR LENDING  
LICENCES.

50 Geo. 3, c. 41.

Penalty.

What not an offence within act.

shall trade with or under colour of any licence granted unto any person whatsoever, or of any licence in which his or her own real name shall not be inserted as the name of the person to whom the same is granted, the person letting out to hire or lending any such licence, and the person so trading with or under colour of any licence granted to any other person, or any licence in which his or her own real name shall not be inserted, as the name of the person to whom the same is granted, shall each of them forfeit the sum of 40*l.*, to be recovered and applied as hereinafter mentioned; and in case any person shall be convicted or have judgment against him for lending his or her licence to any other person or persons contrary to this act, such his or her licence shall be from henceforth forfeited and void, and he or she shall be utterly incapable of having any licence again granted to him or her to trade as aforesaid; provided always, that nothing herein contained shall subject to the said penalty any servant travelling for a licensed master, with the licence of such master, and for his benefit, or any licensed master sending such servant to travel with such licence."

A hawker who gives his licence to be used by his servant employed to sell goods on his account is not liable to the penalty, as for *letting to hire* or *lending* his licence. *Hodgson, q. t., v. Flower, 2 Campb. 290.* This was an action of debt on stat. 29 Geo. III. c. 26, s. 13, to recover the penalty of 40*l.* from the defendant for *letting out to hire and lending* his licence to one B. W. The second count was for unlawfully *lending* the licence. It appeared that W. was the defendant's servant, and was in the habit of going about selling coals for his master, and received 4*s.* 6*d.* a chaldron upon the coals he sold. And it was held by Lord *Ellenborough, C. J.*, that no forfeiture was incurred by the defendant, and that an action could not be maintained against a master for sending out a servant with a licence.—And he cited in point *Chamberlain, q. t., v. Hill, 2 Campb. 292.*

## X. Forging Licences.

Forging or using forged licence.

Penalty.

By 50 Geo. III. c. 41, s. 18, "If any person or persons whatsoever shall forge or counterfeit any licence or licences by this act directed to be granted, or travel with, or produce or shew any such forged or counterfeited licence or licences, for any of the purposes aforesaid, every such person shall, for every such offence, forfeit the sum of 300*l.*, to be recovered and applied as hereinafter directed."

## XI. Constables refusing to assist, &c.

Constables refusing to assist.

Penalty.

By 50 Geo. III. c. 41, s. 21, "If any constable, headborough, or tithing-man, or other officer or officers of the peace, shall refuse or neglect, upon due notice, or on his or their own view to be aiding and assisting in the execution of this act, being thereunto required, and each and every such officer or officers being thereof convicted upon his confession, or by the oath of one or more credible witness or witnesses, before any justice of the peace for the county or place where the offence shall be committed, shall forfeit for each and every such offence the sum of 10*l.*, to be recovered and applied as hereinafter mentioned."

As to the duty of constables in seizing &c., persons &c., selling spirits, see *ante*, p. 1111.

those places, and under those circumstances, particularly provided for by that act. As to the other point, it certainly appears difficult to reconcile the 17th and 20th sections of the act. But I think that the defendant was at all events

guilty of an offence against the 17th section, and was therefore liable to be convicted in a penalty of 10*l.* Order of sessions quashed, and conviction confirmed.

XII. *Penalties, Recovery and Application of—Non-attendance of Witnesses.*

By 50 Geo. III. c. 41, s. 24, "All pecuniary penalties which shall be incurred under this act of a greater sum than 20*l.*, shall be recovered, together with costs of suit, in any of his Majesty's Courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoign, protection, privilege, or wager of law, or more than one imparlance shall be allowed; and one moiety of every such penalty or forfeiture shall belong to his Majesty, his heirs and successors, and the other moiety thereof to the person or persons who shall inform or sue for the same."

Sect. 25 enacts, "That in all cases where the pecuniary penalty by this act imposed does not exceed the sum of 20*l.*, it shall be recoverable before one of his Majesty's justices of the peace of the county, riding, shire, division, city, liberty, town, or place, wherein the offence shall be committed, on proof of the offence, either by voluntary confession of the party or parties accused, or by the oath of one or more credible witness or witnesses, and one moiety of every such last-mentioned penalty shall belong to his Majesty, his heirs and successors, and the other moiety to the informer or informers prosecuting for the same, and, in case of non-payment, the said justice, by warrant under his hand and seal, shall cause the same to be levied by distress and sale of the offender's goods and chattels, or of the goods and chattels with which such offender shall be found trading, and the overplus of the money raised, after deducting the penalty and expense of the distress and sale, shall be rendered to the owner, and shall also commit the offender to the prison of such county, shire, division, city, liberty, town, or place, there to remain until the said penalties, and the reasonable charges of taking the said distress, shall be levied by such distress and sale as aforesaid, or until the same shall be paid or satisfied by such offender; and it shall be lawful for any such justice of the peace, by his warrant, to cause such offender to be apprehended and brought before him to answer to any charge or complaint for any such penalty, and to commit such offender to prison as aforesaid, until the hearing of such charge or complaint, unless he or she shall and do enter into a recognizance before such (a) justice, with two sufficient sureties in a sufficient sum, to be ordered by such justice, to appear at the hearing of such charge or complaint."

Sect. 26 enacts, "That no person committed to any gaol or house of correction for any offence committed against this act, shall be detained in such gaol or house of correction, for any longer space of time than three months."

Sect. 32 enacts, "That, if any person or persons shall be summoned as a witness or witnesses, to give evidence before any justice or justices of the peace, touching any of the matters relative to this act, or the [stat. 9 & 10 Wm. III. c. 27], and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed of by such justice or justices of the peace, or, appearing, shall refuse to be examined upon oath, and give evidence before such justice or justices of the peace, before whom the prosecution shall be depending, that then every such person shall forfeit, for every such offence, the sum of 10*l.*, to be recovered, levied, and paid, in such manner and by such means as are herein directed as to the other penalties."

50 Geo. 3, c. 41.  
Penalties above  
20*l.*, where to be  
recovered.

Penalties under  
20*l.*, how to be re-  
covered.

Distress.

Overplus.

Imprisonment.

Recognizance.

Time of commit-  
ment.

Witnesses refus-  
ing to attend or  
to give evidence.

Penalty.

XIII. *Conviction.—General Issue.*

By stat. 50 Geo. III. c. 41, s. 28, "A conviction in the form or to the effect following, *mutatis mutandis*, as the case shall happen to be, shall be good and effectual to all intents and purposes whatsoever, without stating

Form of convic-  
tion.

(a) By 3 Geo. IV. c. 23, s. 2, this recognizance may be entered into before any other justice. See *Conviction*, Vol. I.

CONVICTION,  
GENERAL  
ISSUE.

50 Geo. 3, c. 41.

the evidence, and without alleging more than the substance of the offence, in all cases wherein any such justice of the peace hath power to convict by virtue of the present act (a):

"BE it remembered, That, on the      day of      , in the year of our Lord      , at      , in the county of      , A. B. came before me, C. D., one of his Majesty's justices of the peace for the said county, residing near the place where the offence hereinafter mentioned was committed, and informed me, that E. F., of      , in the said county of      , [here set forth the fact for which the information is laid (b)], whereupon the said E. F., being duly summoned to answer the said charge, appeared before me, (and having heard the charge contained in the said information, acknowledged and voluntarily confessed the facts therein stated to be true); but in his [or, her] defence alleged, [here setting forth the substance of the defence], [or, voluntarily confessed the said charge to be true], [or, did not make any defence against the said charge, whereupon the same was fully proved on the oath of G. H., a credible witness], [or, said that he [or, she] was not guilty of the said offence, whereupon the same was fully proved on the oath of G. H., a credible witness, or as the case shall be], [or, did not appear before me pursuant to the said summons, but the said charge was fully proved on the oath of G. H., a credible witness, or as the case shall be], and therefore it manifestly appearing to me that the said E. F. is guilty of the offence charged in the said information, I do hereby convict him [or, her] of the said offence, and do adjudge that he [or, she] hath forfeited the sum of      , [or, his [or, her] licence], and the sum of      , of lawful money of Great Britain, to be distributed as the law directs, according to the form of the statute in such case made and provided. Given under my hand and seal, the      ."

Certiorari.

Sect. 29 enacts, "That no conviction upon this act shall be removed or removeable by writ of certiorari, or otherwise, into his Majesty's Court of King's Bench or any other Court, save upon an appeal as by this act is directed." See sect. 27, *post*, 1121.

Justices to transmit accounts of convictions, and penalties.

Sect. 30 enacts, "That every justice before whom any person hath already been convicted of any offence under or by virtue of any of the acts hereby repealed, and having received for his Majesty's use any part or share of any penalty levied, inflicted, or paid under or by virtue of such conviction, for which he has not already accounted, shall, within six months after the passing of this act, transmit to the commissioners for licensing hawkers, pedlars, and petty chapmen, a schedule or schedules containing the names of the persons so convicted, the day on which they were convicted, their respective offences, and the respective sums now remaining in the hands of such justice for his Majesty's use, which were levied or paid under or by virtue of such convictions, arranged according to the several counties, ridings, or places within which such convictions\* hath been made, and every justice, before whom any such person shall be convicted of any offence under or by virtue of this act, shall take and receive his Majesty's share of the penalty levied or paid under or by virtue of such conviction, and that every such justice, his executors or administrators, shall pay or cause to be paid all such sums of money as shall be remaining in his or their hands at the time of the passing of this act, at the next general quarter sessions of the peace after the passing of this act, and all such sums which he shall so take or receive upon any conviction under or by virtue of this act as aforesaid, at the next general sessions of the peace after he shall have so taken or received the same, into the hands of the clerk of the peace, or other such like officer for the county, riding, or place, within which such conviction shall have been made, who is hereby directed to remit the same forthwith, without fee or reward, to the said commissioners for licensing hawkers, pedlars, and petty chapmen, or to such person or persons as the greatest part of them shall appoint; and that every justice, his executors or administrators, shall, immediately on such payment made to any clerk of the peace, or other such

\* See.

To pay over money to clerk of the peace, who is to remit the same.

(a) The conviction is not to be set *Rep. 522.*

aside for mere inaccuracy. *R. v. Aikin*,  
3 Burr. 1785; *R. v. Selway*, 2 Chit.

(b) See the information itself, and state the offence according to it.

officer, transmit a like schedule to the said commissioners, or to such person or persons as they or the greater part of them shall appoint."

Sect. 34 enacts, "That if any person or persons shall at any time or times be sued, molested, or prosecuted for any thing by him or them done or executed in pursuance of this act, or of any clause, matter, or thing herein contained, such person or persons shall and may plead the general issue, and give the special matter in evidence, for his or their defence; and if, upon the trial, a verdict shall pass for the defendant or defendants; or the plaintiff or plaintiffs shall become nonsuited, or judgment shall be recovered against him or them upon demurrer; or if the plaintiff or plaintiffs shall discontinue his, her, or their action; or be nonprossed therein; then such defendant or defendants shall have treble costs awarded to him or them against such plaintiff or plaintiffs."

CONVICTION.

50 Geo. 3, c. 41.

General issue.

Treble costs.

#### XIV. *Appeal.*

STAT. 50 Geo. III. c. 41, s. 27 enacts, "That if any person or persons shall find himself, herself, or themselves aggrieved by the judgment of any such justice, then he, she, or they shall or may, upon entering into a recognizance with two sufficient sureties, to be approved by such justice, to the amount of the value of such penalty and forfeiture, together with a sum which, in the judgment of such justice, shall be adequate to the amount of the costs which may be awarded, conditioned to pay the amount of such penalties, forfeitures, and costs as shall be adjudged in case such judgment shall be affirmed, appeal to the justices of the peace at the next general sessions for the county, riding, or place,\* are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same, or, at their discretion, to state the facts especially for the determination of his Majesty's Court of King's Bench thereon; and in case the judgment of such justice shall be affirmed, it shall be lawful for such justices, or the Court of King's Bench, to award the person or persons to pay such costs, occasioned by such appeal, as to them shall seem meet."

Appeal.

\* Sic. The word  
to who seems omitted.

#### XV. *Forms, List of.*

INFORMATION against a Licensed Hawker, for not having the words "Licensed Hawker" on his Package, &c., (No. 1).

THE like against a person not licensed, for having the words "Licensed Hawker" on his Pack, &c., (No. 2).

THE like against a person for trading as a Hawker, without a Licence, (No. 3).

THE like against a Hawker for trading contrary to his Licence, (No. 4).

THE like against a Hawker for not producing his Licence, (No. 5).

SUMMONS on either of preceding Informations, (No. 6).

GENERAL Form of Conviction, (No. 7).

WARRANT of Distress, (No. 8).

COMMITMENT for Non-payment, (No. 9).

(No. 1).

— } BE it remembered, that, on &c., at &c., A. I., of —, in the said county  
of —, who, as well for our lord the now King, as for himself in this behalf,  
doth prosecute, cometh before me, J. P., one of his Majesty's justices of the peace for  
the said county of —, on the — day of —, in the — year of the reign of our  
lord the now King, and, as well for our said lord the King as for himself, informeth

Information  
against a licensed  
hawker for not  
having the words  
"licensed hawk-  
er," &c., on his  
package, &c. (a).

(a) See the statute, ante, 1106.



## FORMS.

me that a certain licence now in force, subscribed by one or more of the commissioners for licensing and regulating hackney coaches, hawkers, and pedlars, was at a certain day now past granted to C. D., late of &c., [labourer], to travel and trade as a hawker, pedlar, and petty chapman, under or by virtue of a certain act of Parliament made and passed in the fiftieth year of the reign of his late Majesty king George the Third, intituled "An Act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches;" and that the said C. D. being the person to whom such licence aforesaid was granted as aforesaid, and also being a trading person going from town to town, [or, to other men's houses], and travelling on foot, [or, with a horse, or as the case is], in England, [or, Wales, or as the case is], carrying to sell, and exposing to sale, goods, wares, and merchandize, did, on &c., at &c., trade with and under colour of such licence, by hawking for sale goods, wares, and merchandize, to wit, [here describe the goods], and d'd then and there, to wit, as aforesaid, carry the said goods, wares, and merchandize in a pack, [or as the case is, see the words of the act, ante, 1106]; and that the said C. D. had not then and there caused to be written, painted, or printed in large legible Roman capitals, upon the most conspicuous part of the said pack, [or as the case may be, see the words of the act, ante, 1106], in which he carried his said goods, wares, and merchandize, the words "Licensed Hawker," together with the number, name, or other mark or marks of distinction written or printed upon his said licence as aforesaid; contrary to the form of the statute in that case made and provided. Whereby, and by force of the same statute, the said C. D. hath forfeited, for his said offence, the sum of ten pounds; and thereupon the said A. I., who informs as well for our said lord the now King as for himself in this behalf, prayeth judgment of me the said justice in the premises.

A. I.

Exhibited before me, the day and year first above named. J. P.

## (No. 2).

Information  
against a person  
not licensed as a  
hawker, for hav-  
ing the words  
"licensed hawk-  
er," &c., on his  
pack, &c. (a).

Commencement as in the preceding form. State the offence thus:—That C. D., late of &c., [labourer], being other than any person to whom any licence, subscribed by one or more of the commissioners for licensing and regulating hackney coaches, hawkers, and pedlars, to travel and trade as a hawker, pedlar, and petty chapman, under or by virtue of a certain act of Parliament made and passed in the fiftieth year of the reign of his late Majesty king George the Third, intituled "An Act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches," had been granted under or by virtue of the said act, and being also a trading person going and travelling on foot, [or, with a horse, or as the case is], in England, [or, Wales, or as the case is], carrying to sell, and exposing to sale, goods, wares, and merchandize, to wit, [here describe the goods generally], did on &c., at &c., write, paint, and print, and cause to be written, painted, and printed, and kept and continued written, painted, and printed upon his pack, [or, as the case is, see the words of the act, ante, 1106], and in which said pack, [or, as the case is], the said C. D. then and there carried his said goods, wares, and merchandize as aforesaid, the words "Licensed Hawker," &c., [as the fact is]; contrary to the form of the statute in that case made and provided; whereby, &c. [Conclude as in form *supra*, (No. 1)].

## (No. 3).

Information  
against a person  
for trading as a  
hawker without a  
licence (b).

Commencement as in form, ante, (No. 1). State the offence thus:—That C. D., late of &c., [labourer], to wit, on &c., at &c., then and there being a hawker and trading person going from town to town, [or, to other men's houses], and travelling on foot, [or, with a horse, or as the case is], in England, carrying to sell, and exposing to sale, goods as a hawker and trading person, did then and there, as a hawker and trading person going from town to town, [or, to other men's houses], sell, carry to sell, and expose to sale, certain goods, wares, and merchandizes, to wit, [here state the goods generally: there is no occasion to state the precise number or quality], without having obtained the licence, [or as the case is], in that behalf directed and required by the statute in that case made and provided, in such manner as therein is directed, contrary to the form of the said statute; whereby, &c. [Conclude as in form (No. 1), *supra*].

(a) See ante, 1106.

(b) See the provisions, ante, 1112.

## (No. 4).

Commencement as in form (No. 1), *ante*, 1121. State the offence thus:—*That C. D., late of &c., [labourer], on &c., being then a hawker, ["hawker, pedlar, petty chapman, or other trading person"], going from town to town, [or, to other men's houses], and travelling on foot, ["either on foot or with horse, horses, or otherwise"], in England, carrying to sale, and exposing to sale, divers goods, wares, and merchandizes, and a licence so to do being duly granted to him, according to the provisions of an act of Parliament made and passed in the fiftieth year of the reign of his late Majesty king George the Third, intituled "An Act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches," did, at &c., [here state the improper act of trading done by defendant]; contrary to the licence so granted to him as aforesaid, and otherwise than was allowed by the same; and contrary to the form of the statute in such case made and provided. Whereby, &c. [Conclude as in form (No. 1), *ante*, 1121].*

Information on like act against a hawker acting contrary to his licence (a) (b).

## (No. 5).

Commencement as in form (No. 1), *ante*, 1121. State the offence thus:—*That C. D., late of &c., [labourer], on &c., at &c., in the county aforesaid, being then and there a hawker, and duly licensed as such, according to the provisions of an act of Parliament made and passed in the fiftieth year of the reign of his late Majesty king George the Third, intituled "An Act for placing the duties of hawkers and pedlars under the management of the commissioners of hackney coaches," and then and there trading under and by virtue of the licence in that behalf granted to him, did then and there refuse to produce and shew his said licence for so trading as aforesaid, unto one A. C., [constable of the parish aforesaid], although the same was then and there demanded by the said A. C., as such [constable] as aforesaid; contrary to the form of the statute in such case made and provided. Whereby, &c. [Conclude as in form (No. 1), *ante*, 1121].*

Information on like act for not producing the licence (b).

## (No. 6).

— } To A. C., the constable of the parish of \_\_\_\_\_, in the said county of \_\_\_\_\_, and whom else this may concern:  
 WHEREAS A. I., of &c., did, on &c., come before me, J. P., one of his Majesty's justices of the peace in and for the said county, and make information that C. D., late of &c., [state the offence, as in the information]; these are, therefore, to command you, in his said Majesty's name, forthwith to summon the said C. D. to appear before me, at \_\_\_\_\_, in the said county, on \_\_\_\_\_ the day of \_\_\_\_\_, at the hour of \_\_\_\_\_ in the forenoon of the same day, to answer unto the said complaint, and further to do and receive what to law doth appertain; and be you then there, to certify what you shall have done in the execution hereof. Herein fail you not. Given under my hand and seal, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

Summons on either of preceding informations.

J. P.

## (No. 7).

A general form of conviction on stat. 50 Geo. III. c. 41, is given thereby. See *ante*, p. 1120. Conviction.

## (No. 8).

— } To A. C., the constable of \_\_\_\_\_, in the said county of \_\_\_\_\_.  
 WHEREAS C. D., late of &c., was, on &c., at &c., in the said county, before [me], J. P., esq., one of his Majesty's justices residing near to \_\_\_\_\_, in the said \_\_\_\_\_, duly convicted by me, of [state the offence, as in the information]. And whereupon it was then and there adjudged by me, the said justice, that the said C. D. had forfeited, for his said offence, the sum of ten pounds of lawful money of Great Britain, to be distributed according as the law directs. And whereas the said C. D. has had

Warrant of distress.

(a) See Form, Arch. Conv. 204.

(b) See the statute, *ante*, 1112.

## FORMS.

notice of the said conviction, but hath refused or neglected to pay, and hath not yet paid, the said sum, pursuant to the said conviction, which hath been fully proved before me: These are, therefore, to command you to levy the said sum of [ten] pounds by distress and sale of the goods and chattels of the said C. D., or of the goods and chattels with which the said C. D. was so found trading, as aforesaid. And I do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of within [not less than four nor more than eight] days, unless the said sum of [ten] pounds, for which such distress shall be made, together with the reasonable charges of taking such distress, shall be sooner paid. And you are also hereby commanded to certify to me what you shall do by virtue of this warrant. Given under my hand and seal, at , the day of , in the year of our Lord . J. P.

(No. 9).

Commitment for non-payment.

Commence this form as in the form ante, p. 11, (No. 2). State the offence as in the information. Conclude thus:—and, upon full consideration had thereon, I, the said justice, have duly convicted him of the said offence, and have adjudged him to forfeit and pay, for his said offence, the sum of ten pounds of lawful money of Great Britain, which said sum of ten pounds has been demanded of the said C. D. by me the said justice, and he has not paid the said penalty. Him therefore safely keep in your custody until the said sum of ten pounds shall be levied by distress and sale of the goods and chattels of the said C. D., or of the goods and chattels with which he was so as aforesaid found trading, together with the reasonable costs and charges of taking such distress, or until the same forfeiture shall be otherwise paid or satisfied; provided that the time of such imprisonment shall not exceed the space of three months; and for so doing this shall be your sufficient warrant. Given under my hand and seal, this day of , in the year of our Lord .

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Hawks and Hawking. See ante, Game, p. 936.

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## Hay.

AS to the malicious burning of, see ante, Burning, Vol. I. p. 540.

Stats. 2 Wm. III. sess. 2, c. 8, and 8 & 9 Wm. III. c. 17, and 31 Geo. II. c. 40, containing regulations concerning the selling of hay, straw, and cattle, within the bills of mortality, are, by stat. 36 Geo. III. c. 88, repealed, so far as relates to hay and straw, but are not general enough to be here inserted at large.

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Hearsay Evidence, see ante, p. 29 to 33.

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Hedge-breaking. See Wood, Vol. V.;—and as to Breaking Fences of Parks, see Malicious Injuries to Property, Vol. III. ante, p. 740, 741.

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Het, Qualification of, to kill Game, see ante, p. 884;—Forfeiture of Lands, &c. on Conviction, see ante, p. 814, 815.

## Hemp and Flax.

[33 Hen. VIII. c. 17; 26 Geo. III. c. 43; 27 Geo. III. c. 13.]

BY stat. 33 Hen. VIII. c. 17, it shall not be lawful to any person to water any hemp or flax in any river, running water, stream, brook, or other common pond, where beasts used to be watered, on pain that every person offending shall forfeit 20*s.*, half to the King, and half to the party grieved, or any other who shall sue in any court of record, leet, or law day.

33 Hen. 8, c. 17.  
Watering hemp or flax.

By stat. 26 Geo. III. c. 43, for the encouragement of the growth of hemp and flax in England yearly, a sum not exceeding (6335*l.* 15*s.*, 27 Geo. III. c. 13, s. 65), at the rate of 3*d.* *per* stone of hemp, and 4*d.* *per* stone of flax, was directed to be raised in the year 1787, and for every subsequent year, to be paid to the grower, or other person who breaks or properly prepares the same for market. And certain regulations relative thereto were placed under the cognizance of the justices at sessions. But the act was to continue in force for seven years only, and from thence to the end of the next session of Parliament, and is now expired.

26 Geo. 3, c. 43.  
27 Geo. 3, c. 13.  
Bounty for the encouragement of the growth of hemp and flax.

**Herring Fishery.** See *Fisheries*, *ante*, p. 776.

**Hides and Skins.** See *Leather, Excise*, *ante*, p. 459, &c.

**High Constable.** See *Constable*, Vol. I.

**High Treason.** See *Treason*, Vol. V.

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